

Den Hague 12 December 2017

STM Submission to the EU Commission's Consultation on the Directive on the re-use of public sector information

The International Association of Scientific, Technical and Medical Publishers (STM) is the leading global trade association for academic and professional publishers. It has 145 members in 21 countries who each year collectively publish nearly 66% of all journal articles and tens of thousands of monographs and reference works. STM members include learned societies, university presses, both subscription and open access publishers, new starts and established players.

STM welcomes this opportunity to make this additional submission as part the Public Consultation on the Review of the Directive 2003/98/EC on the Re-Use of Public Sector Information (PSI Directive), amended by Directive 2013/37/EU in July 2013.

STM's interest representative ID number is: 98356852465-08.

In general, STM supports the aims of the PSI Directive and bolster the inclusion of raw data (published outside of a scientific publication) and certain forms of so called grey literature in the scope of the PSI Directive, where such raw data or grey literature has been created by the public sector and the copyright subsisting therein is owned by the public sector. The best way to make such raw data and grey literature available may well rest in the formation of public-private partnerships. However, when information has been enhanced or had value added (e.g. indexing, thesaurus, hyperlinks, consolidation, etc.) to it by a third party, for example through the publication in a journal, such information should not fall within the scope of this Directive. This information should be made available to the public based on licenses with commercial terms.

With the above in mind, STM fully supports the clear expression in several recitals and articles of the PSI Directive that copyright and the value-add of the private sector must be respected in the way the PSI Directive is applied. STM opposes the extension of PSI and PSI policies to include original copyright-protected works published by the private sector only because these works may embody or build on PSI.

STM welcomes this opportunity to contribute constructively to the debate by giving its opinion to the following section in the online survey on which STM has a particular interest:

Section: Data held by educational and research establishments/scientific information.

Comments to questions 12a and 12b:

Question 12a:

Do you agree that scientific research results (publications and research data) resulting from public funding should in principle be open access (free of charge online access and unrestricted re-usability)?

STM's reply to this question is submitted as a free comment because a simple "yes or no" answer does not seem appropriate for this purpose. STM fully agrees and supports the principle of FAIR – findable, accessible, interoperable and reusable – data. However, this question conflates research results resulting from public funding with published articles and research data; these are not the same and publications (which include text and data) has significant value added to them by publishers, who needs to recoup these investments through different models of access.

With respect to the principle of Open Access to research data there are additional considerations: it should be noted that among researchers there is at times serious concern for sharing their data, certainly if done too early before proper processing and validation of the data has taken place – or that the data contains information which may reasonably be expected to provide knowledge, products, or technologies that could be directly misapplied by others to pose a threat to public health and safety, agricultural crops and other plants, animals, the environment, or materiel. For this reason, STM supports consultation with the research community about ways in which researcher-validated data can be made accessible without prejudicing the creators of that data or causing a threat to human, animal, or environmental safety.

If and when privacy-issues are at stake, such as often can be the case in medical data, or other legal issues, including patenting and intellectual property issues, embargos on the openness of data may be necessary.

With respect to the principle of Open Access for publications, STM **supports any and all sustainable models of access that ensure the integrity and permanence of the scholarly record**. STM publishers are agnostic about business models and offer therefore a variety of options. Those include 'gold' open access, whereby publication is funded by an article publishing charge paid by the author or another sponsor, a subscription-based journal, or any one of a number of hybrid publishing options. With respect to Green OA, STM publishers believe that it can be consistent with fostering a viable system for funding publications of authoritative communications about research commonly referred to as "final published article" or "Version of record". However certain key factors should be taken into account by all stakeholders when setting and developing their Green OA policies¹. Because different

¹ http://www.stm-assoc.org/2017_05_01_STM_Position_Green_OA.pdf

business models may work best in different circumstances, STM's view is that no single business model should be required for all situations.

STM believes that authors should be able to publish in the journal of their choice, where publication will have the greatest potential to advance their field and fully supports progressing Open Access in ways that respect researcher choice and the diverse approaches to open access taken across different parts of the world, both outside and within Europe.

Question 12b:

To which extent would you agree with the following statements?

Documents held by educational and research establishments, schools and universities that are of scientific nature should become available for re-use with as few restrictions as possible (other than those necessary to preserve individuals' privacy, commercial confidentiality and legitimate rights of third parties, etc.).

STM takes a neutral position to the above statement but like to add the following explanatory comments:

Documents can include any numbers of items, ranging from public funding-only items to items that have had value added to them by the commercial sector. It is not appropriate nor it is necessary to consider the inclusion of those items that have had added value to them by third parties within the scope of the PSI Directive.

Regarding research data, it is important to use clear definitions. STM supports the FAIR (findable, accessible, interoperable and re-usable) principle and agrees that raw research data, for example results of observations or experimentations that validate research findings but are not already published as part of a journal article, should be made freely available with minimal re-use restrictions. However, researchers' concerns as noted in the prior question needs to be adequately addressed.

Science is best advanced by allowing as many scientists as possible to have access to as much valid data as possible. This avoids costly repetition of work and allows creative new integration and reworking of existing data.

It should be noted that hosting, maintaining and preserving raw data or data sets, and continuing to make such data available over the long term, has a cost which, in certain circumstances, the host site may need to recover. We recognize that on occasion the generation of data has been privately funded, and the funding entity may have a particular reason for restricting access to the data (either temporarily or permanently), and we believe these should be respected.

In conclusion, STM supports making researcher-validated data and grey literature available through open access models or private-public partnerships, in consultation with the researchers involved. However, it is crucial that copyright protected content and the value-add of the private sector must

be respected in the way PSI legislation is applied. PSI policies should not be established to engulf private sector information and private sector value-added information, including copyright protected works and materials originated and first published by the private sector.

STM supports the submission of the Federation of European Publishers (FEP).

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael Mabe", with a stylized flourish at the end.

Michael Mabe
CEO STM

Review of the Directive on the re-use of public sector information (PSI Directive)

Fields marked with * are mandatory.

Public Consultation on the Review of the Directive on the Re-Use of Public Sector Information (PSI Directive)

About this consultation

19 September 2017 to **12 December 2017**

Policy area: Digital Economy & Society

Responses to this consultation

The Commission will publish the replies shortly after the end of the consultation period.

Consultation outcome

The Commission will summarise the replies after the end of the consultation period. The results will be taken into account in the context of the review of the PSI Directive.

Contact

If you have any questions or problems regarding this public consultation, please contact: CNECT-PSI-REVIEW-CONSULTATION@ec.europa.eu

Targeted respondents

All interested parties, including governments, public sector content holders and users, commercial and non-commercial re-users, experts and academics as well as citizens are invited to contribute.

Context and purpose of the consultation

The Commission is launching a public consultation in view of reviewing the Directive on the re-use of public sector information (PSI Directive). As foreseen in the May 2017 Mid-Term Review of the Digital Single Market strategy ([COM\(2017\) 228](#)), and in order to fulfil the goals of the strategy in the field of the data economy, the Commission is preparing an initiative on accessibility and re-use of public and publicly funded data, and is at the same time further exploring the issue of privately held data which are of public interest.

The [Directive 2003/98/EC](#) on the re-use of public sector information is a core element of the European strategy to open up government data for use in the economy and for reaching societal goals. Revised by Directive 2013/37/EU (PSI Directive) in July 2013, it encourages Member States (MS) to make as much material held by public sector bodies available for re-use as possible to foster transparency, data-based innovation and fair competition.

The European Commission launches the review of the PSI Directive, fulfilling the periodic review obligation contained in its article 13, and at the same time furthering the goals of the DSM Strategy in the field of data economy.

The questions of this online consultation cover both the evaluation of the current Directive implementation and the problem, objectives and possible options for the future.

ABOUT YOU

* You are welcome to answer the questionnaire in any of the 24 official languages of the EU. Please let us know in **which language you are replying**:

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* **Publication of your response:**

Note that, whatever option chosen, your response may be subject to a request for public access to documents under [Regulation \(EC\) N°1049/2001](#)

- my response can be published with my personal information (I consent to the publication of all information in my response in whole or in part including my name or my organisation's name, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication).
- my response can be published without the information I provided in replies to questions about me or my organisation's name, registration number and e-mail address (I consent to the publication of all the other information in my response in whole or in part (which may include quotes or opinions I express). I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication).

- Please keep my contribution confidential. It will not be published, but will be used internally within the Commission.

* You are responding:

- as a citizen.
 on behalf of an association representing the interests of its members.
 on behalf of a public organisation.
 on behalf of a business.
 other.

* First name:

200 character(s) maximum

Barbara

* Name:

100 character(s) maximum

Kalumenos

* e-mail address:

200 character(s) maximum

Kalumenos@stm-assoc.org

* Name of your organisation:

200 character(s) maximum

STM - International association for Scientific, Medical and Technical publishers

* Website of your organisation:

200 character(s) maximum

<http://www.stm-assoc.org/>

* Contact details of your organisation (address, telephone, etc.):

300 character(s) maximum

Pr. Willem Alexanderhof 5, 2595 BE The Hague, The Netherlands, Tel: +31 70 3140930, Fax: +31 70 3140940

* Where **is your organisation located in** or what is your **nationality** (if you reply as a citizen)?

- European / international
 Austria
 Belgium
 Bulgaria

- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

* Which type of association do you represent (more than one option is possible)?

- Trade, business other professional association
- Non-governmental organisation
- Research and academic institutions
- Public entities, including regional and municipal authorities
- Other

* How many members are you representing?

300 character(s) maximum

145

* You are responding primarily:

- because you hold data that is or could be covered by the PSI-Directive.
- because you are interested in re-using public sector data.
- other.

* Please, specify:

300 character(s) maximum

Because the Directive may affect STM members' interests

* Is your organisation included in the [EU Transparency Register](#)?

- Yes
 No

* Please, indicate your EU Transparency Register number:

100 character(s) maximum

98356852465-08

Explanatory remarks:

This consultation concerns primarily the evaluation and review of the [Directive on the re-use of public sector information](#).

The first part of the survey (Q1-Q8) concerns the evaluation of the implementation and functioning of the current EU legislative framework on the re-use of government data (PSI Directive).

The second part of the survey (Q9-Q18) looks into the possible improvements of this framework in the future.

The third part of the survey (Q 19a-Q21b) reflects the current discussion on the possibility to allow public sector bodies to access and use data coming from private sector entities, whenever this would be justified by public interest considerations.

You are welcome to reply to any part of the questionnaire separately or to all three parts of the questionnaire at once.

The Directive leaves intact and in no way affects the level of personal data protection under the provisions of EU and national law. All current and future provisions of the Directive will have to be implemented and applied in full compliance with the principles relating to the protection of personal data.

The Directive employs the term 'document' to refer to any content, whatever its medium (paper, electronic, sound, visual, etc.) and any part of such content. For the purposes of the present consultation, this term may be replaced by words such as 'data', 'dataset' or 'information'.

Documents held by public sector bodies but covered by third party Intellectual Property Rights are excluded from the scope of the Directive. They are therefore not affected by the current consultation exercise.

PART I: EVALUATION

The PSI Directive was adopted in 2003 and subsequently amended by the Directive 2013/37/EU. The purpose of this part of the questionnaire is to help the Commission assess whether the Directive in its current shape has met the needs of citizens and business and to assist the Commission in making the legal framework simpler and less costly to apply.

Do you want to answer this section?

When clicking yes, the questions related to this section will appear. Please, allow a few seconds for the system to generate the questions.

- Yes

No

EFFECTIVENESS OF THE PSI DIRECTIVE:

The PSI Directive provides a common legal framework for a European market for government-held data (public sector information). The main objective of the Directive is to remove barriers that hinder the re-use of public sector information throughout the European Union. It harmonises the rules and practices relating to the exploitation of such information to stimulate the creation of new data-based services and products.

Q1: Based on your experience, do you consider that the objectives of the PSI Directive are being met? In particular:

	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	I don't know
More data held by public sector bodies, including cultural heritage institutions, has become available for re-use.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public sector information is increasingly becoming a source of innovative services and products.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public sector information circulates freely across the EU and cross-border applications based on such information are easy to implement.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
PSI has become more affordable, including for Start-ups and SMEs.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Exclusive agreements between public sector bodies and third parties are used only exceptionally and are strictly limited to the cases mentioned in the Directive (e.g. necessary for the provision of the public service).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Open field:

Please, add further comments if necessary.

1000 character(s) maximum

Any PSI review approach must distinguish between:(i) measures aimed at making PSI accessible to the general public, whether open access or otherwise, (ii) measures encouraging the re-use and value-add, in other words, the refinement and enhancement of PSI.

Whilst it is true that the Public Sector generates a wealth of data and this data in its unpublished, unstructured and uncertified form constitutes a resource from which knowledge may emerge, publishers and the private sector to a large extent assist in the germination, registration and verification of such knowledge. Publishers, not only assist in the provision of access to the public in useful, structured ways (sub ii), but are re-users of PSI which enhances the latter by, for example, promulgating PSI, updating data, tailoring search functions, alert systems, verifying data, categorizing/structuring data and preserving data, to name but a few. Policies intended to maximize goal should not at the same time undermine same goal.

EFFICIENCY OF THE PSI DIRECTIVE:

The Directive aims to generate socio-economic benefits by limiting barriers to an open re-use of government data. At the same time, the implementation of the Directive may incur compliance costs on the side of the public sector bodies.

Q2: Based on your experience, do you agree that the cost-benefit analysis of the PSI Directive is overall positive? In particular:

	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	I don't know
The costs borne by the public sector bodies in implementing the Directive (e.g. adapting IT infrastructure, lower income from charges) are offset by socio-economic benefits of re-using data (e.g. creation of new digital applications and products, increased transparency).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Compliance with the Directive requires better data management processes of public institutions which leads to cost savings and increased operational efficiency.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In case a request for re-use is rejected and an applicant decides to appeal to the decision of public sector body, the redress procedure is swift, efficient and does not imply excessive costs.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

RELEVANCE OF THE PSI DIRECTIVE:

At the time when the PSI Directive was adopted, different national rules and practices were limiting the supply of PSI available for re-use which slowed down the creation of a common market for public sector information, significantly harming data-based innovation.

Q3: Given the technological progress (such as widespread use of internet) and increased awareness (Open Data movement), would you agree that the PSI Directive is still relevant, in particular by ensuring:

	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	I don't know
Supply of PSI into the EU single market.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sufficient usability (e.g. machine-readability) of data.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fair market access (non-discrimination) of all re-users.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Transparency and accountability of public sector bodies.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Open field:

Please, add further comments if necessary.

1000 character(s) maximum

Q4: A wide variety of licencing conditions with varying degrees of limitations for access and use was identified as an obstacle to PSI re-use in the previous evaluation of the Directive. According to your experience, does this variety of different licenses and re-use conditions still continue to be a barrier to an efficient and effective re-use of public sector information?

- Strongly agree
- Slightly agree
- Slightly disagree
- Strongly disagree
- I don't know

Open field:

Please, add further comments if necessary.

1000 character(s) maximum

Some data sets are by their nature straightforward and may only require a simple disclaimer, for example legislation, court decisions, parliamentary information, commerce/land registers. Others are more complex and may need a license in order to be effectively used, for example Scientific, Geographical or Meteorological information.

COHERENCE OF THE PSI DIRECTIVE:

In addition to the PSI Directive, access to and the re-use of public sector information can be affected by rules stemming from other EU and national legal acts.

Q5: Based on your experience, do you agree that rules of the PSI Directive are well aligned and complementary to the rules based on other EU legal acts relevant to the area of re-use, in particular:

	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	I don't know
Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Public Access to Environmental Information (PAEI) 2003/4/EC Directive .	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Legislation on the protection of personal data (Directive 95/46/EC and the GDPR).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Directive 96/9/EC (Database Directive).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
National access regimes (rules which limit access to certain documents on the grounds of national security, commercial confidentiality, etc.).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Open field:

Please add further comments if necessary.

1000 character(s) maximum

EU ADDED VALUE:

Prior to the adoption of the PSI Directive, rules and practices regarding the re-use of PSI varied significantly across the EU Member States. One of the aims of the EU intervention was to achieve minimum harmonisation, thereby reducing disparities between the Member States.

Q6: Based on your experience, do you agree that EU-level intervention has been beneficial for the extent to which PSI is re-used across the EU? In particular:

	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	I don't know
The PSI Directive has played a role in encouraging the national authorities to open up more public sector data.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Directive has facilitated access to public sector information from countries other than my own.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The Directive is conducive to the creation of an EU-wide market for products and					

services based on public sector information.



SIMPLIFICATION:

One of the objectives of the current evaluation is to ensure that the rules in force are sufficiently clear and do not lead to legal uncertainty or undue administrative costs linked to their implementation.

Q7: In the light of the considerations above, what would be your assessment of the PSI Directive?

	Strongly agree	Slightly agree	Slightly disagree	Strongly disagree	I don't know
Overall, the provisions of the PSI Directive are easy to understand and implement by the public sector bodies and re-users alike.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Some provisions of the Directive could be further simplified or made clearer (if so, please mention which ones in the open field below).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

PART II: REVIEW

The Directive contains a review clause according to which the Commission should evaluate its implementation and communicate the results of this exercise, along with possible proposals for amendments. This part of the questionnaire aims to identify areas which would benefit from EU intervention of legislative or non-legislative nature.

Do you want to answer this section?

When clicking yes, the questions related to this section will appear. Please, allow a few seconds for the system to generate the questions.

- Yes
- No

PRACTICAL ARRANGEMENTS FOR ACCESS AND SEARCH OF DOCUMENTS:

The Directive aims to facilitate search for documents held by public sector bodies and to make data easier to process by computers. To that end it recommends publishing data and metadata in machine-readable, open formats (Art. 5). The Directive refers also to dynamic data (e.g. data from sensors or satellites) in its recital 12, but contains no obligation for public sector bodies to make this data available in a timely manner.

Q9: To which extent would you agree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know

Public sector bodies already make available dynamic data (e.g. sensor, satellite data) for re-use in a timely and easy manner.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public sector bodies should make available metadata (sets of data describing other data) in a mandatory formal open standard (e.g.: DCAT-AP).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public sector bodies should make available data they hold in a mandatory open standard.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More needs to be done to encourage public sector bodies to provide dynamic data in real time, including investing in the appropriate technical solutions (e.g. APIs) that increase the usability of the data.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Open field:

Please, give reasons for your choice.

1000 character(s) maximum

CHARGING RULES:

The Directive contains rules that prevent public bodies from setting excessive or arbitrary charges on the re-use of documents. Since the revision of the Directive in 2013, the default rule for charging for the re-use of public sector information is that of marginal cost of dissemination (Art. 6.1). Some exceptions to this rule are foreseen (e.g. when public bodies are required to generate revenue to cover substantial part of their operating costs). The Directive specifically mentions the rules on charging as one of the areas that may require legislative change in the present review.

Q10: To which extent would you agree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
Current wording of Article 6 of the Directive is good: no changes are needed.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exceptions to Article 6.1 should be abolished: marginal cost of dissemination should become	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

the upper limit for charging by all public sector bodies, save for cultural heritage institutions.						
The circumstances under which exceptions to Art. 6.1 are allowed should be more narrowly defined.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other changes need to be made to the wording (detail in open field).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

DATA HELD BY EDUCATIONAL AND RESEARCH ESTABLISHMENTS/SCIENTIFIC INFORMATION:

With the exception of documents held by university libraries, documents held by educational and research establishments, schools and universities are currently exempt from the scope of application of the PSI Directive. Relevant documents fall broadly into two categories: a) documents of administrative nature such as budgets, enrolment of students, human resources and b) documents that constitute the scientific output of a research establishment or university.

Q11: To which extent would you agree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
Documents held by educational and research establishments, schools and universities that are of administrative nature should become available for re-use with as few restrictions as possible (other than those necessary to preserve individuals' privacy, commercial confidentiality and legitimate rights of third parties etc.).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Educational and research establishments, schools and universities should not be obliged to allow the re-use of their documents of administrative nature. However, when they choose to do so, then they have to apply the same conditions to all re-users	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(prohibition of discrimination and of exclusive arrangements) and be transparent.						
The current legal framework is good. No changes need to be made.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please, explain in the open field).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Open field:

Please, give reasons for your choice.

1000 character(s) maximum

It is crucial for the rights of publishers to be respected and any content on which publishers enjoy copyright, should not be considered public sector information. Therefore, content held by Cultural Heritage Organizations on which copyright subsists should not be regarded and treated as Public Sector Information.

Open access to scientific publications and research data are considered to be an important enabler of innovation and scientific progress. [The Commission Recommendation of 17 July 2012 on access to and preservation of scientific information](#) recommends that Member States, research funding organisations and academic institutions put policies in place that ensure that scientific research results (publications and research data) are in principle available on an open access basis (free of charge online access and unrestricted **re-usability**).

Q12a: Do you agree that scientific research results (publications and research data) resulting from public funding should in principle be open access (free of charge online access and unrestricted re-usability)?

- Yes
- No

Q12b: To which extent would you agree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
Documents held by educational and research establishments, schools and universities that are of scientific nature should become available for re-use with as few restrictions as possible (other than those necessary to preserve individuals' privacy, commercial confidentiality and legitimate rights of third parties, etc.).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be a common /harmonised European policy on access to and re-use of scientific information (publications and research data) binding on all research funding organisations and academic institutions in Europe.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Open field:

Please, give reasons for your choice.

1000 character(s) maximum

DATA HELD BY ENTITIES PROVIDING SERVICES OF GENERAL INTEREST:

Services of general interest (e.g. public transport, postal services, healthcare) can be provided either directly by the state or by publicly controlled companies or on behalf of public authorities by independent economic operators (e.g. under a concession contract).

The data generated whilst providing services of general interest either by publicly owned companies or by independent economic operators on the basis of contracts are often exempt from the provisions of the PSI Directive. This may create an imbalance across the Member States, given that in some of them similar tasks are carried out by public sector organisations directly. As a consequence, the creation of pan-European information products based on this type of data might become difficult.

Q13: To which extent would you agree with the following statements?

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	I don't know
Data generated in the context of the provision of a public task by publicly owned companies or by independent economic operators is currently available for re-use?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Data in the area of public transport is currently available for re-use?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Data produced by utilities (e.g. in the energy, waste and water sectors) is currently available for re-use?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Data generated in the context of the provision of a predominantly publicly funded public task should be available for re-use irrespective of the public or private nature of the entity providing the service?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Q14: If there were an obligation to make data generated in the context of the provision of a public task available, such data should:

- Become available for every potentially interested re-user.
- Become available only to the contracting authority (e.g. for better informed procurement on the basis of market information).

- Become available for other purposes (please explain below).
- I don't know.

RELATIONSHIP WITH THE DATABASE DIRECTIVE:

As a rule, the provisions of the PSI Directive do not affect intellectual property rights (IPRs) including sui generis rights (recital 22), while indicating that rights held by public sector bodies should be exercised in line with the provisions of the PSI Directive. Despite this, some public bodies have been tempted to invoke their sui generis right under the Directive 96/9/EC (Database Directive) to prevent the re-use of the content of their databases.

Q15a: Have you experienced situations where public sector bodies invoked their database rights to prevent the re-use of public sector information?

- Yes
- No

Q15b: In order to facilitate re-use of public sector information, would you consider it useful to clarify the relationship between the two directives, so as to ensure that public sector bodies cannot invoke database rights in order to prevent the re-use of public sector information?

- Yes
- No
- I don't know

NATIONAL ACCESS REGIMES:

The PSI Directive distinguishes between the notion of 'access' and that of 're-use'. The Member States are responsible for deciding which documents cannot be accessed (e.g. on the grounds of protection of national security, commercial confidentiality or in cases where existence of particular interest to access needs to be proved). If a document is not expressly excluded from access by national legislation, it becomes automatically available for re-use under the terms of the PSI Directive.

Q16: In this light, which of the following statements would you support (more than one option is possible)?

- The link between access and re-use is clear and useful. It prevents the release of documents the re-use of which could harm the interests of the state, individuals or third parties.
- National rules on access to documents (e.g. time-limits for obtaining a responses, administrative charges, lack of appeal options) are stricter than the rules foreseen by the PSI Directive and make the re-use of documents more difficult.
- The fact that access regimes differ from one Member State to another slows down the emergence of EU-wide services and products based on public sector information.
- The link between access and re-use is not clear. I find that many documents access to which is currently restricted should be available for re-use.
- Other.

BARRIERS TO MAKING DATA AVAILABLE:

Q17a: According to your experience, what is the most common reason for not making data available cited by public sector bodies in general?

- Making the data available would be incompatible with personal data protection rules and obligations.
- Making the data available would be incompatible with data security rules and obligations.
- The data could reveal third parties' proprietary or confidential information (e.g. intellectual property, trade secrets).

- The data could reveal otherwise confidential information.
- Making data available would be too costly.
- Risk of misuse of the data and of negative reputational impact.
- We do not hold the data requested.
- Other.

Q17b: According to your experience, what is the most common reason for not making data available cited by operators under a public service contractual arrangement (e.g. public passenger transport service) or operating a public concession?

- Making the data available would be incompatible with personal data protection rules and obligations.
- Making the data available would be incompatible with data security rules and obligations.
- The data could reveal third parties' proprietary or confidential information (e.g. intellectual property, trade secrets).
- The data could reveal otherwise my own proprietary or confidential information.
- Making the data available is not a task specified in the contractual arrangement and is too costly.
- Risk of misuse/misappropriation and related reputational impact.
- We do not hold the data requested.
- Other.

Q17c: After having gained access to data, which barriers to the re-use of data have you encountered (more than one option is possible)?

- Unclear or inconsistent terms and conditions for the reuse of the data.
- Lack of machine-readable/standardised licenses (e.g. Creative Commons).
- Lack of machine-to-machine interfaces (APIs) to build new products and services on the data.
- Poor quality metadata (e.g. lack of information on content, quality and context of the data).
- Lack of information on data management (e.g. unknown frequency of updates, change management, persistency of identifiers, long term availability of the dataset, backward compatibility of new versions etc.).
- Other.

Q18: What safeguards (if any) could be implemented to make personal data protection less of an issue in the context of re-use of public sector information?

1000 character(s) maximum

PART III: ACCESS BY PUBLIC SECTOR BODIES TO DATA OF PUBLIC INTEREST COMING FROM PRIVATE SECTOR ENTITIES

Note: The questions below do not concern the retention of data coming from private sector entities for purposes of criminal law enforcement or other purposes entailing decisions that directly and negatively affect individuals (e.g. immigration or taxation decisions).

In the current context of rapid development of communication and information technologies, public institutions are increasingly becoming not only the producers but also major consumers of data which they use to provide better services to citizens, as well as to other government organisations. For instance,

cities may wish to access and re-use data from multiple sources such as sensor data to help improve urban mobility, while statistical institutes increasingly rely on access to new data sources to provide faster information to citizens, businesses and politicians, such as on prices for goods and services.

Do you want to answer this section?

When clicking yes, the questions related to this section will appear. Please, allow a few seconds for the system to generate the questions.

- Yes
- No

Q19a: In light of the above, do you agree that access to data coming from private sector entities and its use by public authorities for reasons of public interest should be allowed?

- Yes
- No

Q19b: Which of the below conditions should apply for such access to be authorised (more than one option is possible)?

- Establishment of a separate agreement between a private and public entity to specify obligations and rights in addition to the applicable legislation.
- Use of the data is clearly defined and limited to the defined purposes.
- Access to data is limited in time.
- The legitimate commercial interests of private entities are safeguarded.
- The security of data can be ensured.
- Confidentiality of the data is safeguarded.
- Trade secrets or other intellectual property are not disclosed.
- Costs for enabling access to these data are covered by the public authorities.
- Private entities can negotiate a price exceeding pure cost recovery.
- Burden on private entities is distributed in a fair manner.
- The results can be used to improve offers or services of data holder.
- The resulting information is made openly re-usable.
- Other.

Q20a: What would be the possible motivations or incentives for sharing data of public interest with public authorities (more than one option possible)?

- None.
- Enrich offer of services by private entities.
- Increase quality of services of private entities.
- Foster data economy in specific markets.
- Use of defined and certified standards.
- Receive quality stamp for data products of private entities.
- Benchmark private with public data.
- Legal security on conditions of use of privately held data.
- Contribution to the Corporate Social Responsibility of private entities.
- Other.

Q20b: Which mode of data access would be most suitable for data sharing to take place (more than one option possible)?

- Transfer of specific data directly between IT infrastructure of private entity and public authority?
- Remote access to data of private sector entities by public authority on private IT infrastructure?
- Remote access to data of private sector entities by public authority on separate IT infrastructure?
- Remote access to data of private sector entities by public authority with application of agreed algorithms for data analysis and processing?
- Transfer of processed and aggregated statistical data to public authority?
- Other.

Q21a: Would specific legal measures need to be put in place to enable data access and use by public sector bodies?

- Yes
- No

DOCUMENT UPLOAD AND FINAL COMMENTS

Should you wish to provide additional information (e.g. a short position paper) or raise specific points not covered by the questionnaire, you can upload your additional document here.

Please, note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The optional document will serve only as additional background reading to better understand your position.

Please upload your file

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/2017_12_12_STM_Reply_to_PSI_Online_Survey_Question_12_A_15A.pdf

Useful links

[Directive on reuse of public sector information \(http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02003L0098-20130717&from=EN\)](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02003L0098-20130717&from=EN)

[Webpage of PSI Directive \(https://ec.europa.eu/digital-single-market/en/european-legislation-reuse-public-sector-information\)](https://ec.europa.eu/digital-single-market/en/european-legislation-reuse-public-sector-information)

[Inception Impact Assessment \(http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4540429_en\)](http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4540429_en)

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