



European Public Sector Information Platform

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## Charging for PSI re-use

*a snap shot of the state of affairs in Europe*

### **Keywords**

*PSI, Public Sector Information, Charging, Pricing, Marginal costs, free re-use, licensing, creative commons, article 6 PSI Directive, article 6 of the proposal for a new PSI Directive, European competition law.*

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## Executive summary

1. The provision on charging in the current PSI Directive has been one of the most contested elements of the Directive. Not surprisingly, the debate is intensifying as the proposal for amending the PSI Directive contains considerable changes to the charging policy. This document aims to support these discussions, in particular those currently held within the framework of the adoption procedure in the Council and Parliament.
2. The new proposal will considerably limit the ability of public sector bodies (PSBs) to charge for re-use to specific auditable cases, whereas the default rule will be that only the marginal costs can be charged.
3. Research into the economic effects of charging by PSBs for re-use of their PSI has recently enjoyed a surge in popularity. Where previously only a few authors were concerned with this matter, over the last few years a steady stream of reports and studies has emerged from the academic world, policy makers and re-users.
4. The material represents a growing body of evidence which strongly suggests that abolishing charges has beneficial impacts on not only the downstream market (that is, on economic growth, employment and innovation), but also the public sector itself, due to observed increases in efficiency and effectiveness.
5. The quick tour of (part of Europe) confirms that there is quite a lot happening: many countries are adopting a central PSI re-use policy that embraces the principle 'no charges, unless' and 'comply or explain'. Nevertheless, there are sectors and Member States that appear to have gathered much less momentum and there are even some that seem to move towards larger scale cost recovery policies, contrary to the aim and spirit of the directive, let alone the PSI Directive.
6. From this, and taking into observation the often clear evidence building up that no or marginal charges are (much) more beneficial than cost recovery charges, the logic and validity of the newly proposed article 6 appears to be quite evident.
7. Although it may come at a cost in the short run – where PSBs will fail to have incomes from charging re-users – the likelihood of much more beneficial long-term effects (lower PSB costs, higher tax returns, outweighing the accumulated lost incomes from re-use charges) should represent a fairly clear business case.

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## 1 Introduction

The provision on charging in the current PSI Directive has been one of the most contested elements of the Directive. Not surprisingly, the debate is intensifying as the proposal for amending the PSI Directive contains considerable changes to the charging policy. This document aims to support these discussions, in particular those currently held within the framework of the adoption procedure in the Council and Parliament.

Section 2 briefly describes the current legal framework and takes a look at relevant competition law rules that apply. Subsequently, section 3 looks into research that has been carried out in recent years on the economic effects of different PSI re-use charging regimes, whereby we will see that a body of evidence is building up, underpinning the beneficial effects of free re-use. Then section 4 takes a snap shot of developments on PSI re-use charging in a number of Member States where interesting developments have been taking place in the recent past, specifically: Finland, France, Italy, the Netherlands, Poland, Sweden and the United Kingdom.

Part of the material in this Topic Report is based on input received from PSI re-use experts across Europe. The author like to thank all those who contributed for their prompt and detailed input, in particular: Raimondo Iemma, Julian Tait, Rolf Nordqvist, Lionel Kapff, Jose L. Marin and colleague members of the ePSI team.

The document was finalised on 24 September 2012.

## 2 Current and newly proposed article on charging for PSI re-use

Let us first have a look at what this all about: the regulatory framework in place and the new one proposed. While doing so, we should not forget that the general rules of competition law play an important inspirational and complementary role.

### *Policy background*

The importance of regulating charges for PSI re-use was flagged in the first proposal of the PSI Directive. According to the Commission: “[t]he control over information in a specific area puts public sector bodies in a position where they can have market power. In the same way as undertakings in a dominant position cannot abuse their market power, public sector bodies should not set their prices arbitrarily and should not charge excessive prices for information that has been established within the public tasks and with public money.”<sup>1</sup>

Building on this notion, during the negotiations on the text of the proposal for the PSI Directive the Committee on Industry, External Trade, Research and Energy advocated the inclusion of an amendment holding that “only costs of reproduction and dissemination were to be charged since a pricing model where only marginal costs of reproduction and dissemination can be charged by the PSB is the best way to ensure a level playing field without unfair competition and cross-subsidisation from one public sector body to another”.<sup>2</sup> However, this amendment did not reach the finish line.

### *Applicability of pricing regime in the PSI Directive*

First, it is important to establish in which situation one can really speak of re-use (within the meaning of the PSI Directive), because that is the point where the rules on charging kick in.

Public sector information can only be re-used if the documents held by the public sector body (PSB) have been produced for a public task purpose. Documents held by PSBs but generated under activities outside the public task are not liable to PSI Directive rules. For instance, a report produced by a national statistical office as a result of some sideline commercial consultancy services, cannot be re-used, since there is no public task basis.

Furthermore, the ‘second use’ – meaning the use ‘after’ the public task use – of the documents held by the PSB needs to be for a purpose other than the original (public task) purpose. So to get under the re-use realm, we need a user (either the PSB itself or another party) that gives the document a second purpose. As a consequence, the mere exchange of documents between PSBs purely pursuing their (own) public tasks does not constitute re-use since the document does not leave the public task remit.

### *Substance of article 6*

Article 6 of the Directive holds: “where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and

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<sup>1</sup> COMMISSION OF THE EUROPEAN COMMUNITIES, *Proposal for a directive of the European Parliament and of the Council on the re-use and commercial exploitation of public sector documents*, COM(2002) 207 final, 10, 5 June 2002.

<sup>2</sup> COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY, *Report on the proposal for a European Parliament and Council directive on the re-use and commercial exploitation of public sector documents*, doc. nr. A5-0025/2003, 29 January 2003, retrieved from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2003-0025+0+DOC+PDF+V0//EN> on 17/05/09.

dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.”

So, under article 6, read in conjunction with Recital 14 of the Directive:

1. the total income from charges for re-use of PSI may not exceed:
  - a. the cost of collection, production (including creation and collation), reproduction and dissemination (including user support);
  - b. together with a reasonable return on investment;
2. whereby the charges:
  - c. should have due regard to the self-financing requirements of the public sector body concerned, where applicable.
  - d. should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

Thus, by setting a maximum level for charging, the PSI Directive leaves a large margin of appreciation to the Member States and the PSBs as it fails to indicate how to measure what would be a ‘reasonable return on investment’ and the cost categories mentioned may lead to semantic discussions. Nevertheless, charges should at least be based on an assessment of demand, as the charging limit is set on the total income and has to be divided over all the potential applicants. Furthermore, charging based on royalties would be no longer possible under the Directive, as this is not cost-oriented, but based on the income of the re-user.<sup>3</sup>

#### *Article 10(1): Non-discriminatory charges*

Again irrespective of whether the PSB re-uses its PSI itself, article 10 of the Directive ensures that any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use. Under general EU competition rules this requirement would apply only in case of abuse of dominance by the PSB concerned, since it is based on the general principle that prices should be established by negotiations between parties.

Recital 19 elaborates on this indicating that this provision should not prevent the PSB from adopting a differentiated charging policy, distinguishing specifically between commercial and non-commercial re-use. Accordingly, it is unclear whether the prohibition to discriminate is absolute, starting at the point where charges are made, or leaves the PSBs some margins to set different charges. In any case, even if one is to conclude that some differentiation in charging would be allowed, such policy should not lead to de facto exclusive arrangements meant in article 11 of the Directive, which will be demonstrated by the effects of the charging in the form of presence of downstream sellers.

Furthermore, PSBs may enter the danger zone of State aid, as prohibited under article 107 TFEU, if charges to domestic re-users would be lower – or in fact free – than those imposed on foreign (European) re-users, even if the latter would be in full conformity with article 6 of the Directive.

#### *Article 10(2): Equal internal charges*

In case the PSB is vertically integrated – providing value-added services, based on its raw data PSI outside its public task – it might be tempted to set high prices for re-use in the upstream market for the raw data. In doing so, it would benefit from the fact that internally it can rely on the raw data at no costs, since this has been produced (and paid for) under the public task.

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<sup>3</sup> See also: Katleen Janssen, The EC Legal Framework for the Availability of Public Sector Spatial Data – An examination of the criteria for applying the directive on access to environmental information, the PSI directive and the INSPIRE directive, p. 148–150.

Since this is detrimental to the goals of the Directive (and fair competition in general), article 10(2) puts the PSB under the obligation to internally apply the same charges and other conditions to the supply of the documents for those activities as applied to other users. This is to avoid cross-subsidisation within the PSB and between PSBs, whereby, pursuing its commercial activities, the PSB would benefit from a lower cost level than other (private sector) parties. In other words, if the PSB holding the documents allows for public sector re-use – either internally or through another (associated) PSB – the Directive will have a ‘levelling effect’, since the same conditions for re-use are to be imposed as those governing agreements with other re-users (whereby, of course the PSB can also decide to lower the charges towards its re-users).

As such article 10(2) is a species of the obligation to apply non-discriminatory conditions for re-use, having internal effect.

#### *Prohibition to apply predatory pricing in the downstream market*

Finally, the vertically integrated PSB may also be tempted to demand low prices for its PSI based value-added services, thus confronting re-users with fierce price competition in the downstream market and, at the same time, creating a barrier to potential new entrants. This prohibition to apply so called ‘predatory pricing’ has been acknowledged by the ECJ in many cases.<sup>4</sup> The anti-competitive element is based on the assumption that once the ‘predator’ has killed competition, it will act as a monopolist, charging higher competitive prices and covering its prior losses. This means that if the PSB has no intent to do harm – it merely lowers its prices because it considers this to be in line with serving the public interest, rather than economic interest – this would not qualify as predatory pricing.<sup>5</sup> Generally speaking, such charging would fall outside the scope of the PSI Directive as the downstream exploitation by PSBs would not qualify as re-use, except for those cases where PSBs argue that (even) the downstream exploitation of value-added services is part of their public task.

#### *Proposal takes charging one step further*

The proposal for the new directive adds four new sections to the current article 6:

1. Where charges are made for the re-use of documents, the total amount charged by public sector bodies shall be limited to the marginal costs incurred for their reproduction and dissemination.
2. In exceptional cases, in particular where public sector bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority referred to in Article 4(4), and without prejudice to paragraphs 3 and 4 of this Article.
3. Notwithstanding paragraphs 1 and 2, libraries (including university libraries), museums and archives may charge over and above the marginal costs for the re-use of documents they hold.
4. Where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved. (= current article 6).
5. The burden of proving that charges comply with this Article shall lie with the public sector body charging for re-use.

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<sup>4</sup> For instance *Tetra Pack v Commission*, Case C-393/94 [1996] ECR I-5951

<sup>5</sup> *Akzo v Commission*, Case C62-86

Accordingly, the new article 6 proposes considerable amendments to the charging policy of the Member States: as a default, the total amount charged by PSBs should be limited to the marginal costs incurred for the reproduction and the dissemination of the public sector documents. Only in exceptional cases higher charges can be made, meaning in particular where PSBs generate a substantial part of their operating costs relating to the performance of their public tasks from the exploitation of their intellectual property rights (IPRs). In such cases, the charges have to be determined according to objective, transparent and verifiable criteria, and the charging has to be in the public interest. The independent authority that has to be set up under the new proposal has to approve the higher charges. The burden of proof for compliance with these provisions lies with the PSBs. Hence, if challenged, they will have to prove that they are in the exceptional situation that justifies charges above marginal cost, and that their charges are determined according to objective, transparent and verifiable criteria and that they are in the public interest.

The proposal for the new Directive does not affect the applicability of competition law.

#### *Concluding remarks*

The new proposal brings about a significant change whereby the ability of PSBs to charge for re-use will be limited to specific auditable cases, whereas the default rule will be that only marginal costs can be charged.

### 3 Overview of recent research on effects of PSI re-use charging

#### *Surge in research on economic effects of PSI re-use*

In the previous section we looked into the current and newly proposed legal framework on charging for PSI re-use. As the changes sought are quite significant, the question is what these would bring about. Interestingly, research into economic effects of charging by PSBs has recently enjoyed a surge in popularity. Where previously only a few authors were concerned with this matter, over the last few years a steady stream of reports and studies has emerged from the academic world, policy makers and re-users. The table below provides a (large) selection of relevant studies, and briefly outlines the essence.

*Chart 1: overview of recent and relevant PSI re-use case studies*

Year	Title and author + short name	PSI domain (+ short names)	Outline
2008	'Models of Public Sector Information Provision via Trading Funds', Newbery, Bentley and Pollock, Cambridge University, <b>Trading Funds study</b> <sup>6</sup>	A set of UK 'basic registers': <ul style="list-style-type: none"> <li>- Met Office</li> <li>- Ordnance Survey</li> <li>- Hydrographic Office</li> <li>- Land Registry</li> <li>- Companies House</li> <li>- Driver Vehicle Licensing Agency</li> </ul>	Relying on prior experiences of agencies adopting marginal cost pricing, the study provides estimates for the costs and benefits of marginal cost pricing in relation to bulk, digital PSI data from big UK public data holders.
2009	'The Economics of Public Sector Information', Rufus Pollock, Cambridge University, <b>Pollock study</b> <sup>7</sup>	UK raw PSI in general	Relying on mathematical analysis, the study assesses who should best finance PSI re-use and the regulatory structure needed.
2010	'PSI in European Meteorology – an Unfulfilled Potential', Richard Pettifer, PRIMET, <b>Pettifer 1 study</b> <sup>8</sup>	Meteorological information in general	Proceeding on the basis that, in general, meteorological PSI is available on a cost-recovery basis in Europe and on marginal or zero cost bases in the US, the study assesses the detrimental effects for Europe.
2011	'Pricing of Public Sector Information Study', Deloitte Belgium, <b>POPSIS study</b> <sup>9</sup>	21 case studies in the EU in all important PSI domains, including, the Dutch <b>KNMI case</b> (meteo), Norwegian <b>METNO case</b> (meteo), Danish <b>Deca case</b> (geographic), <b>Spanish Cadastre case</b> (geographic), <b>Austrian Cadastre case</b> (geographic)	Analysing 21 case studies, covering a wide range of PSBs and different PSI sectors, the study assesses different models of supply and charging for PSI and their effects on the downstream market, PSI re-users, end-users and impacts on the PSB itself.
2011	'Does Marginal Cost Pricing of Public Sector Information Spur Firm Growth?', Heli Koski, The Research Institute of the Finnish Economy, <b>Koski study</b> <sup>10</sup>	Geographic information	Assessing the performance of 14,000 firms in the architectural, engineering and related technical consultancy sectors, located in 15 different countries, the study analyses the effect of maximum marginal cost pricing for geographical PSI on the firms' growth performance during the years 2000–2007.

6 <http://www.berr.gov.uk/files/file45136.pdf>

7 <http://www.econ.cam.ac.uk/dae/repec/cam/pdf/cwpe0920.pdf>

8 <http://www.primet.org/documents-mainmenu-29/424-psi-in-european-meteorology-an-unfulfilled-potential>

9 [http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/report/11\\_2012/models.pdf](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/report/11_2012/models.pdf)

10 [http://www.etla.fi/files/2696\\_no\\_1260.pdf](http://www.etla.fi/files/2696_no_1260.pdf)

Year	Title and author + short name	PSI domain (+ short names)	Outline
2011	'Costs and Benefits of Data Provision – Report to the Australian National Data Service', John Houghton Victoria University Australia, <b>Houghton study</b> <sup>11</sup>	Information from: - Australian Bureau of Statistics - Office of Spatial Data Management & Geoscience - National Water Commission & Bureau of Meteorology	Presenting three case studies, the study explores the costs and benefits that PSI producing agencies and their users experience in making information freely available and provides preliminary estimates of the wider economic impacts of open access to PSI.
2011	'Pricing of PSI in the Meteorological Sector Blocks Market Development', Richard Pettifer, PRIMET, <b>Pettifer 2 study</b> <sup>12</sup>	Meteorological information in general	Considering three hypothetical SMEs in Luxembourg, Poland and France that wish to provide weather-related services but are confronted with cost-recovery pricing, the study calculates that these SMEs can never compete successfully.
2011	'Review of Recent Studies on PSI Re-use and Related Market Developments', Graham Vickery <sup>13</sup>	All PSI domains 27 EU Member States	<ul style="list-style-type: none"> <li>• Market size 2008 and 2010: €28 billion and €32 billion</li> <li>• Average growth rate in PSI-related markets 7%</li> <li>• Total direct and indirect economic impact of PSI reuse: €70-140 billion</li> <li>• Welfare gains from moving to marginal cost pricing: €40 billion</li> </ul>

#### *Fairly clear body of evidence building up*

Although there is a lot more to be said about all these studies, if we focus on charging, the following conclusions can be drawn:

1. The market size for PSI re-use is economically significant (Vickery) and so is the unexploited potential (Pettifer, Koski).
2. There appear to be specific 'economic laws' for PSI re-use (Pollock, Newbery, POPSIS).
3. Based on these laws, there is a clear trend towards a model whereby the marginal costs for facilitating re-use are charged (or less) (POPSIS).
4. Where charges are lowered, spectacular increases in demand are seen, both in terms of volumes and users and the variety of users (non-commercial and commercial, in particular SMEs – POPSIS).
5. The empirical results point to substantial positive network effects downstream (Pollock, Newbery, POPSIS, Koski, Pettifer), even if these are hard to measure, as is particularly the case with respect to those types of PSI which have infrastructural value and which cross easily into other domains (e.g. geographical PSI – Spanish Cadastre, Austrian and Australian GI cases).
6. Types of PSI which allow for more 'isolated measurements', like meteorological and hydrographical information (KNMI and Norwegian Met Office cases), suggest demand price elasticity well over a factor 1 – meaning that lowered prices increase turn over (Pollock, Newbery, POPSIS, Koski, Pettifer).
7. Conversely, costs hardly increase even in the face of spectacular rises in demand (POPSIS, Pollock, Newbery and all case studies), decreasing average costs towards the level of fixed costs.
8. Financing appears to be a main obstacle to change, where PSBs are stuck in the 'own re-use income reliance trap' (POPSIS). Then again, put into the context of the organisation's full budget, these incomes are insignificant (often less than 5%) (POPSIS).

11 <http://ands.org.au/resource/houghton-cost-benefit-study.pdf>

<http://www.crcsi.com.au/Documents/ANZLIC-Economic-Study---Stage-2-Report.aspx>

12 [share-psi.eu/papers/primet.pdf](http://share-psi.eu/papers/primet.pdf)

13 <http://epsiplatform.eu/content/review-recent-psi-re-use-studies-published>

9. Subsequently, rechanneling of funds, covering costs from the State budget and lifting the burden to partly generate own income requires relatively small amounts (KNMI, Norwegian Met Office, POPSIS, Australian cases) and effects kick in swiftly, after one to two years (Pollock, Newbery).
10. Effects on PSBs moving to marginal costs regime appear to be beneficial as well: closer connection to the public task (Norwegian Met Office), more professionalised and less tense relations with private sector re-users (KNMI case), increased efficiency from doing away with internal charging and transaction costs (Australian cases, Koski, POPSIS).

*Concluding remarks*

Research into economic effects of charging by PSBs for re-use of their PSI has recently enjoyed a surge in popularity. Where previously only a few authors were concerned with this matter, over the last few years a steady stream of reports and studies has emerged from the academic world, policy makers and re-users. The material represents a growing body of evidence which strongly suggests that abolishing charges has beneficial impacts on not only the downstream market (that is, on economic growth, employment and innovation), but also the public sector itself, due to observed increases in efficiency and effectiveness.

## 4 A snap shot of developments on PSI re-use charging in seven Member States

Having looked at the regulatory framework applicable and the changes proposed, and having walked through the case studies undertaken in this field over the last years, obviously the question is: what are the current developments across Europe with respect to charging for the re-use of PSI?

Presented below is an anthology of examples from seven Member States. Obviously, this is not an exhaustive overview, but rather a general picture of trends in the PSI charging practices in a number of Member States.

### *Finland*

The general atmosphere for opening PSI resources for re-users is reported to be positive in Finland. The discussion has become more coherent and integrated into the mainstream discussion on the development of the information society. More importantly, it is starting to reach top-level decision makers. This is mirrored by the sentiment expressed by Mr Jyrki J. Kasvi, Member of the Finnish parliament: "More has happened in the last four months [in terms of change in attitudes towards opening up the public sector data resources] than I believed would happen in four years".

Most activity in this area is connected to the implementation of the Infrastructure for Spatial Information (INSPIRE) Directive 2007/2/EC. Other initiatives in the area of PSI re-use include the 'Apps for Democracy' innovation contests and ongoing data catalogue projects.

A national level debate is one thing, but of course, the real action towards opening up data sources takes place inside individual public organisations. Regional and local administrations have a very important role since significant amounts of PSI is produced at this level of government. The level of knowledge, awareness and attitudes related to PSI re-use varies immensely between the individual organisations.

Nevertheless, on 1 May 2012 the Finnish government opened up its geodata for free re-use. According to Jarna Ratia, the Director General Central Administration: "This also allows attaining one of the most substantial strategic objectives of the NLS, to use topographic data as widely as possible. Hundreds of millions of euros have been invested during the last decades in the digital databank. We believe that making the data available provides the society with the most considerable total economic benefits of these investments." The May release also contains elevation data, fixed points, aerial photos and orthophotography, and the topographic database.

Furthermore, Dr Heli Koski, a researcher at the Research Institute of the Finnish Economy produced a very interesting study, '*Does Marginal Cost Pricing of Public Sector Information Spur Firm Growth?*', on the impact of marginal cost pricing of geo-data or making it freely available, in contrast to full cost pricing. The study has now been published in English.

The conclusions Koski reaches are quite convincing and strongly support free data re-use: The firm-level data concerning re-users of geographical information (GI) active in architectural and engineering activities and related technical consultancy sector from 15 countries during the year 2000-2007 suggests that the pricing of public sector GI strongly relates to the firms' sales growth. Firms functioning in the countries in which public sector agencies provide fundamental geographical information either freely or at maximum marginal costs have grown, on average, about 15 percent more per annum than the firms in the countries in which public sector GI is priced according to the cost-recovery principle. The difference-in-difference estimations further show that positive growth impact materializes already one year after switching to the marginal cost pricing scheme but a

stronger boost to the firms' growth takes place with a two-year lag. Interestingly, marginal cost pricing has not generated notable growth among the large firms; SMEs have been benefiting most from cheaper geographical information. It seems credible that switching to marginal cost pricing of public sector information (PSI) substantially lowers barriers for the entry of SMEs into new market areas in the provision of GI-based products and services.

### *Italy*

Where public bodies are making available datasets that were previously unreleased (or available under closed terms of use), mainly within open data projects, the trend is not to apply any charge. This is also due to the fact that, in many cases, transaction costs would overcome the expected income or the previous actual income (this aspect is reflected, for instance, in the Piedmont legislation on open data when addressing charging principles). Moreover, the promoters of open data projects believe that "free" is to be considered as one of the attributes of "open". The extent of open data initiatives is growing bigger. However, no significant change has to be acknowledged in the policy of the major PSB holders (mainly at the national level) applying charges. The two layers seem somehow independent from each other.

Nevertheless, still many large Italian PSBs frequently have the mandate, or at least the incentive, to remunerate their activity through charging, with a central public body periodically funding the PSI so that break-even is achieved (if needed). In fact, for these kinds of PSI, switching to a "free of charge" policy would require a substantial increase in the public subsidy they receive. Furthermore, incumbent re-users of such information (e.g. cadastral data, firm registry) do not seem in favour of a "free of charge" policy.

For instance the main provider of cartographic data – the "Istituto Geografico Militare Italiano" (Italian Military Geographic Institute), can be openly accessed, but the re-use is still subject to charges and requires a specific authorization by the Institute. Moreover, the Institute has a number of authorised distributors (a few per region, depending on the size). The national geoportal maintained by the Ministry of Environment, also provides national cartographic data. (Registered) users do not pay any charge to access the data, but do not allow commercial reuse either. Nevertheless, there are certainly pockets where the Open Data philosophy (and associated charging policies) is being adopted. Many geographic data are produced by regions and other local authorities; some of them are publishing geodata, usually at no charge. The regions of Piemonte and Emilia Romagna are examples where geographic data were available under charges (typically a two-part tariff: fixed fee + actual download) but transaction costs turned out to be higher than the actual income, making PSBs decide to drop charging altogether.

### *France*

Following strong political drive from Prime Minister François Fillon, in May 2011 France changed its re-use policy drastically. Under Decree n° 2011-577, as a general rule, all national-level PSI has to be made available free of charge for re-use on the centralised national data portal "data.gouv.fr". Public sector bodies that want to charge for their PSI need to file a justified request to the Prime Minister. Only a decree issued by the Prime Minister gives PSBs the right to charge for PSI. Pricing models enacted before July 2011 do not require a prime ministerial decree. However, they need to be notified to the central list. Failure to do so by 01 July 2012 gives zero-cost access to PSI to all re-users.

As a follow up on 31 December 2011 a decree was published establishing a committee under the '*conseil d'orientation de l'édition publique et de l'information administrative*', the advisory council of PSI publication. The committee is tasked with formulating an advice on the list of public data sets available for re-use that are subjected to payment.

This committee is likely to look into the French Meteorological Office (Météo France), whose commercial branch is an active player in the market for value-added meteorological services with a large market share. Météo France's revenues from commercial activities are used to reduce the tax payer's contribution for Météo France's functioning. It is reported that due to severe budget constraints being faced by the French government, it seems improbable that additional public funds will be allocated to Météo France and IGN in order to provide all their PSI free of charge. Accordingly, there is deadlock, which, in fact, is being faced by many PSBs throughout Europe.

### *The Netherlands*

The Dutch have really adopted the Open Data philosophy not only in policy, but also at the level of data holders. A few pockets of resistance remain in place though, as these PSBs rely heavily on their own re-use incomes, most prominently the Dutch Cadastre.

In terms of general data policy, the rule 'no charges, unless' was adopted in 2011 in a policy note from the Dutch Ministry of Internal Affairs and Kingdom Relations, the department in charge of the PSI re-use dossier. This line has now been transposed into draft formal legislation: in early July 2012 a new piece of FOIA legislation was put out for public consultation.

This piece of legislation holds specific rules on PSI re-use, including charging. These are:

Article 11:

1. A public sector body will not connect any conditions to the re-use of documents.
2. When Granting re-use rights, a PSB will not exercise any rights under the Copyright Law, or the Database Law, or the Law on Related Rights.

Article 12:

1. When providing documents for re-use under this FOIA, a PSB will maximally charge an amount equal to the costs related to the provision of the documents.
2. Further rules can be set (under General Rules of Policy) as to the establishment of these costs as well as costs that will not be charged.

After public consultation, the draft legislation will be finalised and put forward to Parliament, which is expected to happen in the fall of 2013.

At the level of data holders, significant changes in charging practices are visible. In the field of geographic information, a free data re-use policy has been adopted for a number of highly valuable data sets, including: the full coverage topographical map of the Dutch territory (TOP10NL), the Basic Register of Addresses (BAG), the National Road Register (Nationaal Wegenbestand). In particular for TOP10NL this is a major change as previously the licence costs for the full data set amounted to 50.000 euro. However, as the Cadastre became aware that about 90% of the users were PSBs, it realised this did not make sense. After allowing free re-use, the number of re-users skyrocketed, confirming the consumer surplus available.

Allowing free re-use of the Register of Addresses (BAG) as well as the National Road Register (Nationaal Wegenbestand) did not come without a battle: underlining the fundamental character of this movement, existing private sector data holders decided to take the Dutch State to court, in an effort to expedite the opening up of (parts of) these data sets for free re-use.

In summary proceedings, the Dutch Court of 's Hertogenbosch refused to grant Falkplan's request for an injunction on the Ministry of Infrastructure and Environment to refrain from making available the national road database for re-use without any conditions, including for commercial purposes. Falkplan, a private company providing route planning and travel information services, claimed that if the Ministry made the road database available for re-use, it would cause irreparable damage to its business model. However, the Court found no sufficiently urgent need to immediately stop the Ministry from disseminating the data. Interestingly, although the Court could have rejected Falkplan's

claims on these grounds without any further discussion on the merit of the case, it nevertheless went on to address Falkplan's arguments and found that the Ministry's intentions were fully in line with its obligations under the re-use framework and the (upcoming) changes in Dutch competition law. Hence, the national road database can be used for any commercial or non-commercial purpose without any restrictions. However, the story is not over yet: in spite of the manifestly clear decision in the summary proceedings, Falkplan has initiated so-called 'ground proceedings', and it may take up to one year before a decision is rendered (with the possibility of appeal).

The Dutch government has been working on a system of authentic datasets (the so-called basisregistraties) for a number of years. One of these authentic datasets is the BAG, holding data on addresses and buildings (Basisregistraties Adressen en Gebouwen). The data held in this registry were already available for re-use (including commercial use), except from the postcodes. From 1 February 2012 onwards, the postcodes were also made available for any type of use. PostNL, the holder of the postcode database, tried to prevent this in court, but the court decided that the postcodes should also be made available for re-use. This considerably increases the value of the BAG for re-use. Nevertheless, PostNL has started substantive proceedings, and a further judgement is expected in the course of next year.

The structural character of this movement towards free re-use is further acknowledged by two recent policy changes.

As of March 2012, the Ministry of Economic Affairs, Innovation and Agriculture, responsible for the Dutch National Space Organisation (the NSO), has structurally financed the free re-use of Global Monitoring for Environment and Security (GMES) data for a period of three years (2012, 2013, 2014), by acquiring a licence from Astrium for radar data covering the Dutch territory. The basic idea is that Dutch users, in particular those from the private sector, can get acquainted with the use of this data set, allowing them to prepare for the GMES data provision in 2014, thus giving them a head start when launched. The components of the data set acquired is a look-alike of the GMES data set likely to be adopted. The total funding amounts to €4m for the entire period and was furnished by the Ministry, by rearranging funds within its own budget (rather than claiming extra money from the Dutch Treasury, which would have been very burdensome in these times).

Secondly, on 20 September 2012, another 'high quality high returns' public sector database was opened up: the RDW -the Dutch national car registry – now allows re-use of its data on all registered cars in the Netherlands. Until now this information was available one record at a time through a website, or as downloads against payment. The data release is announced as a test (for one year), to make sure the RDW can ensure a stable environment for doing so. In the first three months of this test period the data re-usable will at most be a week old, and after that period the update frequency will be daily. During the test the access to the data is limited to 50.000 data requests per month initially. Together with the data release the RDW is launching a competition for apps re-using the data. Deadline for participants is 7 October 2012, and the winners will be announced during the 13 October 'Hack de Overheid' (Hack the government) event in Rotterdam. The total prize money amounts to 6.000 Euros.

### *Poland*

In July 2011 the Polish government sent a draft bill to Parliament aimed at amending the current bill on Access to Public Information. This Act 1195 implements the 2003 PSI Directive and amends the following Acts: Act of 10 April 1974 on population records and identity cards, Act of 29 June 1995 on public statistics, Road Traffic Act of 20 June 1997, Water Act of 18 July 2001, Act of 2 July 2004 on freedom of economic activity, Act of 17 February 2005 on computerisation of activity of bodies carrying out public tasks and Act of 24 September 2010 on population records. The main purpose of the amendment is to introduce into national legislation rules for re-use of public information in line with the EU PSI Directive and to improve the competitiveness of companies whose business involves

the processing of information. Working with a central repository, to which all government bodies will be required to contribute PSI, everyone will have the right to re-use public information, without restrictions and free of charge (as far as no incremental costs of distribution apply, which re-users will have to cover.). However, if the preparation of information for re-use will generate additional costs, a payment may be required to offset these costs. For information that is subject to copyright law, licenses will have to be used to provide broad rights of access and re-use. The core provision on pricing are laid down in articles 23b and 23c, as demonstrated below (unofficial English translation of draft Act).

23b:

1. Public information is made available for re-use without restrictions in the form of conditions, and free of charge, subject to paragraphs 2 and 3, and Article 23c.
2. The obliged body may determine the conditions of re-use of public information, concerning:
  - 1) the obligation to provide information about the source, time of production and acquisition of public information from the obliged body,
  - 2) the obligation to further provide the information in the originally acquired form to other users,
  - 3) the obligation to provide information about the processing of information which is being re-used,
  - 4) the scope of responsibility of the obliged body for the information provided.
3. The obliged body determines the method of using public information meeting the characteristics of a work within the meaning of the Act of 4 February 1994 on copyright and related rights (Journal of Laws No 90/2006, item 631, as amended<sup>14</sup>) or constituting a database within the meaning of the Act of 27 July 2001 on database protection (Journal of Laws No 128, item 1402, No 96/2004, item 959, No 99/2007, item 662 and No 176/2007, item 1238), ensuring the possibility of any use of the work or database for commercial or non-commercial purposes, creation and distribution of copies of the work or database, as a whole or in fragments, and making changes and distributing related works.
4. The obliged body provides conditions of public information re-use in the electronic form.

23c:

1. The obliged body may impose a fee for the provision of public information for re-use on request mentioned in Article 23g(2) if the preparation of information in the manner indicated in the application requires the incurring of additional costs.
2. When imposing the charge mentioned in paragraph 1, costs of preparation and submission of public information in the given manner and in the specified form are taken into account, as are other factors allowed for in the case of non-typical applications for re-use of public information, which may affect in particular the cost or time of preparation and submission of the information. The total amount of the charge must not exceed the total costs incurred directly for the preparation and submission of the public information for re-use in the specific manner and in the specified form.

The actual implementation of the law may raise some challenges as some large PSI holders in Poland, for instance the national meteorological services are known to be quite reluctant to adopt free charging models.

### *Sweden*

The Swedish government has announced it will start an investigation this autumn with the purpose of looking into the charging procedures, in principle, for all Swedish authorities. The meteorological organization SMHI has already announced a change to its pricing policy as of 2014, making all their information available for free. Interestingly, apparently the charging and data policy of the Norwegian Met Office has had an important role in this decision, being the front runner (together with the Dutch) in this field.

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<sup>14</sup> Amendments to the consolidated text of the Act were published in the Journal of Laws No 94/2006, item 658, No 121/2006, item 843, No 99/2007, item 662, No 181/2007, item 1293, No 157/2009, item 1241 and No 152/2010, item 1016.

Nevertheless, there are still large differences in other sectors: the prices for cadastral information in Sweden are reported to be 10 times higher than the prices for vehicle information. Just as an example the Swedish Land Survey works under the governmental instruction saying that their prices for re-use shall cover costs for extracting and distributing information as well as the costs for building, maintaining and developing the information systems within the authority.

However, the Swedish Competition Authority is taking an increasing interest in PSI re-use market conditions. In 2011 it assigned a study on the functioning of the PSI re-use rules (both national and European) in relation to general competition law and this year it is reported to be handling complaints about the market for geographical information and meteorological information.

### *United Kingdom*

There doesn't seem to be a concerted move to start charging for data by PSBs although nationally this isn't the case. In the UK the setting up of the Public Data Group and its relationship with the Data Strategy Board (DSB) and Open Data User Group (ODUG) seems to be a process to formalise a system where certain datasets are released for free, some are bought from the Public Data Group through ODUG and DSB and some continue to be charged for by the Public Data Group. (The Public Data Group consists of the Trading Funds, Met Office, Ordnance Survey, Land Registry and Companies House). It is believed that the advent of the Public Data Group will solidify PSI charging and licensing policy within the UK, reinforcing the charging positions of Trading Funds

At the local level charging for data is rare unless there is already a revenue generating relationship in existence. There is a complicating factor in the UK where PSI is created by private sector organisations under the public task. Although the UK government has made National Rail's realtime information available for free, this has not been mirrored in other similar organisations. The problem with public transportation data is that there are a multitude of contracts for the delivery of the public service, creating big issues in relation to re-use.

The UK Met Office has a tiered approach to meteorological information. It has a number of services that are free to access, through an Open Government Licence through its DataPoint initiative. The Met Office also provides data and analysis under a controlled regime that does have provision for free access after registration but most of the controlled services are chargeable.

The Ordnance Survey has made a variety of datasets available under the Open Government Licence but there is a feeling that it has only gone as far as it has to. For instance the Ordnance Survey MasterMap, which is the definitive map and topography of the UK from which a lot of other location data is derived, is not open. Last but not least, the UK Companies House will lower the fees for accessing data held in its company register on 1 October 2012. Companies House holds the data on all companies registered within the UK. While some fees are just slightly reduced, it is of bigger interest that a number of searches that were previously provided against a charge of 1 GBP will now be free. This also concerns the data concerning who is appointed as director of a company. This allows for a much larger free access to this public data.

### *Europe*

Finally, of course Europeana must be mentioned. This initiative has adopted a compulsory licensing scheme on the basis of Creative Commons zero (public domain), whereby (meta)data are accordingly being made available for re-use for free.

### *Concluding remarks*

This quick tour of (part of Europe) confirms that there is quite a lot happening: many countries are adopting a central PSI re-use policy that embraces the principle of 'no charges, unless' and 'comply or explain'. Nevertheless, there are sectors and Member States that appear to have gathered much less momentum and there are even some that seem to move towards larger scale cost recovery policies, contrary to the aim and spirit of the directive, let alone the PSI Directive.

From this, and taking into consideration the often clear evidence building up that no or marginal charges are (much) more beneficial than cost recovery charges, the logic and validity of the newly proposed article 6 appears to be quite evident. Although it may come at a cost in the short run – where PSBs will fail to have incomes from charging re-users – the likelihood of much more beneficial long-term effects (lower PSB costs, higher tax returns, outweighing the accumulated lost incomes from re-use charges) should represent a fairly clear business case.

## About the Author



Marc de Vries, BA LLM, is a member of the ePSI team and has professional degrees in both law and economics (Utrecht 1991). He has been active in the field of public sector information re-use for more than 15 years, both at the national and European levels. He serves clients in the public and private sectors in the Netherlands and beyond, EC institutions in particular. Marc regularly publishes books and articles on legal and economic issues surrounding PSI re-use and he is frequently invited as a subject matter expert to speak at conferences.