

Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Directive		2002/0123(COD)	
Information market: re-use and commercial exploitation of public sector documents. 'PSI Directive'		Procedure completed	
Amended by 2011/0430(COD) Repealed by 2018/0111(COD)			
Subject 3.30 Information and communications in general 3.30.25 International information networks and society, internet			

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<div>ITRE</div> Industry, External Trade, Research, Energy		19/06/2002
		PPE-DE VAN VELZEN W.G.	
	Former committee responsible		
	<div>ITRE</div> Industry, External Trade, Research, Energy		19/06/2002
		PPE-DE VAN VELZEN W.G.	
	Former committee for opinion		
	<div>LIBE</div> Citizens' Freedoms and Rights, Justice and Home Affairs		02/10/2002
		NI CAPPATO Marco	
	<div>ECON</div> Economic and Monetary Affairs		01/10/2002
	V/ALE MAYOL I RAYNAL Miquel		
	<div>JURI</div> Legal Affairs and Internal Market	The committee decided not to give an opinion.	
	<div>CULT</div> Culture, Youth, Education, Media and Sport	The committee decided not to give an opinion.	

Council of the European Union	Council configuration	Meeting	Date
	Environment	2536	27/10/2003
	Agriculture and Fisheries	2511	26/05/2003
	Transport, Telecommunications and Energy	2499	27/03/2003
	Transport, Telecommunications and Energy	2472	05/12/2002

European Commission	Commission DG	Commissioner
	Communications Networks, Content and Technology	

Key events

05/06/2002	Legislative proposal published	COM(2002)0207	Summary
04/07/2002	Committee referral announced in Parliament, 1st reading		
05/12/2002	Debate in Council	2472	Summary
28/01/2003	Vote in committee, 1st reading		Summary
28/01/2003	Committee report tabled for plenary, 1st reading	A5-0025/2003	
12/02/2003	Decision by Parliament, 1st reading	T5-0049/2003	Summary
17/03/2003	Modified legislative proposal published	COM(2003)0119	Summary
26/05/2003	Council position published	07946/1/2003	Summary
05/06/2003	Committee referral announced in Parliament, 2nd reading		
26/08/2003	Vote in committee, 2nd reading		Summary
26/08/2003	Committee recommendation tabled for plenary, 2nd reading	A5-0284/2003	
24/09/2003	Debate in Parliament		
25/09/2003	Decision by Parliament, 2nd reading	T5-0408/2003	Summary
27/10/2003	Act approved by Council, 2nd reading		
17/11/2003	Final act signed		
17/11/2003	End of procedure in Parliament		
31/12/2003	Final act published in Official Journal		

Technical information

Procedure reference	2002/0123(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by 2011/0430(COD) Repealed by 2018/0111(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/5/19229

Documentation gateway

Legislative proposal	COM(2002)0207 OJ C 227 24.09.2002, p. 0382 E	05/06/2002	EC	Summary
Committee of the Regions: opinion	CDR0134/2002 OJ C 073 26.03.2003, p. 0038-0040	20/11/2002	CofR	
Economic and Social Committee: opinion, report	CES1353/2002	11/12/2002	ESC	

		OJ C 085 08.04.2003, p. 0025-0027			
Committee report tabled for plenary, 1st reading/single reading		A5-0025/2003	28/01/2003	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0049/2003 OJ C 043 19.02.2004, p. 0070-0222 E	12/02/2003	EP	Summary
Modified legislative proposal		COM(2003)0119	17/03/2003	EC	Summary
Council statement on its position		09279/2003	16/05/2003	CSL	
Council position		07946/1/2003 OJ C 159 08.07.2003, p. 0001-0010 E	26/05/2003	CSL	Summary
Commission communication on Council's position		SEC(2003)0627	28/05/2003	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0284/2003	26/08/2003	EP	
Text adopted by Parliament, 2nd reading		T5-0408/2003 OJ C 077 26.03.2004, p. 0264-0314 E	25/09/2003	EP	Summary
Commission opinion on Parliament's position at 2nd reading		COM(2003)0620	15/10/2003	EC	Summary
Follow-up document		COM(2009)0212	07/05/2009	EC	Summary
Follow-up document		SEC(2009)0597	07/05/2009	EC	Summary

Additional information

European Commission

[EUR-Lex](#)

Final act

[Directive 2003/98](#)
[OJ L 345 31.12.2003, p. 0090-0096](#) Summary

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

PURPOSE : to establish a minimum set of rules governing the commercial and non-commercial exploitation of existing documents held by public sector bodies of the Member States which are generally accessible. PURPOSE : One of the principal aims of the establishment of the internal market is the creation of conditions to promote the development of Community-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. There are considerable differences in the rules in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key information resource. This proposal involves a minimum harmonisation of national rules on the re-use and commercial exploitation of public sector information. The main features of the proposal are: -a directive which will apply to documents that are generally accessible, unless they are subject to a specific exception provided for in this proposal. -there are reasonable boundaries set to the exercise of intellectual property rights of public sector bodies, but the proposal does not remove the protection for rights which currently exist, such as legal remedies for unauthorised re-use. -public service broadcasters, and cultural and educational establishments are excluded from the scope of the directive. -if public sector bodies allow the re-use of documents, the conditions in the directive will apply. -requesters are given the possibility of asking for documents in any format or language available. Electronic transmission is favoured but paper-based transmission is not excluded. There is no obligation on a public sector body to create or adapt documents into a different format or language. -in order to respect the differences in the national access regimes, a regime is proposed that brings replying times to requests for re-use in line with the timeframes applicable for accessing the information. -principles for charges are based on a cost-oriented approach. Where charges are made, the total income should not exceed the cost of producing, reproducing and disseminating the documents, together with a reasonable profit margin. The burden of proof is on the public sector body, unless there is such transparent accounting in place as to allow the prospective re-user to verify whether this principle is respected. -charges and other conditions for commercial re-use should be non-discriminatory. -the directive imposes transparency in the conditions for re-use. -Member States must ensure that standard licence agreements or the commercial exploitation of public sector information are available on-line and can be processed on line. -there are limits to the possibility for public sector bodies to have exclusive arrangements for the exploitation of public sector information. -Community institutions will respect the rules for the re-use of information resources. ?

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

The Council held a policy debate on the draft Directive of the European Parliament on the re-use and commercial exploitation of public sector documents. The debate focused in particular on the principle whereby there is no obligation to make documents available for re-use, as well as on charging principles for the re-use of documents and issues related to intellectual property rights. The President concluded that: - considerable progress has been made and a general approach on many of the technical aspects has been identified, including on the definitions, the time, transparency and format requirements for dealing with requests for re-use, and provisions on the use of licences and on non-discrimination; - the impact of the draft Directive on documents over which public sector bodies hold intellectual property rights will require further analysis so as to ensure that the provisions, in particular on charging, find the right balance. This analysis is still ongoing in some Member States; - the Council awaits with interest the opinion of the Parliament on the central issues related to this balance so that it may agree on a common position as early as possible in 2003.?

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

The committee adopted the report by W.G. VAN VELZEN (EPP-ED, NL) amending the proposal under the codecision procedure (1st reading). It said that the proposed directive should be extended to cover all information in all formats (rather than simply "documents" as mentioned in the proposal) held by public sector bodies. It also introduced a distinction between "basic information", which should be provided free of charge and made widely accessible on-line, and "other information" which can be provided at cost. "Basic information" was defined as information pertaining to democratic constitutional states, such as legislative texts, court judgements and information relating to representative bodies, whereas "other information" should be taken to mean information that does not fall within this definition. On the question of costs, the committee introduced a new clause specifying that an applicant who considers that the charges made by the public sector body are excessive shall be entitled to request a review of those charges. It also said that the Commission should develop guidelines on how to calculate the charges for the re-use of public information. Moreover, where a document is re-used for commercial purposes, it should be clearly stated that the document was obtained from a public sector body. The committee also adopted an amendment calling for Member States to facilitate the re-use of the information they hold by making available, preferably on-line, lists of main databases held by public sector bodies. These should be available free of charge and should show, by category, whether the information is basic or other information as well as the details of the public sector body responsible for making it available for re-use. Lastly, the committee said that, where public sector bodies decide to discontinue the production of a certain type of information falling into the category of "other information", they must take account of the impact that such discontinuance may have on any private sector organisation using that information (which may have invested considerable resources in techniques and systems in the expectation that the information is generally accessible). Moreover, the public sector body must provide reasonable notice and explanation of its decision to discontinue production. ?

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

The European Parliament adopted a resolution drafted by W.G. van Velzen (EPP-ED, Netherlands) making several amendments to the Commission's proposal: - Parliament made a distinction between "basic" and "other" information. (On this point, please refer to the document dated 28/01/03.) - public authorities must make available their own information in a format which as far as possible is not dependent on the use of specific software subject to payment. Where possible, all the information should be presented not only in graphic form but also in textual mode, to enable people with sensory difficulties to use it; - with regard to specific categories, a Member State may decide that, where charges are made, the total income from allowing access or re-use will not exceed the cost of producing and disseminating this information together with a reasonable return on investment. The burden of proving that charges are cost-oriented lies with the public sector body charging for the re-use of information; - an applicant will have the right to request a review of the charges; - public authorities must promote the re-use of information made available to them; - Member States must make available lists of main content assets (e.g. major databases) held by public sector bodies including, where relevant, information on the conditions for re-use. These lists must show by category whether the generally accessible information is basic information or other information and the public sector body responsible for making it available for re-use; - the review of the Directive should focus on its success in facilitating the creation of Community-wide information products and services, and on the extent to which it has enhanced the cross-border use of public-sector information.?

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

Of the 23 amendments adopted by the European Parliament, 10 amendments are accepted by the Commission and 8 amendments are accepted in part or in principle. As regards those accepted by the Commission, they refer to : - changing of the words 'document' and 'documents' into 'information' throughout the proposal for a directive; - further clarifying what types of information are collected by the public sector; - indicating that the tradition of the exploitation of public sector information by public sector bodies has developed in many different ways and that this should be taken into account; - clarifying that information which constitutes trade or business secrets falls outside the scope of the Directive; - giving the right to an applicant who considers that charges made by the public sector body exceed those allowed under the charging article of the directive to request of the charges; - taking out the words 'where re-use is allowed'; - taking out the words 'and appropriate'; - linking the review more clearly to the objectives of the directive. Concerning the amendments accepted in part of in principle by the Commission these concern: - the fact that presenting information both in graphic form and textual mode to enable people with sensory difficulties to use it cannot be accepted within the context of this directive. It imposes a burden on public sector bodies that cannot be justified in the light of the objectives of the directive; - the proposal to take into account the purpose of the reuse in determining the timeframes that are reasonable for treating requests for re-use; - the obligation for public sector bodies to provide information on the identity of the third party right-holder; - the obligation for Member States to make available lists of main content assets held by public sector bodies. The Commission accepts the first sentence of this amendment and proposes to reformulate the second sentence as follows: 'Such lists shall be made available for free and shall indicate which are the public sector bodies responsible for making the information available for re-use'.?

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

The Council adopted by unanimity the common position that largely reflects the main orientations of the Commission proposal. The common position has taken up the following amendments by Parliament, they concern: - further clarifying what types of information are collected by the public sector; - stating that public administrations should promote the re-use of information made available by them; - changing documents 'held by' public service broadcasters which are excluded from the scope of the directive into documents 'within the power of disposal' of public broadcasters; - clarifying that information which constitutes trade or business secrets falls outside the scope of the directive; - the obligation for public sector bodies to provide information on the identity of the third party rightholder. It limits this obligation to cases where the public sector body is able to provide such information; - linking the review of the directive more clearly to its objectives. This is also the aim of the revision of this article by Council. The main points of the common position which differ from the Commission proposal are as follows: - modifying the title of the proposed Directive by deleting the reference to commercial exploitation and this throughout the text of the Directive itself unless needed for specific reference. The Council considered that the term "re-use" covers both commercial and non-commercial exploitation; - specifying the scope of the Directive in that it neither changes the rules for access to documents held by public sector bodies in the Member States, nor affects the protection of individuals with regard to personal data. The Council also considered it appropriate to add wording to explicitly exclude from the Directive's scope documents already excluded from access by virtue of the access regimes in the Member States; - eliminating the definition of 'generally accessible document' since this would cause unnecessary confusion in the Directive, which handles re-use of and not access to documents. This seeks to distinguish the notions of access rights (Member States' competence) and of re-use of documents that are made accessible. On the other hand, the definition of 're-use' has been elaborated in order to avoid ambiguity concerning the exchange of documents between public sector bodies in pursuit of their public tasks; - time-frames concerning the treatment of requests for re-use have been specified where no time-limits or other rules regulating the provision of documents are established in the Member States. To ensure a timely provision of documents, a time-frame of 20 working days is foreseen, extendable by another 20 working days in cases of extensive or complex requests; - concerning charges, the Council has amended the wording. A reference to accounting principles has been added to take into account the public sector bodies' practice of writing off investments over several years. Transparency has been increased by adding wording demanding public sector bodies to indicate not only the applicable conditions and standard charges for re-use but also the factors taken into account in the calculation of charges for atypical cases; - as far as exclusive arrangements are concerned, the Council added a new paragraph clarifying the situation concerning existing exclusive arrangements. The new paragraph sets a time-frame for their termination in light of bringing them within the scope and effects of the Directive; - specified the aim of the review of the in order to ensure a full examination of the benefits expected to be achieved by it.?

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

The Council notes that the Council has reached unanimity and delivers a favourable opinion on the common position as a whole. In several respects, the common position clarifies the provisions of the Commission proposal. A further improvement of the text could be achieved by the incorporation of the amendment of Parliament endorsed by the Commission and in particular the amendment relating to the charging article and the lists of main content assets held by public sector bodies.?

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

The committee adopted the report by W.G. VAN VELZEN (EPP-ED, NL) amending the Council's common position under the 2nd reading of the codecision procedure. It reinstated a number of amendments adopted by Parliament at 1st reading as well as, in some cases, the text of the original Commission proposal. It also introduced a number of new amendments. The report reinstated the definition of "basic information" proposed by Parliament at 1st reading as well as the Commission's original text defining "generally accessible information". One new amendment focused on the need to provide public sector information speedily. MEPs argued that this was particularly important for "dynamic content" such as traffic data, the economic value of which depends on its immediate availability and regular updates. The committee also reinstated the Commission's original idea of a general time-limit of no more than three weeks for processing the applicant's request and providing the information for re-use. As for charging, a new amendment specified that, on request, the public sector body should indicate the calculation basis for the charge. Furthermore, the committee introduced an obligation for public sector bodies to inform applicants of "available means of redress relating to decisions or practices affecting them". Another reinstated amendment said that public sector bodies should make their own documents available in a format which, as far as possible, is not dependent on the use of specific software. The committee also wanted public bodies to take into account the possibilities for the re-use of documents by and for people with disabilities. Lastly, MEPs wanted Member States to ensure that practical arrangements were in place to facilitate the on-line search for documents. ?

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

The European Parliament adopted a resolution comprising a series of compromise amendments. The resolution was based on the draft by W.G. VAN VELZEN (EPP-ED, Netherlands.) The main amendments were as follows: - once a request for re-use has been granted, public sector bodies should make the documents available in a timeframe that allows their full economic potential to be exploited. This is particularly important for dynamic content (e.g. traffic data), the economic value of which depends on the immediate availability of the information and of regular updates. Should a licence be used, the timely availability of documents may be a part of the terms of the licence; - to facilitate re-use, public sector bodies should make available their own documents in a format which, as far as possible, is not dependent on the use of specific software. Public sector bodies should take into account the possibilities for the re-use of documents by and for people with disabilities; - applicants for re-use of documents should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress; - tools that help potential re-users to find documents available for re-use and the conditions for re-use can facilitate considerably the cross-border use of public sector documents. Member States should therefore ensure that practical arrangements are in place that help reusers in their search for documents available for re-use. Assets lists, accessible preferably online, of main documents (documents that are extensively re-used or that have the potential to be extensively re-used), and portal sites that are linked to decentralised

assets lists are examples of such practical arrangements; - where possible, documents shall be made available through electronic means; - on request, the public sector body must indicate the calculation basis for the published charge.?

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

The European Parliament adopted amendments to the Council's common position. These amendments were based on a compromise package agreed between Council and Parliament. The Commission can accept all the European Parliament's amendments in full. The amendments are as follows: - changing the word 'documents' into 'information' in the title of the Directive; - indicating that different administrative traditions in dealing with public sector information should be taken into account; - referring to the rights of citizens under the Charter of Fundamental Rights of the European Union; - giving attention to dynamic data, the economic value of which depends on its timely availability; - underlining the importance of formats that are independent of a specific software and the needs of people with disabilities; - drawing attention to the importance of transparent means of redress, in particular for SMEs; - indicating that public sector bodies should take into account interests of re-users when they discontinue the production of documents; - explaining the importance of practical tools that help re-users for cross-border use of public sector documents; - indicating that the directive is also about the practical means of facilitating re-use; - stipulating that public sector bodies have to indicate on request the calculation basis for their charges and that public sector bodies shall inform applicants for re-use on means of re-dress; - introducing an obligation for the Member States to ensure practical arrangements that facilitate the search for documents available for re-use; - reformulating the reference to self-financing needs of certain public bodies and the reference to the applicable accounting principles and the relevant cost of calculation method of the public sector bodies concerned; - linking the availability of information to the right to knowledge. This recital seems to be more about access to information than about re-use, but it is acceptable as part of the package agreed by Parliament and Council; - changing the formulation of the notion that this Directive is without prejudice to the national access regimes; - reintroducing the notion of use for commercial and non-commercial purposes in an article; - making the public sector bodies the direct addressees of the obligation and not the Member States. ?

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

PURPOSE : to establish a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the Member States. LEGISLATIVE ACT : Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information. CONTENT : the Council approved the amendments proposed by the European Parliament at second reading with a view to the adoption of a Directive with a view to the adoption of a Directive on the re-use of public sector information. This Directive shall not apply to : - documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules as defined in line with common administrative practice in the Member State in question; - documents for which third parties hold intellectual property rights; - documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of: - the protection of national security (i.e. State security), defence, or public security; - statistical or commercial confidentiality; - documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit; - documents held by educational and research establishments, such as schools, universities, archives, libraries and research facilities including, where relevant, organisations established for the transfer of research results; - documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres. This Directive builds on and is without prejudice to the existing access regimes in the Member States. This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to obtain access to the documents. This Directive leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC. The obligations imposed by this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention and the TRIPS Agreement. It should also be noted that Member States shall ensure that, where the re-use of documents held by public sector bodies is allowed, these documents shall be re-usable for commercial or non-commercial purposes. Where possible, documents shall be made available through electronic means. ENTRY INTO FORCE : 31/12/2003. IMPLEMENTATION : 01/07/2005.?

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

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.

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

This Communication reviews the application of Directive 2003/98/EC concerning the reuse of public sector information.

The PSI Directive regulates non-discrimination, charging, exclusive arrangements, transparency, licensing and practical tools to make it easy to find and re-use public documents.

The value of the EU PSI market is estimated at EUR 27 billion, which is four times the EU market for mobile roaming services.

The PSI Directive was implemented by many MS with considerable delay. The prohibition of exclusive arrangements only became fully applicable as from 1.1.2009. Therefore, the Directive in its present form has not yet had its full impact.

For this reason the Commission does not intend to propose amendments to the Directive at this point. The Commission will carry out a further review at the latest in 2012 when more evidence on the impact, effects and application of the Directive should be available and will communicate the results to the European Parliament and to the Council. Legislative amendments will be considered at that stage if the potential of re-use is still being hampered.

In the meantime, there is much room for improvement in the way Member States deal with their PSI resources in the market.

The Commission draws attention to the following areas in particular:

The Commission discusses the following points in the paper:

- full implementation and application of the PSI Directive. The Commission has opened 18 infringement cases against Member States and the European Court of Justice has delivered 4 judgments for failure to implement the Directive. Member States have also implemented the Directive in different ways;
- terminating exclusive arrangements. The Commission notes evidence of exclusive arrangements still in force in Member States. It will scrutinise observance of this obligation and launch an investigation on the extent of such arrangements in 2009;
- charging: the report notes that continuous analysis of the economic case for marginal costs is a Commission priority for the future;
- facilitating re-use: public sector bodies should ensure that documents that are re-usable (i.e. accessible for any use beyond the initial public tasks for which they were originally produced) can be re-used for commercial or non-commercial purposes;
- ensuring fair competition between public sector bodies and re-users: in some cases the line between the public tasks and market activities of public sector bodies is not clearly demarcated. There are also cases where public tasks are defined in such a way that they cover a very wide range of activities and occupy almost the whole market of added-value PSI services. These situations can easily lead to cross-subsidies, where a public sector body uses its ?raw? information for further value-added services under more favourable conditions than those offered to competitors. It is very difficult for private re-users to compete with public sector bodies in such circumstances;
- conflict resolution: the Commission encourages Member States to set up PSI complaint mechanisms.

The Commission concludes that progress and implementation of the Directive is uneven. Barriers include attempts by public sector bodies to maximise cost recovery, as opposed to benefits for the wider economy, competition between the public and the private sector, practical issues hindering re-use, such as the lack of information on available PSI, and the mindset of public sector bodies failing to realise the economic potential.

Member States need to focus their efforts now on: (i) full and correct implementation of the Directive, (ii) terminating exclusive arrangements, (iii) applying licensing and charging models that facilitate the availability and re-use of PSI, ensuring equal conditions for public bodies re-using their own documents and other re-users, (iv) promoting quick and inexpensive conflict resolution mechanisms.