Re-use of public sector information. Recast

2018/0111(COD) - 25/04/2018 - Legislative proposal

PURPOSE: to facilitate the re-use of of public sector information from Member States.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: public sector information (PSI), e.g. meteorological data, digital maps, statistics and legal information is a valuable resource for the digital economy. Therefore, the EU has been promoting the re-use of public sector information for several years.

Directive 2003/98/EC of the European Parliament and the Council on the re-use of public sector information (PSI Directive) 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. In July 2013 Directive 2003/98/EC was amended by Directive 2013/37/EU, with the aim to encourage Member States to make as much material held by public sector bodies available for re-use as possible.

The review was carried out by the Commission concluded that the Directive continues to contribute to the achievement of its main policy objectives, but there are a number of issues that need to be addressed in order to fully exploit the potential of public sector information for the European economy and society. They include:

- provision of real-time access to dynamic data via adequate technical means;
- increasing the supply of high-value public data for re-use;
- preventing the emergence of new forms of exclusive arrangements;
- limiting the use of exceptions to the principle of charging the marginal cost.

The overall objective is to contribute to the strengthening of the EUs data-economy by increasing the amount of public sector data available for re-use, ensuring fair competition and easy access to markets based on public sector information, and enhancing cross-border innovation based on data.

IMPACT ASSESSMENT: on the basis of the elements presented in the impact assessment, a mixed package of lower intensity regulatory intervention combined with an update of existing soft law was chosen as the preferred option.

CONTENT: the proposal for recasting Directive 2003/98/EC aims to:

- facilitate the creation of Union-wide information products and services based on public sector documents;
- ensure the effective cross-border use of public sector documents on the one hand by private companies, particularly by small and medium-sized enterprises, for added-value information products and services, and on the other hand by citizens to facilitate the free circulation of information and communication.

Scope of the Directive and the general principle: with the recast, the scope of application of the Directive shall be extended to:

- documents held by public undertakings active in the areas defined in the Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and by public undertakings acting as public service operators insofar as they are were produced as part of the provision of services in the general interest;
- certain research data, a specific category of documents produced as part of scientific research, namely results of the scientific fact-finding process (experiments, surveys and similar) that are at the basis of the scientific process.

The general principle that documents falling within the scope of the Directive are re-usable for commercial and non-commercial purposes under the conditions set forth in this Directive (Article 3) is unchanged for documents within the scope of the Directive before the recast.

For documents to which the scope of application is extended by the recast, the general principle applies only insofar as the public undertakings in question have made the documents available for re-use.

Terms and conditions for making re-use data available: the proposal takes into account the growing importance of dynamic ("real-time") data and includes the requirement on public sector bodies to make such data available through an Application Programming Interface (API). For a limited number of fundamental high-value datasets (to be adopted through a Delegated Act) there will be a hard obligation to do so.

Principles governing charging: the re-use of documents shall be free of charge or limited to the marginal costs incurred for their reproduction, provision and dissemination, and, where applicable, anonymisation of personal data and measures taken to protect commercially confidential information. The re-use of high value datasets shall be free of charge for the user. These datasets shall be available for free, machine-readable and accessible via APIs.

Derogations are provided for: (i) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks; (ii) libraries, including university libraries, museums and archives; (iii) private partners.

Research data: the proposal specifies that Member States shall support the availability of research data by adopting national policies and relevant actions aiming at making all publicly funded research data openly available ('open access policies'). It also provides that data already available in "open access" research data repositories shall be re-usable for commercial and non-commercial purposes according to the provisions of the Directive.

Exclusive arrangements: the proposal specifies that the prohibition of exclusive arrangements shall also extend to such arrangements that do not expressly grant an exclusive right in the re-use of documents, but may lead to a situation where access is limited to one or very few

re-users.