Information market: re-use and commercial exploitation of public sector documents. 'PSI Directive'

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This Commission Staff Working Paper concerns the re-use of Public Sector Information (review of Directive 2003/98/EC).

The aim of the working paper is to present facts, evidence and examples relating to the re-use of PSI that are relevant to the issues dealt with in the Communication.

The PSI Directive provides for minimum rules applicable in all the Member States on the re-use of the information of public sector bodies and on their behaviour in the information market. It was adopted in order to address the many problems faced by private companies when dealing with public sector information holders: high charges, long response times, unfair competition, exclusive arrangements and the general non-availability of information for re-use.

Implementation: Member States have taken **three different approaches** to implementing the Directive: (i) eleven have adopted specific implementing legislation regarding the reuse of PSI.; (ii) four have used a combination of new measures specifically addressing re-use and legislation predating the Directive; (iii) eight have adapted their legislative framework for access to documents to include re-use of PSI. The remaining Member States (4) have notified the Commission only of measures predating the Directive, with no specific re-use provisions.

Following conformity checks of national transposition measures and/or complaints, the Commission approached the national authorities of a number of Member States on nonconformity issues. In three cases the Commission decided to initiate infringement proceedings for incorrect and incomplete transposition (in particular, concerning charging, non-discrimination, prohibition of exclusive agreements and procedural requirements).

Scope and impact of the Directive: to measure the impact of the re-use of PSI, an **assessment was carried out on behalf of the Commission**. This focused on three main PSI sectors: geographical and meteorological information, and legal and administrative information. The assessment indicates that:

- the Directive has had its strongest impact in the sector of **geographical information** (GI). Since 2002, re-use requests have increased by 250% on average and the download volume has grown simultaneously by approximately 350%. Moreover, a large majority (79%) of private re-users of GI would like to have access to more public GI but high pricing and restrictive licensing are preventing them from doing so;
- the Directive has had a considerable impact in the sector of **legal and administrative information**. The market for legal and administrative information has been growing, on average, by 40% since 2002. However, the survey also highlights the continuing dissatisfaction expressed by re-users about public authorities (the lack of information on what legal and administrative information is accessible and available for re-use);
- in the sector of **meteorological information**, the Directive has had limited impact so far. Meteorological re-users complain basically about pricing, transparency and licensing conditions, and report that discriminatory practices are particularly prevalent in this sector.

Moreover, the Commission has to analyse whether cultural establishments, education and research organisations and public service broadcasters, currently excluded from the scope, ought to be covered by the Directive:

- **cultural sector**: the advantages of including cultural heritage institutions within the scope of the Directive are currently difficult to assess and require further investigation over time. The possible implications to this sector (need for major administrative activity to clear third-party or unknown rights and heavy processing costs) should not be allowed in the longer term to outweigh the possible advantages to the economy, industry and society;
- **educational institutions**: it is widely felt by the research community that publicly funded research should be widely available and useable to all, to maximise its potential;
- **public service broadcasting institutions**: given that the Directive does not apply to documents if a third party owns the intellectual property rights (IPRs), this provision could considerably narrow the number of documents that broadcasters could make available and accessible for re-use purposes under the principles of the Directive.