

The ePaństwo Foundation has been active in using the provisions of the directive and regulations implementing them at the national level for many years. Last year, the Foundation, together with the Digital Center, published a report summarizing the year of implementation of the act on the re-use of public sector information in Poland (<https://centrumcyfrowe.pl/wp-content/uploads/2017/09/e-1.pdf>). The Foundation also took part - as one of seven entities in the EU - in consultations organized by EC on the impact assessment document on the draft directive, as well as shared its experience in the evaluation of the functioning of the directive as of 2013.

The Foundation welcomes the proposed solutions, while realizing that the draft directive must take into account the diverse legislation and practice of Member States. Therefore, the draft directive does not respond to some of the comments formulated in the above-mentioned Foundation's report, but is a good step towards strengthening the legal landscape to improve reusing public sector information.

The proposal of a new directive not only extends the scope of entities and information that will be subjected to re-use, but also refers to the regulation of practical aspects of accessing PSI by introducing the principle of applying dynamic access systems. The latter is particularly important for real-time data. The Foundation has repeatedly pointed out the need for such a solution as an indispensable condition for building stable products based on the use of public data. In particular, the regulation contained in art. 4 par. 5 indicates that despite the problems with the automatic provision of data, the deadline of its dissemination should not unduly limit the possibilities of using their economic potential.

We are also satisfied that the new wording of recital 19 of the Directive clearly states that 'this Directive imposes on Member States the obligation to re-use all documents (...)' This is an important shift from the current status that 'this Directive does not contain any obligations to allow re-use of documents. Member States or public sector bodies concerned decide whether or not to allow the re-use.' Changing the philosophy in this area will help in actual implementation of the Directive's objectives and will increase the amount of information that will be re-used both by economic entities and those related to the non-governmental sector.

We are also pleased with the content of recital 20 of the proposal, which finds a practical expression in art. 1 point 1. b, of the proposal, to extend the scope of entities obliged to provide information for re-use to public enterprises. In the context of increasingly frequent "privatization" of public services and due to the fact that such enterprises collect and process large amounts of data, such a proposal responds to the market demand for their re-use. Similarly, we are happy to see the inclusion of research institutes and research data in the group of entities providing public sector information. For many years, the Foundation has been active in the field of so-called Open Access and strongly supports the regulation that research data generated during the implementation of projects financed from public funds will be opened for re-use. We are also supporting the change concerning restricting the general disallowance to re-use of public sector information based on the sui generis protection. Although we have not identified examples of such restrictions in Poland, we have indicated potential problems in this respect.

It is also worth noting the clarification in recital 31 of the proposal of the definition of a document in machine-readable format. The Foundation observes in Poland and other countries that despite

declarations, entities obliged to provide information for re-use, in fact rarely use such formats while they are necessary to create cost-effective services based on public data.

On the other hand, the Foundation is disagreeing with the possibility of exceeding marginal costs by public entities in cases when it is necessary to pay fees for providing information for re-use. However, we positively assess, contained in art. 7 par. 2 of the draft, the requirement to publish a list of public sector bodies that need to earn revenue in connection with the releasing public sector information. This will increase the transparency of the bodies' activities also on their current financial management.

We also consider as a negative change to allow the imposition of a fee for the anonymisation of personal data or commercial information. Member States should seek to introduce automated mechanisms of anonymisation or pseudonymisation of data. The existence of the possibility of relatively easy handling of such problems is confirmed, among others the Polish Central Database of Decisions of Administrative Courts. We find interesting to propose the introduction of high value datasets, especially on the assumption that they should be made available free of charge and via API. However, it is not clear on which method the data will be selected. The criteria presented in the project seem too general.