

CEEP KEY MESSAGES ON THE COMMISSION PROPOSAL FOR THE REVIEW OF THE DIRECTIVE ON THE RE-USE OF PUBLIC SECTOR INFORMATION (PSI DIRECTIVE)

CEEP supports the European Commission's overall objective to set a European regulatory framework that fosters the development of the European data economy. Public services' enterprises in all sectors are on a firm path towards digitalisation whilst their resources to support this development are scarce. Data is increasingly recognised for its economic value. Amongst other data, the link with the customer is particularly valuable to any economic actor. Thus, data-based products or the trading of data can in the future provide additional income to public services' providers, which can be re-invested with the aim to accelerate their digitalisation process.

In this context, CEEP welcomes that the Commission's proposal does not contain a general, automatic obligation to allow the re-use of documents produced by public undertakings. CEEP also welcomes that certain types of documents are not covered by the Directive, particularly documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of the protection of national security, defence, or public security, statistical confidentiality as well as commercial confidentiality (e.g. business, professional or company secrets).

At the same time, CEEP sees the need to clarify how these provisions play together with those asking public undertakings to publish data in certain cases, especially through possible future delegated acts on high-value data sets. Therefore, CEEP pleads for the revision of the PSI Directive to become a true support tool for ongoing digitalisation, innovation and investments by public services' enterprises and not to lead to legal uncertainty and a reduction of investments, harming the long-term provision and development of public services.

The Directive's scope and the need for a level-playing field for all market players

The Commission's proposal to differentiate between, on the one hand, data held by public undertakings and, on the other hand, government data or content owned by cultural institutes, goes into the right direction. Indeed, they are not the same as public undertakings' dynamic services require constant generation of own income, reinvestment and adaptation to a competitive market.

Nevertheless, the proposed revision widens the scope of the original PSI Directive to public undertakings in sectors such as water, energy, transport and postal services. This creates a substantially unequal treatment between public undertakings and private companies which are not included in its scope but operate in many cases on the same markets.

As the companies which tend to benefit from open datasets are large platforms that want to compete with European local, regional and national public services' enterprises, it is essential to create a level-playing field between all market actors, independently of their ownership. This would not be guaranteed if only some enterprises have to share data with private ones who in turn could be enabled to take over business models of those enterprises which act in the general interest and, for instance, create local jobs and ensure stable investment in the underlying infrastructure.

Indeed, the revision of the PSI Directive needs to acknowledge that both the collection and provision of data induce costs which must be recovered. Data analytics create added value which should remain a possible basis for future business models also for public services' providers. Therefore, in a competitive environment, aiming at a level playing field, public services' providers should be allowed to equally run new data driven businesses based on the data of their services, as long as the provision complies with the existing data protection regulation.

Thus, CEEP suggests maintaining the Directive's current scope in order to ensure the continuous provision of high-quality public services throughout the EU as well as a stable framework for investments in these services, particularly in view of the investments needed for the digital infrastructure of the future.

Already existing regulation and innovation in sectors included in the Commission's proposal

The revision of the PSI Directive should take into account existing regulation on open data. Indeed, both European sectoral legislation and national rules in sectors with important differences from one Member State to another, such as in the water sector, need to be kept in mind when reviewing the Directive. For example, the transport sector is already regulated through the ITS-Directive and its delegated acts, which requires operators from all modes – public and private – to share travel information and service data with each other. In CEEP's view, a second proposal, just months later, goes against the principle of better regulation. Therefore, a continuation of the existing sectoral approach would be favoured.

Already today, CEEP members are active drivers of innovation through new digital solutions. They publish certain data openly with the objective of further improving the services for citizens and end users. In addition to that, many CEEP members are already working closely with trusted partners to develop, for example, innovative mobility solutions (such as apps combining a multitude of public services within one geographic area, testing ride-sharing offers or even autonomous vehicles, which customers can call through an app). Since the new PSI Directive would put a stop to such exclusive arrangements (Article 12), it is likely that cooperation for innovation, for example with local start-ups, will be made more difficult or will cease to exist altogether.

CEEP members' experience shows that such cooperations can even lead to a support of investment in public services as they join forces with third-parties to increase investments in digital solutions. Therefore, the revision of the PSI Directive should allow a continuation of these existing, successful cooperations between public services' providers and digital services' providers that are often local

start-ups in order to pursue these investments and ensure that citizens can continue benefiting from these innovative approaches.

A stable framework for the provision of high-quality and cost-efficient public services

The proposal about future delegated acts in the Directive's potential new Article 13 aims at forcing public undertakings and public bodies to make high-value datasets available for free. This would represent a drain of values away from public services' enterprises, with the decision about it being taken entirely out of their hands. Not only does this article currently create legal uncertainty, but such provisions could also hinder ongoing innovation in public services' enterprises by making investments in own data sets unstable and risky. Therefore, CEEP pleads for refraining from the possibility of defining a list of high-value data by means of a delegated act and to remove this article which would give a wide mandate to one European institution on such a sensitive and complex issue that requires a large political debate before its adoption. As a minimum, CEEP pleads for implementing acts instead of delegated acts to allow for more scrutiny and transparency when taking these crucial decisions for the future of public services in Europe, and for treating each sector separately with the relevant Parliamentary committees involved in the discussion.

The review of the Directive needs to consider that public services' providers are enterprises that, just like other enterprises, must deliver their high-quality services in an economical, cost-efficient way. This includes cost recovery when making certain data available or regularly updating them. Public services' providers should not be forced to give out value for free or at marginal costs to other companies who would not contribute sufficiently to the required investments. Only a reasonable return on investment allows the provision of their own innovative services that are built on their unique understanding of their users and the needs of the latter. In this way, public services' providers aim at helping to achieve the Commission's objective of developing the European data economy that they share.

In this context, we also consider the tightening of the possibilities for financial compensation for public bodies as too far reaching. The collection, maintenance and sharing of data sets is expensive and cumbersome and must be compensated for. Therefore, the deletion of possible exemptions to charge more than the marginal costs should be removed from the proposed Directive (Art. 6).

Last but not least, it remains unclear how public undertakings and public bodies should deal with personal data in the light of this proposal. Although it argues to focus on non-personal data, it talks a lot about the anonymization of data. Thus, it is unclear how "mixed datasets" should be treated and who bears the risk/ responsibility if complaints about a violation of the General Data Protection Regulation arise.