

Proposed Recast of the re-use of Public Sector Information Directive

1. Background and aim of the proposal

The Public Sector Information ('PSI') Directive 2003/98/EC amended by Directive 2013/37/EU sets out the legal framework for the reuse of data generated by public sector bodies (e.g. environmental, legal, traffic, meteorological, health, financial etc.).

The Commission have conducted a review of the current PSI Directive aimed at addressing the remaining and emerging barriers to the re-use of public sector data. Consequently a recast of the Directive was proposed to bring the text up to date with advances in digital technologies, such as Artificial Intelligence and the Internet of Things.

The objective of the proposed recast of the Directive is to strengthen the EU's data-economy by increasing the amount of publicly held and publicly funded data available for re-use. Particularly emphasis is being placed on real-time access to dynamic data, ensuring fair competition and easy access to cross border data. The proposed changes are intended to clarify the relationship with other EU legal instruments including the Database (96/9/EC) and INSPIRE (2007/2/EC) Directives.

The main changes introduced to the text are framed so as to allow full exploitation of the potential of public sector information. The Directive introduces an obligation to allow the re-use of public data held by public bodies (Recital 19) unless access is restricted or excluded. It brings public undertakings such as public utilities under the PSI and it proposes using Delegated Acts to set out lists of high value datasets to be made available by Member States.

While each individual amendment may be broadly welcomed, the sum of the changes must be taken into consideration when assessing the impact on public bodies and public undertakings.

2. Summary of the measures proposed

1) *Introduction of delegated powers for improving access to high-value datasets*

The Commission consider that the provisions governing access to high value datasets needs to be strengthened and to this end they are proposing the introduction of powers to adopt delegated acts in respect of a list of high-value datasets.

In order to facilitate reuse high value data sets should be made available with minimal legal restrictions and at no cost. The power to adopt acts setting out the lists of high value datasets which Member States will be asked to provide will be delegated to the Commission along with specification of the method of publication and re-use.

These datasets should be made available in machine-readable format, be accessible via APIs and be free to use. It includes an obligation to make public data re-usable unless restricted or excluded, however clarification will be required to see whether public bodies will be required to compile the high value datasets (even if they do not currently do so) and make them available.

Organisations should consider what datasets they currently publish or intend to publish and what effort would be required to automate their availability through APIs if this is not already in place.

Main references:

- Delegated Acts
 - Recital 58, 59 and 61
 - Article 14 and 13(6)
- High Value Datasets
 - Recital 28, 58, 60
 - Article 2(8), 6(5)
 - Chapter 5 – Article 13

2) *Scope expanded to include public undertakings*

The scope of the Directive will be expanded to include public undertakings which refers to entities entrusted with the provision of public services (water, energy, transport, postal services, public transport services by rail and road, air carriers or marine transport services) which are funded or governed by public bodies.

High-value datasets are often generated in the context of the provision of certain services of general economic interest by public undertakings and by publicly funded research rather than by the public sector as such. Where these datasets are included in the list of high value datasets to be dictated by way of delegated acts they should be provided as dynamic data where possible.

Public undertakings will be encouraged to make data available for re-use but information outside the scope of the public service is excluded, however, private companies engaged by them to carry out a public service task will also come under the scope of PSI for data relating to that task.

Main references:

- Recitals 20, 21, 22
- Articles 1(1)(b), 2(2), 13(3), 5, 6(2)(c), 13(3)

3) *Research Data and Open Access Policies*

Publicly funded scientific research data will now come under this Directive and national policies will be required aimed at making this research openly available. This data should be made available through online repositories provided by the research bodies.

The proposal limits itself to ensuring legal re-usability of research data and only such research data that has already been made openly accessible as a result of obligations under national law or resulting from agreements with research funding bodies.

Main references:

- Recitals 23, 24, 44
- Articles 4(5), 7(2), 10

4) *Amendment to charging principles*

Amendments have been made to the charging stipulations, the directive proposes that data should be made free of charge or charges limited to marginal cost recovery. Recital 14 of the current Directive, 2003/98/EC, which provided for a reasonable return on investment has been removed. In the interests of transparency where public bodies are required to generate income to enable them to perform their functions a published list of such bodies must be provided.

While in general Irish public bodies do not charge for published data, the impact of the changes to the charging regime for those that do needs to be explored.

Main references:

- Recital 32, 33
- Article 2(13) and 6

5) *Prohibition of exclusive arrangements*

The holders of public data sometime enter into arrangements to derive extra value from their data which can limit the number of potential re-users of the data.

The current directive requires public bodies to provide data for use in open formats without exclusive arrangements except where necessary. In the interests of transparency this has been extended to include public undertakings (semi-states, utilities and agencies) with the provision that any such arrangement must be made public two months before it comes into force.

Main references:

- Recital 45
- Article 12

6) *Clarification of links with other EU Directives*

The proposal builds on the INSPIRE Directive 2007/2/EC to regulate the re-use of spatial datasets, including the conditions for re-use by third parties. It also clarifies the relationship between the PSI Directive and the *sui generis* right provided for in Article 7 of the Database Directive 96/9/EC.

Main references:

- Recital 45, 53
- Article 1(5) and (6)

3. Timeline

The data economy is seen as a key driver of growth and jobs which could significantly boost European competitiveness in the global market. Public bodies produce vast amounts of data, e.g. meteorological data, digital maps, statistics and legal information. This information is a valuable resource for the digital economy. It is not only used as valuable raw material for the production of data-based services and applications, but also brings greater efficiency to the delivery of private and public services and better informed decision-making.

Some countries fully support the PSI directive as it is currently cast. A number of countries have raised concerns in relation to the delegated acts, charging proposals and the burden that the implementation of access to dynamic data through APIs could pose. The Government Reform Unit in the Department of Public Expenditure & Reform will continue to engage with the European Commission/Council on the proposals – an indicative timeline can be seen below.

PSI Directive recast – timeline

Launch of negotiations with the MS (Telecom Council WP)	Early May
Assigning of EP Committees	Mid May
Publication of all language versions in Eur-Lex	End May
EP Draft report and opinions	Sept/October
Adopted report (1 st reading)	November
Agreement on a general approach in the Council	Early December
Trilogue (interinstitutional negotiations)	Early 2019
Adoption of the recast Directive	Mid -2019
Launch of the process to adopt the Delegated Act (PSI Group as the expert group)	Within 5 years of entry into force

Additional information

You will find all related documents (Impact Assessment Report, Synopsis Report of the Public Consultation, IA Support Study, Factsheets, etc.) on the EU website at the following link:

<http://ec.europa.eu/digital-single-market/en/policies/building-european-data-economy#usefullinks>

The text of the proposed directive and explanatory notes can be found at

https://eur-lex.europa.eu/resource.html?uri=cellar:4e790e4c-4969-11e8-be1d-01aa75ed71a1.0001.02/DOC_1&format=PDF

Government Reform Unit

Department of Public Expenditure and Reform