



COMMUNIA Feedback on Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the re-use of public sector information (recast) COM(2018)234

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Communia International Association on the Public Domain has been active in the discussion on the legal framework for access to and re-use of public sector information (PSI) in the EU for many years. In our position papers from [2012](#) and [2014](#) we spoke about the proposal to amend Directive 2003/98/EC. We also took part in the public consultation on the review of the PSI Directive (2017 PSI Review) conducted by the European Commission last year, both submitting [our responses to the questionnaire](#) and publishing a [policy paper](#) with our recommendations to strengthen access and re-use of PSI.

COMMUNIA is pleased to see that the proposal to amend Directive on re-use of public sector information, which has been presented by the Commission on 25 of April 2018, includes most of the recommendations we made in our prior responses to consultations and policy analyses. We are especially glad to see the attempts to make more research data available, the extension of the scope to public undertakings (including transportation data), and further limiting the scenarios in which public entities may charge for data. COMMUNIA supports the proposal to amend Directive, but at the same time we want to draw attention to some issues where the proposal should be improved.

Re-use of research data held by educational and research establishments

We fully support the extension of the scope of the directive to “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”. However, the extension of the scope of the directive in this respect should be combined with making them available under permissive open licenses (such as [CC BY](#)), or even put into the worldwide public domain using a tool like the [CC0 Public Domain Dedication](#).

At the same time, the proposal excludes publications in scientific journals from its scope. The Horizon 2020 programme Model Grant Agreement already requires that grantees must ensure open access to all peer-reviewed scientific publications — meaning that “any scientific peer-reviewed publications can be read online, downloaded and printed.” It should go further to require that re-use rights be granted to both publications and associated datasets, by requiring that permissive open licenses be applied at the time of publication. For

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this reason, we urge the Commission to ensure that policy efforts to improve access to publicly funded scientific research (including the upcoming Horizon Europe framework) are complementary — and not in conflict with — each other.

As Member States will be obliged to develop policies for open access to research data resulting from publicly funded research while keeping flexibility in implementation, we urge the Commission to prepare guidelines in this area.

Open licensing as standard mechanism for sharing PSI

Unfortunately, the new proposal doesn't go far enough in requiring open licensing for PSI. Instead, it only relies on the 2014 guidelines. The 2014 guidelines provided recommendations for standard licences, datasets and charging for re-use of documents, and put a lot of emphasis on the use of standard open licenses. Therefore we recommend the Commission codify their [earlier guidelines on recommended standard licences for PSI](#), and also ensure accurate licensing metadata across PSI and open data portals that reflects these licensing options.

Charging for re-use

COMMUNIA welcomes improved language for clarity on charges and changes in the general rule of charging for PSI, which cannot be more than the marginal costs for dissemination. We are pleased that re-use of research data and the high value data-sets must be free of charge.

In our previous position paper we pointed that “works made available for re-use by cultural heritage institutions that are publicly funded should be available at the costs incurred similar to the public information bodies. It does not make sense that these CHIs can charge fees at a different scale than other PSI bodies seeing that they have similar tasks in providing access to publicly funded resources with minimal restrictions.”

Therefore, we recommend that cultural heritage institutions should only be able to charge marginal cost. The same rule should apply as well to publicly funded undertakings, which are also excepted from ‘marginal costs at most’ principle.

Third party intellectual property rights

In [2014](#), we noted that Recital 9 of the 2013 Directive introduces some uncertainty to understanding the scope of the Directive because of third party intellectual property rights. The issue of the interpretation of Recital 9 of the Directive was also addressed during a meeting with representatives of member countries under the ['PSI Group'. which took place on September 10, 2014](#).

Recital 9 might be interpreted as implying that any document currently held by a library but originally owned by a third party and whose term of protection has not yet expired is a document for which third parties hold an intellectual property right, and therefore is excluded

from the scope of the Directive. This reading seems contrary to the provisions established in Article 3 (consolidated version) and contradicts the overall objectives and principles enshrined in the Directive (to open up public knowledge for reuse). With this amendment, the Commission did not take the opportunity to clarify this discrepancy and left Recital 9 without major changes (new Recital 49).

This provision requires further investigation, but in our opinion the situation leads to a lack of harmonization of the scope of cultural heritage resources that are re-used and is not conducive to the creation of international projects, applications, and services that are based on cultural heritage resources.

We hope you will take these comments under consideration during the review of the proposed changes to the PSI directive. We welcome further discussion on the topic.