

European Public Sector Information Platform

Topic Report No. 24

**PSI access and re-use in Poland:
on the administrative and civic level**

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Published: 24th February 2011

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About the Author

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Abstract

This report is a brief and overall presentation of the current status of PSI access and re-use in Poland as seen from a legislative, administrative and civic perspectives. It is aimed at helping a reader get acquainted with the status quo in the aforementioned subject by gathering some important facts on the subject matter.

Keywords

Public Sector Information, directive 2003/98/EC, PSI in Poland, open data, NGO

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1. Introduction

On the administrative level, Poland has yet to transpose the PSI Directive to the country's own legal framework. Although the legislative work is in progress, its pace satisfies neither the EC (European Commission) nor Polish citizens. Whilst the EC takes formal actions against the Polish government, Polish civic organizations and NGOs (non-governmental organizations) along with some executive bodies in Polish administration are taking things in their hands and, following the example of civic initiatives elsewhere, doing the work.

In the first section of the report the current legal framework with regards to PSI (public sector information) is presented. Here the author quotes some most important excerpts from major legal acts in order to help the reader to become acquainted with the legal framework in question.

The second section presents basic facts concerning the current status of the PSI Directive implementation. The chronological order of the presentation is aimed at creating a general timeline of events that has led to the status quo.

In the last section of the report some examples of initiatives and projects closely related to the issue of PSI in Poland are given. The list has been compiled by the author with the intention to draw a reader's attention to some of the interesting things happening around the issue of PSI in Poland and is not intended to be exhaustive.

2. Current state of PSI access in Poland

Although Poland has yet to implement the Directive 2003/98/EC¹ of 17 November 2003 on the re-use of public sector information, the country has a legal and administrative framework which covers the basic aspects of PSI access. The existing framework in this respect is a result of major changes that Polish legal system has undergone on Poland's way from communism to democracy since 1989. In this section of the report the most fundamental and currently binding legal acts pertaining to PSI are presented.

a) Current legal framework for PSI access

The most important legal act directly governing the principles behind giving access and accessing public sector information in Poland is the Act of 6 September 2001 on access to

¹ http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf

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public information.² However, there are also other legal acts which pertain to the issue of public sector information.

The Constitution

The fundamental legal act in Poland is the Constitution of the Republic of Poland of 2 April 1997.³ Within its scope, in Article 61, there is a direct reference to the general concept of providing a citizen with the right to obtain information produced or possessed by public authorities or persons. The constitution also allows limitations in exercising this right.

'Article 61

1. A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury.

2. The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings.

3. Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State.

4. The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure.'

It is worth noting that the previous Polish Constitution which had been valid before the aforementioned act came into force did not grant the right to obtain public information. The contents of Article 61 of the Constitution of the Republic of Poland paved the way for modern legislative initiatives aimed at providing Polish citizens with access to public sector information.

² <http://isip.sejm.gov.pl/DetailsServlet?id=WDU20011121198>

³ <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> - English translation

Act on access to public information

The legal act which most directly currently governs the aspect of access to PSI is the Act of 6 September 2001 on access to public information as published in the Journal of Laws of 8 October 2001.⁴

In its first section, following the framework set by the Constitution, the Act provides the definition of public information and signals the possible limitations as to the access to public information stipulated by other acts:

'Article 1.

1. Each information on public matters constitutes public information in the understanding of the Act and is subject to being made available on the basis of principles and under the provisions defined in this Act.

2. The provisions of the Act shall not breach the provisions of other acts defining different principles and the mode of access to the information being public information.'

It is important to note that the definition of public information is very broad and general. It reflects the intention of legislators to build the foundation for openness of the State with regards to a wide range of data, facts and information. Historically, it is yet another important step for Poland on the road to creating a civic society. The article quoted above also stipulates that not every piece of public information is accessible to every citizen as some public information may be classified.

Article 2 of the Act defines who can access public information:

'Article 2 . 1 Each person is entitled, with the stipulation of Article 5, to the right of access to public information, hereinafter referred to as "the right to public information".

2. The person exercising the right to public information cannot be demanded to reveal the legal or factual purpose.'

Yet again it clearly expresses each person's right to public information but at the same time it refers to Article 5 of the Act which sets the range of limitations in exercising the right to public information. According to Article 5 the right to public information is subject to limitation e.g. in relation to privacy of a natural person or secret of an entrepreneur. It may also be limited due to the provisions of other legal acts.

⁴ <http://isip.sejm.gov.pl/DetailsServlet?id=WDU20011121198> or for English translation http://ec.europa.eu/information_society/policy/psi/docs/pdfs/implementation/po_tra_%20dz-u-01-112-1198_21-03-05.doc

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Among legal acts which set limitations to access to public information The Classified Information Protection Act of 22 January 1999⁵ is one of the most important. According to Article 1.1 of the Act:

'This Act defines the standards and requirements for safeguarding information expressed in whatever form and manner, including information in the course of development, which must be protected against unauthorised disclosure because it is a state secret or public service secret, hereinafter called "classified information"(...)'

Among other legal acts whose provisions are importantly connected with the issue of access to public information there are: Protection of Personal Data Act, Database Protection Act, Copyright Law and Neighbouring Laws Act, Press Law, Public Orders Law and the Code of Administrative Proceedings.

b) Current PSI access procedure

For the purposes of this report and due to its required scope and limitations, only access to open PSI (not classified) is presented. According to Polish law 'public sector information' is a very broad term (see above) which relates to both openly accessible data and to the data accessible to defined recipients (classified PSI). Access to classified PSI needs different procedures and those are not described below.

Following the stipulations of the Act on access to public information the right to access public information is granted to any natural person, legal person or organization not being a legal person. There is no discrimination as to the subject requesting access to PSI.

According to Article 7 of the Act on access to public information, public information can be obtained in three ways. An entity which is obliged to make available the public information it holds can either announce it as a result of its obligation or its own procedures or make it available on the petition. The third way to access public information is by attending board meetings of public authorities chosen by general elections.

In the first case the basic tool for making public information available is a public information bulletin (in Polish referred to as BIP – for Biuletyn Informacji Publicznej). It is an electronic bulletin published on the Internet. Article 8 of the Act defines what needs to be announced and published, what are the regulations governing the publication in BIP, how should information be published. If public information is not available through BIP one can submit a petition to get access to public information. It can be done either in an oral or written form. Public information will then be made available also in a written or oral form. Articles 13 and

⁵ <http://isip.sejm.gov.pl/DetailsServlet?id=WDU19990110095>

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14 of the Act stipulate the time, form and method in which the access to public information is granted. On the whole public information should be made available without undue delay and not longer than within 14 days after the petition was submitted. More details can be found in the Act. In the following articles the issue of refusal to make the public information available as well as appeal and complaint procedures are addressed.

According to Article 7 item 2 of the Act ‘access to public information is free, with the stipulation of Article 15.’ Article 15 states as follows:

‘Article 15. 1. If as a result of making public information on the petition, defined in Article 10, it. 1, the entity obliged to do this, is to incur the additional costs connected with the method defined in the petition of a method of making it available or necessity to transform the information in the form pointed in the petition, this entity is entitled to the payment from the petitioner covering these costs.

2. The entity, defined in it. 1, within 14 days of submitting the petition, shall notify the petitioner of the amount of the payment. Making the information available in accordance with the petition takes place after the expiration of the period of 14 days of notifying the petitioner unless the petitioner makes within this period the change in the petition in the scope of method and form of making this information available or withdraw the petition.’

The practical application of the regulations concerning the payment for obtaining public information excludes any charges for granting access to public information per se. This means that one cannot be charged for submitting a petition or for accessing BIP (Public Information Bulletin). Charges may be applied if additional costs are to be incurred. Current legal framework lacks clear interpretation as to how charges for obtaining public information should be applied.

To summarize this part of the report it is important to note that within the last 22 years (after 1989 when Poland underwent major political and social changes) Poland has been in the process of restructuring its legal framework in many respects. Access to public information treated as a universal right of every citizen of the Republic of Poland is reflected in the current legal framework. Main definitions and procedures have been defined. However, being a Member State, Poland is obliged to fully transpose Directive 2003/98/EC, which has not yet happened.

3. Current status of the implementation of Directive 2003/98/EC in Poland

As stated before in the report Poland has not yet transposed the key provisions of the PSI Directive into Polish law. There is currently an ongoing legislative procedure aimed at

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amending the existing act on access to public information and connected acts in order to comply with the PSI directive. Below is an outline of the history of actions taken by the EC and Poland with regard to PSI Directive implementation.

In October 2008 the EC launched infringement proceedings against Poland:

*'(...)for failing to fully implement rules providing common conditions for the re-use of information produced, collected and shared by public bodies in the EU. The Commission is sending letters of formal notice (the first step of an infringement proceeding) to Poland and Sweden for incomplete and incorrect transposition of the EU Directive of 2003 on the re-use of public sector information (the PSI Directive). Both Polish and Swedish legislation fail to fully implement several provisions of the PSI Directive, including those that prohibit exclusive arrangements and discrimination. These are crucial in order to open monopoly markets to competition and guarantee equal conditions for all potential re-users.'*⁶

In June 2009 the EC stepped up legal actions against Poland for incorrect transposition of EU public sector information rules. It was announced that:

*'Polish legislation does not contain crucial provisions of the EU's 2003 PSI Directive, including obligations on non discrimination and prohibition of exclusive agreements. As a result, wrong transposition prevents reusers to know the full extent of their rights established by the Directive and to rely on them before the national courts. In its reasoned opinion, the second step in the infringement procedure, the Commission asks Poland to take the necessary steps to comply with the EU rules on PSI within two months. If Poland does not comply with the PSI Directive within this time limit, the Commission can refer the case to the Court of Justice.'*⁷

In September 2009 Polish Ministry of Interior and Administration published assumptions for the act on re-use of PSI. The assumptions entered the procedure of public consultation and consultation with other authorities.⁸

In June 2010 the EC referred Poland to the EU's Court of Justice

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<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1524&type=HTML&aged=0&language=EN&guiLanguage=en>

7

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1011&format=HTML&aged=0&language=EN&guiLanguage=en>

8

http://www.bip.mswia.gov.pl/portal/bip/218/18369/Projekt_Zalozen_do_projektu_ustawy_o_ponownym_wykorzystaniu_informacji_publiczne.html

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*'(...)over incorrect implementation of an EU Directive on the re-use of public sector information such as digital maps, meteorological, legal, traffic, financial, economic and other data. Such public sector information can be re-used in products and services like car navigation systems, weather forecasts and financial and insurance services, and is estimated to be worth at least €27 billion every year (according to a 2006 study undertaken for the Commission). The EU public sector information Directive, adopted in 2003, requires Member States to ensure that such information is made available and that the public sector and those who could be interested in using this data are made aware of their rights and obligations. The Commission asked Poland to take the necessary steps to comply with the Directive in June 2009. In the absence of adequate compliance, the Commission has decided to refer Poland to Court.'*⁹

The Republic of Poland officially disagrees with the EC's allegation that it has failed to transpose the PSI Directive with regard to articles 2, 3, 4, 6, 7, 8, 10 and 11 of the Directive. Polish authorities claim that legal acts being currently in force in Poland do fulfill the aims of the Directive as presented in articles listed.

Later in 2010 and in the beginning of 2011 the consultations were in progress which led to a recent publication of the latest version of assumptions as to the new act on re-use of PSI. In early February 2011 the Ministry of Interior and Administration published,¹⁰ along with the latest text of the assumptions for the new act on PSI re-use, two more documents. A report on compliance of the proposed act with Directive 2003/98/EC and a discrepancies report on the remarks made by various stakeholders as to the new act on PSI re-use (a list of rejected remarks).

Among the most crucial provisions which need to be implemented in Polish law in order to transpose the PSI Directive there are: the definition of the re-use of public sector information, the procedure for accessing and re-using PSI, conditions of applying charges for the re-use of PSI, transparency as to the conditions of re-use of PSI by various entities, transparency as to the exclusivity agreements.

The implementation of the PSI Directive will be performed as an amendment of the existing Act on access to public information. Also, 8 other existing acts will need to be amended.

To summarize, Poland is the only Member State which in the view of the EC is still in the process of transposing the PSI Directive to the country's legal framework. The process is however quite advanced. The EC is taking more and more serious actions against the Republic of Poland. Also, stakeholders in Poland i.e. NGO's, businesses, entrepreneurs, civic

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<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/801&format=HTML&aged=0&language=EN&guiLanguage=en>

¹⁰ <http://www.bip.mswia.gov.pl/portal/bip/218/19369/>

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organizations, public entities and media are putting pressure on Polish legislative authorities with regard to the implementation of the Directive.

4. PSI access and re-use – what is happening

Regardless of the fact that the PSI Directive has not been implemented in Poland, various organizations, academia, NGOs and individual citizens are working on gathering and publishing public sector information and promoting the general concept of open public data. This is mainly done through the organization of events and through the development of openly accessible internet projects.

The following section, due to a concise character of the report, presents some interesting selected initiatives and projects and by no means can be treated as a complete or representative catalogue of events and projects. The list is ordered randomly.

Stowarzyszenie Liderów Lokalnych Grup Obywatelskich (SLLGO) – the Association of Leaders of Local Civic Groups¹¹ According to its mission statement this association was established to undertake actions in order to promote and fulfill the idea of good governance. In the association's manifesto SLLGO says that '[we] understand the principle of transparency as assuring the right to information, which is one of human rights, specifically the right to broad access to information on the activities of public entities and entities performing public tasks as well as information on spending public money'. SLLGO realizes its mission through its main projects:

- Pozarządowe Centrum Dostępu do Informacji Publicznej (Non-Government Centre for Access to Public Information)^{12 13}
- Budżet obywatelski (Civic budget)¹⁴
- Mocna Straż (Strong Guard)¹⁵

Among the events organized by SLLGO's structures there are:

- Transparency Camp 2010¹⁶ - a Warsaw-based event with international guests organized as a promotion of best practices in public transparency, source of inspiration and discussion forum

¹¹ <http://www.lgo.pl/onas/index.php?id=3>

¹² http://www.informacjapubliczna.org.pl/kim_jestesmy,36,dz.html

¹³ http://www.informacjapubliczna.org.pl/about_us,38,dz.html

¹⁴ http://www.funduszesoleckie.pl/o_nas,17,dz.html

¹⁵ http://watchdog.org.pl/25,232,about_us.html

¹⁶ <http://transparencycamp.pl>

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- Tydzień Informacji Publicznej - Public Information Week¹⁷ – a series of training sessions on public information organized annually, from 2006, for citizens, organizations, public institutions.

Fundacja ePaństwo (e-State Foundation) is an NGO whose leading project is **Sejmometr**.¹⁸ The project is a website dedicated to delivering information on the work of the Polish Parliament and changes in the Polish legal system. According to its mission statement the website is aimed at ‘delivering legislative information using modern internet technologies.’¹⁹ Sejmometr.pl presents e.g. details of current legislative proceedings, voting results, participation statistics etc. The website is dynamically developed and is based on open source code.

Centrum Cyfrowe²⁰ is a digital think & do tank fostering the digital dimension of public issues, forming a part of the Projekt: Polska Foundation. The organization aspires to be ‘an entity specialized in matters related to the building of digital society: one which would analyze the complicated social, cultural and economic vicissitudes caused by the prevalence of digital technologies, stimulate the growth of knowledge and develop practical tools in the area.’²¹ Its main project is “Open Government Roadmap: Building foundations for introducing Open Government in Poland” which is funded by the Trust for Democracy in Central and Eastern Europe and whose goal is to implement in Poland an open government model. Apart from their intellectual efforts, Centrum Cyfrowe work on practical implementation of open government by creating a tool for publishing and visualizing the Polish state budget data. Also the organization is involved in the organization of hackdays aimed at getting people involved in the creation of various applications using open public data.

Stowarzyszenie Klon/Jawor (Maple/Sycamore Association)²² is ‘an independent, apolitical not-for-profit organization whose main aim is the development of a tolerant, active and participating, creative, self-organizing society.’²³ The association is extensively involved in many programs and projects promoting civic society in a variety of ways. With regards to public sector information its biggest project is Moja Polis.²⁴ It is ‘an interactive system for monitoring local partnership and developing active and participating local communities.’²⁵ The core element of the project is a website which collects and gives access to a variety of information and data in their geographical and temporary context. The emphasis is placed both on the reliability of the data and on data visualization. On the website one can find

¹⁷ http://www.informacjapubliczna.org.pl/tydzien_dip.8.dz.html

¹⁸ <http://sejmometr.pl/>

¹⁹ <http://sejmometr.pl/oportalu>

²⁰ <http://centrumcyfrowe.pl/>

²¹ <http://centrumcyfrowe.pl/about-us/>

²² <http://klon.org.pl/>

²³ <http://klon.org.pl/x/29120;jsessionid=6F30EAC1670D647A21B134AAE422A6E5>

²⁴ <http://www.mojapolis.pl>

²⁵ <http://klon.org.pl/x/426362>

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region-oriented reports on social, economic and political issues as well country-wide data aggregations and presentations.

Stowarzyszenie Miasta w Internecie (“Cities on the Internet” Association – COI)²⁶ is ‘an expert nongovernmental organization established in 1998. (...) The strategic dimension of COI activities consists of cooperation with public sector (with particular attention paid to local governments, local and rural communities) towards the development of information and civil society. This relationship is reflected by a systemic approach of COI towards the needs of public authorities on both the regional and local level, which takes into account the stage in which community policy implementation is at a given moment.’ Its research and development interests include: integration of ICT systems, data and business process interoperability and the use of formal knowledge representation (e.g. semantic web).

System Informacyjny Statystyki Publicznej (Public Statistics Information System)²⁷ is a large-budget project (approx. €40m.) run by the Central Statistical Office of the Republic of Poland. It is financed 85% by the European Regional Development Fund and 15% by the State. Among the project’s primary objectives are: making statistical data and information accessible to various subjects of social life, building both open and restricted-access data warehouses, building a Decision Support System on the basis of business intelligence solutions, adding metadata to presented information, and creating various dashboard for accessing and visualizing the contents of the data sets. The data will be accessible through the Internet as websites and webservice.

5. Conclusions

Within the last 22 years, since 1989 when Poland started historical social and political changes, the Republic of Poland has made a major shift in its legal framework towards a civil society. The foundation for opening up PSI has been successfully laid. Together with Poland joining the European Union, new obligations are imposed which must lead to the further development of Polish legal framework in many respects, including PSI access and re-use. Poland is currently in the legal process of fully transposing the PSI directive into its legal system.

Various civic organizations and citizens in Poland strongly support the idea of openly accessible and re-usable PSI. This is done through shaping an intellectual context, assistance in creating normative acts, realization of various events and projects which raise awareness and promote the idea of open PSI and many other activities.

²⁶ <http://mwi.pl/english.html>

²⁷ <http://www.stat.gov.pl/cois/sisp.htm>

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According to the author's own experience Poland, especially on an administrative level, is not yet sufficiently involved in the pan-european exchange of opinions, knowledge and experience referring to PSI between various stakeholders. It seems that Poland is rather underrepresented at various events that take place in Europe where people share their ideas, suggestions, doubts, practices etc.

Moreover, in the author's opinion, Poland is not sufficiently committed to fully facilitating the potential of open PSI, which may lead to a waste of many opportunities to raise the human capital and utilize the power of knowledge that lies behind various sorts of data held by the State. In order to facilitate this potential for the purposes of the civilizational development of its society, the author believes that Polish authorities should send a clear signal to their own citizens and to the international community that Poland commits to be a modern and developing knowledge-based society. The clarity of law, incentives for data holders, stimulating individuals and organizations to access and re-use data, supporting the building of technical infrastructure, promoting research on social and economic benefits of open PSI are some of the strategies whose adoption would help achieve this goal.