Re-use of public sector information

2011/0430(COD) - 12/12/2011 - Legislative proposal

PURPOSE: to facilitate the creation of Union-wide information products and services based on public sector documents, to ensure the effective cross-border use of public sector documents.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: public sector information is an important primary material for digital content products and services with a large hitherto unexploited potential.

The economic importance of opening data resources, including public data, is now widely recognised. A recent study estimates the total market for public sector information in 2008 at 28 billion across the Union. The same study indicates that the overall economic gains from further opening up public sector information by allowing easy access are around 40 billion a year for the EU27. The total direct and indirect economic gains from PSI applications and use across the whole EU27 economy would be in the order of 140 billion annually

Directive 2003/98/EC of the European Parliament and the Council on the re-use of public sector information aims to facilitate the re-use of PSI throughout the Union by harmonising the basic conditions for reuse and removing major barriers to re-use in the internal market.

The review was carried out by the Commission and resulted in the publication of Communication COM(2009) 212. It found that, despite the progress made, a number of barriers still persisted namely:

- 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.

The Commission concluded that a further review should be carried out by 2012, when more evidence on the impact, effects and application of the Directive would be available. This proposal of the Commission is the result of the second review. The review of the Directive thus forms part of the Digital Agenda for Europe and the Europe 2020 strategy aiming for smart, sustainable and inclusive growth.

IMPACT ASSESSMENT: the impact assessment examined 5 options to deal with the identified problems, i.e. insufficient clarity and transparency of PSI re-use rules, locked information resources, excessive charges, lack of a level playing field, insufficient enforcement of re-use provisions, and inconsistent approaches adopted by individual Member States.

- Option 1: No policy change: no changes to the Directive (baseline);
- Option 2: Discontinuing existing Union action: repeal of the PSI Directive;
- Option 3: Soft law measures (e.g. Commission guidelines or recommendations);
- Option 4: Legislative amendments (amending the substance of the Directive, i.e. the rights and obligations established by its provisions);
- Option 5: Packaged solution combining substantive changes to the re-use framework (Option 4) with additional guidance on the principles to be applied by national authorities when they implement it at national level (Option 3).

The Commission considers that combining legislative amendments with soft law measures (option 5) combines the benefits of option 3 and 4. This will hence ensure the convergence of national re-use friendly regulatory approaches throughout the internal market, thereby enhancing legal certainty, increasing incentives and lowering barriers to PSI re-use.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the overall aim of this revision is to eliminate persisting and emerging differences between Member States in the exploitation of public sector information, which hamper realisation of the full economic potential of this resource.

Specific aims are to facilitate the creation of Union-wide products and services based on PSI, to ensure the effective cross-border use of PSI for value-added products and services, to limit distortions of competition on the Union market, and to prevent the deepening of disparities among Member States in dealing with reuse of PSI.

The content of the proposal corresponds to those aims.

This includes:

- extension of the scope of the Directive to currently excluded sectors (cultural, educational and research establishments as well as public service broadcasters);
- establishing a rule for charging based on marginal costs, possibly with exceptions;
- amending the general principle to make accessible documents re-usable;
- imposing a requirement to publish data in machine-readable formats;
- imposing a requirement to appoint an independent regulator and to provide for an effective and efficient redress mechanism;
- reversing the burden of proof of compliance with charging requirements;
- imposing a requirement to define the scope of public task by legislative means only.

The Commission should assist the Member States in implementing the Directive in a consistent way by giving guidance, particularly on charging and calculation of costs, on recommended licensing conditions and on formats, after consulting interested parties.

BUDGETARY IMPLICATION: there are no implications for the EU budget.