

Re-use of Public Sector information

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✓ General

- Definition
- European level
- Transposition status
- Legal instruments

✓ Issues

✓ Examples

Definition



✓ Re-use means :

“The use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use.”

Directive 2003/98/EC, article 2

✓ First European steps :

- 1989 Guidelines for improving the synergy between the public and private sectors in the information market
- 1990 Directive 90/313/CEE (access to environment information)
- 1999 Green Paper on public sector information in the information society
- 2001 Communication from the Commission: eEurope 2002: creating a EU framework for the exploitation of public sector information
- 2002 Directive proposal

✓ European rules

- 2003 European Directive 2003/98 of 17 November 2003
- Transposition : before 1st of July 2005

✓ Status of transposition

- Denmark, Estonia, Finland, France, Ireland, Poland, Slovakia, Sweden, UK have notified implementation

http://europa.eu.int/information_society/policy/psi/implementation/index_en.htm

Legal instruments



- ✓ Freedom of Information Acts (France, Belgium, Lithuania, Slovenia)
- ✓ Re-use of public sector information Regulations (UK)
- ✓ PSI laws (Denmark)
- ✓ Data protection law and Act on publication of data of public interest (Hungary)
- ✓ Secondary legislation (Ireland, Luxembourg),
- ✓ Law on State Registers (Lithuania)

The Directive : main points



- ✓ **Exclusions**
- ✓ **Definition**
- ✓ **General principle : re-usable for commercial and non-commercial purpose where the re-use of documents is allowed**
- ✓ **Licence**
- ✓ **Time limits**
- ✓ **Negative decision : grounds for refusal and reference to means of redress**
- ✓ **Format and language**
- ✓ **No obligation to continue production of information**
- ✓ **Charges : not exceed some determined costs**
- ✓ **Practical arrangements for search**
- ✓ **Non-discrimination**
- ✓ **Prohibition of exclusive arrangements**



BARRIERS / STOPS



- ✓ **Based on Member States' access regimes (exceptions)**
- ✓ **Determination at national level of what is meant by 'administrative documents', and what is excluded from the possible documents that can be demanded (France)**
- ✓ **Choice : allow or not (+ commercial, non-commercial use)**
- ✓ **Pricing – profit making prices for the public services?**



Competition rules

Examples



- ✓ **The French law (different exclusions)**
- ✓ **The UK situation (what is a public task)**
- ✓ **Case study in Slovakia (tacit refusal)**

Analysis of the FRENCH framework

Ordonnance of 6 June 2005 (modifies Law of 17 July 1978)



✓ French law

✓ Re-use is allowed for all public documents excepting:

- Documents excluded from access by virtue of the French access regime (excepting when published by the Authorities)
- Documents made by authorities in the framework of a public industrial or commercial mission
- When third parties hold intellectual property rights

✓ Directive

- Article 1.2. c)
- Article 1.2. c)???
- Article 1.2. b)

Analysis of the FRENCH framework



✓ French law

- Cultural establishments or services; educational and research establishments and institutions determine themselves the conditions for re-use
- What about broadcasters?
- Exclusion of some documents not being 'administrative documents'

✓ Directive

- +/- article 1.2. e) and f)

The UK situation



- ✓ **The new Office of Public Sector Information (OPSI)**
- ✓ **Legal instrument : statutory instrument 2005 n°1515**
 « the Re-use of Public Sector Information Regulations 2005 »
 Coming into force the 1st July 2005
- ✓ **A Guide to the Regulation Best practices**
 - Issues to be discussed
- ✓ **How does the UK system work?**

The UK situation



- ✓ Re-use means ‘the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body’s public task for which the document was produced
- ✓ It shall not include (a) the transfer for use within a public sector body for the purpose of carrying out its own public task; or (b) the transfer for use of a document from one public sector body to another for purpose of either public sector body carrying out its public task
- + other exclusions



✓ What is a public task?

- A task which is directly related to its core activity (vs optional commercial products competing in the open market)
 - BUT not always easy to identify directly related tasks
- e.g. government trading funds are required to develop profitable commercial outlets for their services in order to offset core and central overheads (often built around information provided as part of public task. Does not mean however that everything produced falls within the public task...)

Proposed characteristics

- essential to the business of the public sector
 - Explains the policy of public sector bodies
 - Sets out how the law (in UK and EU) must be complied with
 - The citizen consider the information to be key to their relationship with the public sector
 - There may be a statutory requirement to produce or issue such information
 - It enjoys an authoritative status by virtue of its issue by the public sector
- ➔ Raw data (but value-added information not excluded)
- ➔ grey areas
- ➔ Public sector bodies should have a clear view (based on the characteristics)

Case study in Slovakia



- ✓ **Question** : the Slovak FOI Act determines the possibility of a tacit or mute refusal. Does this comply with the EU Directive 2003/98 requiring to communicate the grounds for refusal and a reference to means of redress to the applicant?
- ✓ **The EU Directive does not modify national FOI Acts. Mute refusals shall subsist for access requests. But are not possible regarding re-use decisions.**
 - ➔ **Note the existence of such tacite refusals in other Member States (Ireland)**

Your point of view



- ✓ Any questions?
- ✓ What is the situation in your country?
- ✓ What about the application of competition rules ?
- ✓ Definitions of public tasks?
- ✓ Other issues

Thank you for your attention



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