

PSI Alliance[★]

Name PSI Alliance
Organisation

Context and possible action to consider

Do you think that PSI re-use has reached its full potential in Europe? (optional)

- agree strongly
- agree
- no opinion
- disagree
- disagree strongly

Could further action towards opening up public data resources and practical measures facilitating re-use (asset lists of available documents, simplified or no licensing conditions, marginal costs etc.) contribute to unlocking innovation and developing new services, applications and mash-ups? (optional)

- agree strongly
- agree
- no opinion
- disagree
- disagree strongly

Community-wide products and services using PSI are not limited to national borders. Do you think that divergent national rules can make it more complicated to grasp economic opportunities and to develop cross-border products and services? (optional)

- agree strongly
- agree
- no opinion
- disagree
- disagree strongly

Should further action be taken at Community level to promote cross-border products and services re-using PSI? (optional)

- agree strongly
- agree
- no opinion
- disagree
- disagree strongly

In your opinion, should the PSI Directive be amended? (optional)

- yes
- no

Amendments to the Directive

 If yes, should there be

	yes	no
more substantive amendments to the Directive? (optional)	<input checked="" type="radio"/>	<input type="radio"/>
and/or technical adjustments to the Directive clarifying some of the provisions? (optional)	<input checked="" type="radio"/>	<input type="radio"/>

 If you think that the PSI Directive should be amended, which issues should in your opinion be addressed? Which provisions should not be amended? (optional)

To be addressed:

- Obligations to deliver raw data (if information is stored in a digital form and is public
- Clarification of “public task”
- Licences should be mandatory (if data is delivered to commercial re-users)
- “marginal cost” should be written into the directive and properly defined
- Proper segregation of accounts to prevent cross subsidy
- An independent PSI regulator should be mandatory in every Member State
- Reasons for restraining PSI re-use should be clearly stated, transparent and subject to regular review
- A clearer redress mechanism to better avoid court procedures
- Greater transparency of who is the responsible person in charge of asset lists within the PSI Holders organisation
- Sensible sanctions for non-compliance
- The fact that copyright can still be used to block public registers
- Current PSI holders are allowed to profit from selling data while still staying within the letter (but not the spirit) of the law

Not to be amended

- Priority should be given to proper implementation and application before widening the scope (although the PSI Alliance is not against widening the scope in principle)
- Formalities for the request of PSI work well

Should "soft law" measures be taken possibly in addition to a modification of the Directive, such as Commission guidance or recommendations, regarding the application / interpretation of the PSI Directive? (optional)

- yes
- no

 If yes, which "soft law" measures would you favour? (optional)

- Recommendations regarding the creation of licences
- Recommendations for how to calculate prices on the basis of the marginal cost principle
- Guidelines regarding PSI-regulators and their mission
- Guidelines and support to better understand how to apply the Directive, e.g. best practice, case-law and exchange of information between the EC and the MS
- Guidelines on what is and is not permitted to be withheld by PSI Holders
- Guidelines on what should be made available for re-use.

Substance

Scope (Article 1)

Currently, the PSI Directive is not applicable to information held by cultural, educational and research establishments and public service broadcasters. In your opinion, as far as information is not covered by third party intellectual property rights (excluded in any case from the scope of the PSI Directive), should the Directive apply to information held by

	agree strongly	agree	no opinion	disagree	disagree strongly
public service broadcasters? (optional)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
educational and research establishments? (optional)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
cultural establishments? (optional)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Could you please indicate reasons for or against the inclusion of information held by these establishments? What would be the benefits / difficulties if the scope was extended to cover such information? Are there certain data sets, if not all, held by these establishments that could be valuable for developing new services or applications and that should be made available to re-use? (optional)

Where the generation of information is financed by public funds, there should be an implied right of re-use. The PSI Alliance believes that inclusion of these sectors will lead to a market expansion of products and services that will benefit both consumers and private companies. In particular with regard to educational and research establishments, inclusion within the scope would remove a loophole for PSI Holders to restrict release of data for re-use. However, there are practical issues that would need addressing regarding third parties' intellectual property rights as well as political distractions in this area which could be highly time-consuming and distracting from the ultimate goal of the review of the PSI Directive, which has enough problems coping with the current scope. Therefore, the priority should be to focus on proper application of the current Directive before widening the scope.

Definitions (Article 2)

Do you think that the definitions of the PSI Directive cause problems and should be amended or clarified? (optional)

- yes
 no

 If yes, could you please indicate which definitions / problems, and how they could be clarified / addressed? (optional)

-“Raw data” - it should be made clear to authorities that they have to deliver the original information that is stored in their databases and not value added information.

-“Re-use” - the term re-use should be better defined to avoid misinterpretation

-“Document” - the term is becoming anachronistic , fitting poorly into an open data environment

made up of text, images, streaming videos etc

- A differentiation between “PSI” and “information protected by intellectual property rights”, as companies are accused and sometimes sued by PSI bodies for being in breach of copyright, despite legitimate PSI re-use.

-“Public task” - the lack of definition is a key failure of the current Directive; in many ways, a proper definition of public task would revise the Directive in itself. While at the top political level, there is a fair understanding, at a lower administrative level, many public information administrators see the information as their own and not the property of taxpayers, thus do not readily want to publish information and also often see the data as a means for of revenue for their department. The Directive should define “public sector task” in relation to PSI re-use. “Public Task” should be defined in the area of managing and disclosing information, and away from the area of competing with the private sector in order to avoid possible abuse of dominant position. Public task should include:

- Managing information, using information, sharing it, and disclosing it
- Assessing, identifying and advertising information for potential re-use
- Classifying information, describing it, and quantifying it
- Cleaning information for reuse
- Contracting with the private sector clean up information for reuse
- Qualifying and describing quality or accuracy concerns that affect reuse
- Making information digitally available in useable formats
- Licensing information for reuse
- Managing information cost effectively
- Charging at marginal cost of supply
- Facilitating private sector reuse of information
- Ensuring a level playing field between re-users including the PSB itself
- Ensuring maximum economic benefit to the community by encouraging reuse

General principle (Article 3)

Do you think that all public sector information which is already publicly accessible should also be re-usable? (optional)

- agree strongly
- agree
- no opinion
- disagree
- disagree strongly

In your opinion, what would be the advantages / disadvantages of this? (optional)

The PSI Alliance believes that all PSI should be made available, and if there are exceptions to be made, such as for data protection rules and IP rules, then they can be included as part of the licence.

The advantage is that there will be growth, transparency and creativity that will meet the needs of the market and there are no disadvantages.

Making PSI accessible should be a requirement of the revised Directive, and MS should be obliged to justify any exemptions.

Making all PSI accessible would help to apply the Directive properly, as many PSI holders escape it by arguing that they do not fall under the scope of the Directive.

Processing of requests (Article 4)

Do you think that the requirements applicable to the processing of re-use requests should be tightened or clarified? (optional)

yes

no

 If yes, how should this be done? (optional)

Currently public sector bodies can make their own rules for time taken to process requests - this should be tightened. A suitable statutory maximum length of time should be imposed, for example this could be the same as the time taken to process a freedom of information request. There should be a mechanism to oversee requests as well as a mechanism for redress.

Available formats (Article 5)

In your opinion, should more re-use friendly formats (e.g. machine readable) be promoted? (optional)

yes

no

 If yes, could you please specify which formats and how? (optional)

Information in a digital format must be promoted (machine readable and machine re-usable). In terms of larger companies, no special format has to be used as they, in particular, can convert the information to the format necessary for their business. Other smaller companies prefer the format to be in XML as this is the structure that is more re-usable. This process will also aid public authorities in the organisation of their data. Another problem is that often files or databases contain “classified” information, blocking the whole file from re-use, thus stand-alone parts of the database are not available for re-use due to arguments based on Article 5 para 1.

Charging (Article 6)

In your opinion, public sector information should be made available for re-use

	agree strongly	agree	no opinion	disagree	disagree strongly
at charges based on full cost recovery, together with a reasonable return on investment? (optional)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

at charges based on full cost recovery? (optional)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
at charges based on partial cost recovery? (optional)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
at marginal costs for reproducing and disseminating the documents? (optional)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
at marginal costs as the basic rule with certain limited exceptions? (optional)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
for free as regards both commercial and non-commercial re-use? (optional)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
for free as regards non-commercial re-use? (optional)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

What would be the benefits of charging based on marginal costs? What could be the disadvantages? (optional)

Cost can be a barrier, so when the information is cheaper, then accessibility is greater. From an industrial point of view, many companies are used to, if not expect to pay their suppliers. Any other charging regime apart from marginal cost requires complex licensing and some substantive governance. Both are expensive to set up and operate and hinder innovation and potential re-use.

There should be proper segmented accounting to prevent cross-subsidy and mission-creep coupled to independent and effective governance with sanctions.

The Cambridge Study showed that increased gains from greater employment and tax returns outweigh any losses of direct revenue obtained from the sale of the data in the meteorological sector - there is no evidence that this should be any different for other sectors.

It should not be difficult to calculate the real cost for PSI distribution. If there are extra costs, then they must be specified and then if necessary scrutinised.

Keeping costs marginal will prevent the public sector from competing directly in the market with an unfair advantage with private companies, which is currently the case in many areas.

A disadvantage could be that marginal cost pricing can theoretically rule out funding for public sector bodies from sales of information (during tight economic times) which could otherwise be used by the PSB to reinvest in its information by cleaning it up to improve service and quality and making more of it available for re-use. It is arguable that this work is part of the public task and that the information should already be properly managed and easily accessible.

What could be the exceptions to a default rule of marginal costs? (optional)

Many public sector local and national information sets are poor quality, disorganised, and in various different formats, much of it is in analogue format and is barely accessible, and some of it has been largely forgotten about.

It can be very expensive to sort through and clean up and digitise public sector information to make it reusable, and this is quite often a specialist task. A lack of motivation, expertise, and funding in the public sector on this issue is a very significant bottleneck to unlocking the economic potential from reuse and this has not been addressed at all by the Directive.

Exceptional charges should be levied solely for the task of cleaning, improving and increasing re-use of PSI and should not be re-directed to other tasks carried out by the public sector body.

Re-users occasionally desire partnerships with an authority with regards to information collection - extra costs for this should be paid by the re-user or divided between several re-users that gain from the activity.

Any exceptions should be decided upon by a neutral body - e.g. a PSI regulator - who have powers to intervene.

Do you think that the current rules on charging (allowing full cost recovery, together with a reasonable return on investment) should be tightened and/or clarified in respect of how much re-users can be charged? (optional)

- yes
- no

 If yes, in what way? (optional)

Public sector bodies should adequately demonstrate how they apply their pricing and it should be made clear that only the marginal cost of distribution can be charged.

Often the information that is available in a database is already paid for by someone obliged to be entered into this database. (E.g. commercial or land registers often charge a fee for a legally enforced entry into a public register.) On the basis of full cost recovery usually the revenue already made with the “customer” in the first place is not accounted for and therefore charged “twice”.

There should be a stricter definition of what constitutes cost recovery - it should be clear that there should be no costs connected to other users (for example non-commercial re-users or individual citizens) who might get the information for free. There is no need for return on investments when it comes to government PSI Holders.

Transparency (Article 7)

Do you think that the current transparency rules regarding conditions and standard charges for re-use of PSI should be changed / clarified? (optional)

- yes
- no

 If yes, could you please indicate how you think this should be done? (optional)

There is often the initial problem that the transparency rules are simply not being applied in the first place.

Activities of PSI holders should be stated, declared publically and reviewed regularly. Instead of waiting for a request, public bodies should be required to give details of their charging policies. Any calculations should be connected to the different data distributions/services and not to the authority as a whole - it is very difficult to scrutinise the calculation if it is not clear enough and it is not connected to a particular service.

Furthermore, an obligation of transparency about criteria according to which charges and costs are applied and about the eventual application of direct or indirect public subsidies should be imposed.

Licences (Article 8)

Do current licensing regimes of Member States or of individual public sector bodies still create problems for re-use (e.g. by imposing unfair conditions or by unduly restricting the possibilities for re-use)? (optional)

- yes
- no

 If yes, what can be done to address these issues? (optional)

In many Member States, there exist hardly any standard licences - more should be done to encourage standard licensing terms and conditions (cf the Canadian government example). Licenses that are restrictive and subject to sudden changes can make investment in new products risky, especially for SMEs. Public bodies could be offered opportunities to compare their terms and conditions with their peers.

The issue of licenses is connected to intellectual property rights - it is important that the norm for public information (presented as raw data) is not protected by copyright rules.

In some Member States (in particular Italy), there are sometimes fees for the release of licensing which are only applicable for certain professions (according to exclusive agreement) and not others - a solution would be to clarify that all licenses should be released according to a fixed written procedure for free to any person re-user free to any re-user without discrimination.

Measures should be taken to address public sector bodies that advertise that they comply with the Directive regarding licenses but then does not take measures to disclose information for re-use.

Practical arrangements (Article 9)

Do you think that more measures should be taken to facilitate the search for documents available for re-use? (optional)

- yes
- no

 If yes, which measures? (optional)

Public sector bodies should advertise what raw data they have available for re-use and this should be linked from their homepage. Often it is difficult to get PSI holders to acknowledge that certain documents exist.

PSI holders should also name the person who is in charge of PSI issues in every PSI holder's institution.

Non-discrimination (Article 10)

In your opinion, have the current rules on non-discrimination caused problems in practice and should they be tightened / clarified to foster fair trading conditions? (optional)

- yes
- no

 If yes, could you please specify how you think this should be done? (optional)

It should be imposed on bodies owning or collecting re-usable data for public interest not to operate in the market.
There should be a link made to competition law stating how they are similar and how they differ.

Prohibition of exclusive arrangements (Article 11)

Do you think that exclusive arrangements are a problem and that more measures should be taken to address them? (optional)

- yes
- no

 If yes, could you please specify which? (optional)

Most exclusive arrangements have now largely been eliminated. However, some PSI holders still hold an exclusive mission (from the government) to distribute and sell certain information - these exclusive missions should be better scrutinised to see if they can be done by the private sector competing in the free market. In this respect it might be a solution to envisage a notification or authorization procedure to be to be filed with the competition authorities.

Practical measures

Should the Commission encourage deployment measures at national level such as exchange of good practices, awareness raising and/or practical measures facilitating re-use? (optional)

- yes
- no

 If yes, could you please indicate which deployment measures? (optional)

The Commission already encourages good practice through its seminars and the ePSI Platform. These are excellent initiatives which help countries learn from each other and they should continue to be encouraged.

A regulatory body is needed in each Member State that can promote the application of the PSI Directive. Progress in the UK, France, Spain and Slovenia shows different ways of promoting PSI.

A body should also be created to preside over arbitration or a court that is equipped to resolve disputes between PSI Holders and re-users.

Some form of redress mechanism at EU level would help to overcome some of the national limitations.

Guidance and/or recommendations would be welcome in respect of Article 9 of the current Directive - a good example for comparison is the handbook that was published by the Commission with regards to the Services Directive.

Should the Commission promote practical measures such as national portals (like the www.data.gov.uk or the www.data.gov in the US) with a strong political drive towards opening up the wealth of public sector data? (optional)

- yes
- no

 If yes, could you please specify which measures? (optional)

Such portals should be promoted, but not to the exclusion of other client to client channels, especially for operationally perishable data (e.g. meteorological observations and numerical output).

The Commission could help by demonstrating how such portals contribute to PSI re-use benefitting both the public and private sector as well as society generally. There should also be an EU wide (or Commission) portal, similar to that of the World Bank.

The promotion of PSI portals should also be seen as a way of attracting SMEs into the PSI market who might not have done so otherwise.

General issues

What changes in policy of Member States and/or public sector bodies regarding re-use of public sector information have you noticed since the adoption of the PSI Directive in 2003? (optional)

For some re-users there have been some positive changes since 2003 including:

- OPSI and APPSI in the UK
- Introduction of the Open Government Data initiative in the UK
- Information Officer in Slovenia
- New PSI Law in Sweden
- The start-up of common PSI organisation in France
- Cadastral information for free in Spain and Netherlands and low prices in Austria
- Changing of law in Netherlands to apply marginal pricing

But there have been attempts by some member States, notably Italy, to avoid implementation and application of the Directive.

However, many re-users feel that in their particular area that they feel strong opposition and open ignorance concerning the PSI Directive and the relevant national law.

What have been the positive effects of the PSI Directive and of these changes? Please give also figures on growth in terms of turnover, staff, number of clients, downloads etc., where possible. (optional)

The Directive has helped to bring about change and open the debate to a wider audience. In the UK it gave a new level of authority and recognition to OPSI and supported the work of private sector associations. There has been a very large increase in the re-use of PSI in Austria in particular (more than 1000%), as well as in Netherlands and Spain but yet to see any changes in Sweden. The private sector in added value meteorological services has grown substantially (c. 40%) from a very low base but the overall growth of the sector has not been as good (c. 1.2% p.a.) Compare this with the USA where PSI is readily available at the cost of redistribution and where the growth in the sector has been c. 17% p.a.

Many public sector bodies have realised that the general public is indeed interested in their data, but not enough.

In Italy, the most significant positive effect is the direct application of principles set forth by the Directive by national judges in pending legal proceedings related to the matter. Nevertheless we have still not achieved the result we need and much time has been spent on wasteful debate instead of enforcing compliance and application.

What are the remaining barriers to re-use (availability of information, charging, licensing conditions, etc.)? (optional)

- Lack of awareness and understanding surrounding PSI re-use.
- Non-compliance by PSI Holders with the Directive and national law.
- Lack of obligation to comply with regulations, timescale for compliance and guidance for compliance
- Lack of definition of public task
- Authorities adding value onto data
- Lack of asset lists on every PSI holder's homepage
- Too many intellectual property rights on public information (information belongs to the people)
- Lack of guidance for Civil servants on how to apply the law
- Lack of charging according to cost principle
- Not regulatory bodies in every Member State
- Prohibitive pricing (especially for climatological pricing)

- It often seems to be left to the private sector to implement the Directive, as they spend resources trying to persuade holders to release information
- Lack of clarification on licenses and contractual agreements - clarification would ensure which way, under which format and at what price the data can be accessed.
- Lack of specific criteria and guidelines to limit the possibilities for public authorities to gather economic benefits from the exploitation of public data. This trend does not help the European economy, since it inhibits the development of new markets.
- PSI producers are sometimes subsidised to collect information that its government and the market does not need.

The cost of the public sector competing with the private sector can be great, indeed without a truly competitive and vibrant market it is unlikely that production costs will be driven down and innovation will be discouraged.

Would you have any other comments or input that you wish to give regarding the review of the PSI Directive? (optional)

The Directive itself is important for the development of re-use, but just as important, if not more important, is to have properly applied harmonised national regulations based on the EU PSI Directive. This has so far proved difficult to achieve owing to different cultures in the public sectors across the EU and private companies. The Commission needs to focus on how to build bridges between these two different worlds - a start would be to appoint a person in each PSI holder to be responsible for contact with PSI re-users as has been done successfully in France and some other countries.

There should be greater linkages between different legislations, for example greater co-ordination between the PSI Directive and Antitrust legislation and related guarantees on breaches. (See Communication from the Commission 02/09/2009 C (2009) 864 final and the White Paper on damages actions for breaches of EC antitrust rules, 2.4.2008 COM (2008) 165 final.

There has been debate for a long while in Europe and beyond, the time is now come to revise the Directive, remove the many holes which allow authorities to get out of their obligations and have regulatory bodies with teeth.