



European Public Sector Information Platform

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# Differences in the 2008 and 2010 public online consultations regarding the PSI Directive

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PSI Directive, Public online consultation, Review

**Abstract**

*Calibri, 11, italic.*

## Inhoudsopgave

<b>Abstract</b>	<b>4</b>
<i>Abstract, calibri 11, italic</i>	<b>4</b>
<b>1 Introduction</b>	<b>4</b>
1.1.1 Number of responses	5
1.1.2 PSI potential	6
1.1.3 Impact of the Directive on PSI re-use and amendments to the Directive	7
1.1.4 Extension of scope	9
1.1.5 Differences in Member States' position papers	10
1.1.6 Conclusions	11
1.1.7 Follow up	<b>Fout! Bladwijzer niet gedefinieerd.</b>
1.2 Sources	12
1.3 Title level 2 Cambria 12	<b>Fout! Bladwijzer niet gedefinieerd.</b>

## Abstract

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### 1 Introduction

Directive 2003/98/EC of the Parliament and the Council on the re-use of public sector information (PSI) was adopted on 17 November 2003. It regulates the behaviour of public sector bodies when they act in the market by trading information (e.g., geographical, statistical or meteorological data) or by making it available for re-use. The adoption of the Directive has created new opportunities for the content industry in Europe to exploit PSI for value-added information products and services, particularly with cross-border effects (navigation systems, meteorological services, etc.), and has stimulated public sector bodies to widely disseminate, share and allow the re-use of their data. Besides this economic impact, the Directive has also grown in importance for democratic or bureaucratic processes and possibilities for scientific research and SME innovation.

Article 13 of the PSI Directive required the European Commission (EC) to review the Directive by 2008.<sup>1</sup> The article states that this review should particularly address the scope and impact of the Directive. One of the conclusions of the 2008 review was that a second review of the Directive should be undertaken by 2012 because it was too soon for any real effects to register. For both the 2008 and the 2012 reviews of the Directive, the opinion of Member States, PSI stakeholders and other interested parties was sought by means of online public consultations in 2008 and 2010. This topic report highlights the interesting trends, differences and commonalities between the results from the two online consultations.

A factor complicating this analysis is that the two consultations were structured very differently and asked different questions from the respondents. We will focus in this piece

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<sup>1</sup> Article 13. Review

1. The Commission shall carry out a review of the application of this Directive before 1 July 2008 and shall communicate the results of this review, together with any proposals for modifications of the Directive, to the European Parliament and the Council.

2. The review shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, as well as further possibilities of improving the proper functioning of the internal market.

on a number of questions for which an answer can be derived from both consultations.

- (1) How do the respondents compare from 2010 to 2008?
- (2) Has the PSI market reached its full potential?
- (3) What is the impact of the PSI Directive?
- (4) Should the PSI Directive be extended to broadcasting, cultural and scientific institutions?
- (5) Have Member States changed their opinions towards PSI re-use and the PSI Directive?

## 2 Number of responses

A remarkable difference between the two public consultations is the number of respondents: 15.8 times more respondents answered the EC's request for opinions of stakeholders and citizens in 2010 as compared to 2008. Although the number of nations that provided the EC with a position paper decreased from 12 to 5, the number of replies from citizens grew from 5 to 264 — a 5180% increase. The number of respondents in other stakeholder groups also increased; but with only 9.5 times as many stakeholders, the increase was not as great as the increase in citizen response.

Category	2008	2010	Increase
Citizens	5	264	5180%
<i>Total of other stakeholders</i>	<i>30</i>	<i>285</i>	<i>850%</i>
<i>PSI re-users</i>	<i>5</i>	<i>83</i>	<i>1560%</i>
<i>PSI content holders</i>	<i>4</i>	<i>50</i>	<i>1150%</i>
<i>Public authority / non-profit association</i>	<i>5</i>	<i>28</i>	<i>460%</i>
<i>Experts / academics</i>	<i>n/a</i>	<i>124</i>	<i>-</i>
<i>Commercial associations</i>	<i>16</i>	<i>n/a</i>	<i>-</i>
Other	2	36	1700%

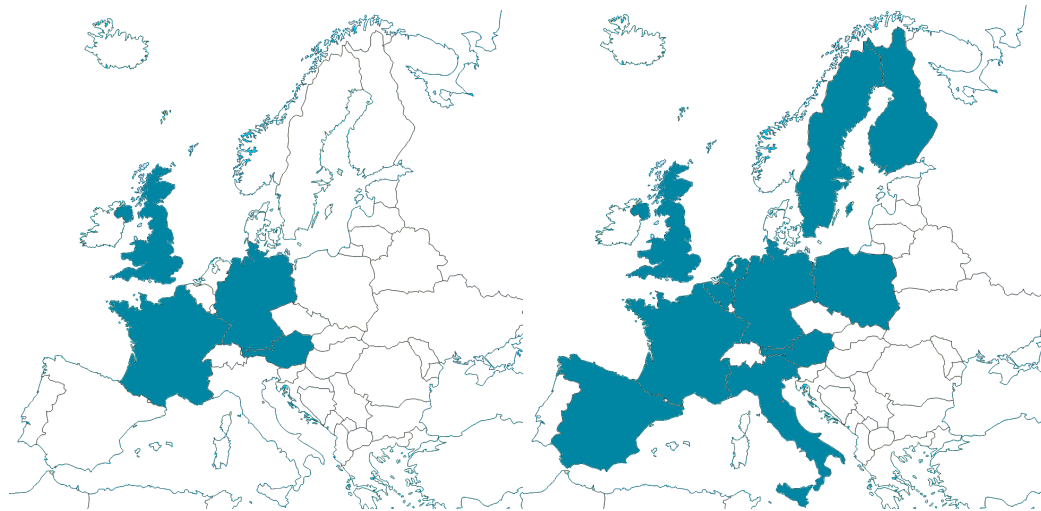
<b>Total respondents</b>	<b>37</b>	<b>585</b>	<b>1481%</b>
<b>National position papers</b>	<b>12</b>	<b>5</b>	<b>-58%</b>

Table 1. Respondents and national position papers. In the 2008 public consultation, experts/academics were not listed as a separate category. Neither were commercial associations, which were listed in 2010 as either re-users or content holders.

### Respondents were from all over Europe

Respondents of the 2010 public consultation came from all over Europe. Approximately 80% of all responses came from 11 Member States (DE, FR, UK, FI, ES, IT, BE, NL, SE, AT, PL), while the remaining 20% came from 26 other states (both Member and non-Member States). The 37 responses in 2008 originated from 10 countries, with 80% of submissions coming from international organisations and stakeholders in Germany, France, UK and Austria. We can therefore conclude that attention to PSI issues has spread to more European countries. Nonetheless, eastern European countries are lagging in number of responses to the public consultation.

**2008: 80% of responses from 4 countries; 2010: 80% of responses from 11 countries.**



## 3 PSI potential

When respondents in the 2010 public consultation were asked the question: “Do you think that PSI re-use has reached its full potential in Europe?”, 89% of the respondents ‘disagreed’ or ‘disagreed strongly’, and 6% had ‘no opinion’. All Member States who offered an opinion believed that PSI has indeed not yet reached its full potential. Among the respondents who believe PSI re-use has already reached its full potential (agree, agree strongly), are five content holders, several PSI re-users and a number of citizens. The public consultation of 2008 did not question respondents on whether or not, in their opinion, PSI re-use had reached its full potential. The general impression from the answers is, however,

that it had not. In 2008, the Directive had only just been made effective in most Member States. For example, the PSI alliance states that the PSI Directive ‘allows for too much leeway for government to interpret the rules as they wish’. Also, it can be argued that if PSI potential had already reached its peak in 2008, a considerable number of respondents should have recognized this in the 2010 public consultation.

## 4 Impact of the Directive on PSI re-use and amendments to the Directive

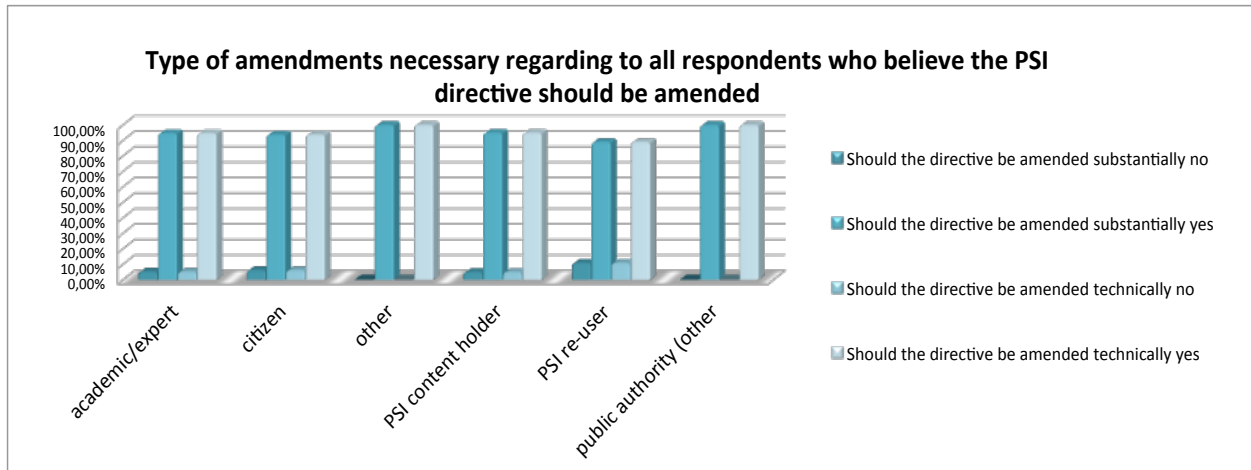
In the 2008 consultation the overall impact of the PSI Directive on charging policies was, according to the stakeholders, still limited, if any could be proven at all. Also, in response to a question about the proper implementation of the Directive into national law, almost all re-users said they faced “substantial problems” when they intended to re-use PSI. Furthermore, when asked whether or not “*Legislative amendments [should] be introduced in the Directive*”, the bulk of responses from re-users suggested amendments to make the Directive “sharper” and “tighter”. They believed the Directive needed to be re-worded to make it more stringent and re-use more enforceable. However, some respondents stated that the timing of the public consultation was such that real evaluation of the impact of the Directive was not yet possible.

As far as the responses of the Member States were concerned, Ireland stated that the Directive had no impact. The Netherlands and Slovenia reported changes mostly in the legal framework surrounding PSI, whilst ignoring any possible societal impact. Finland stated that the Directive had created awareness, contributing to growth of the PSI market. According to Hungary, further legislation was necessary “*so that access to public data should not merely be defined as a fundamental right granted [to] everyone with the same conditions, but as a service provided by the public sector for market purposes*”.

From the above, we feel it is safe to conclude that, in 2008, the impact of the Directive in economic and societal terms was considered very limited.

In the 2010 public consultation a number of questions were posed that together show the impact of the PSI Directive. As noted, almost all respondents feel that PSI has not yet reached its full potential. Furthermore, 63% of all respondents feel the PSI Directive should be amended both substantively (80%) and technically, to clarify some of the provisions. This shows a considerable number of respondents who would likely benefit more from an amended directive than from the current one.

Amongst stakeholders benefitting from PSI re-use directly (PSI re-users), 73% believe that the PSI Directive should be amended. Of the stakeholders who might experience short-term negative consequences from the PSI Directive (PSI holders), 60% are against any amendments. And 65% of citizens favour both technical and substantive amendments.



Member States Belgium and the Netherlands believe the Directive should be amended. Denmark and France believe the Directive could be amended, although priority should be given to the implementation of the current regulatory framework, as it has not yet produced all its effects. The United Kingdom opposes substantive amendments.

A closer inspection of the issues that, according to the respondents, should be amended highlights the difference between PSI re-users and citizens on one side, and PSI holders or public sector bodies on the other, whilst Member States offer issues for amendment on both ends of the spectrum.

In 2010, PSI holders were generally not in favour of amending the Directive. However, some suggestions for amendments were put forward by this group. Most notably these encompass: a list of specific datasets to fall under the Directive and more clarity regarding release of raw (source) data versus value-added data. Furthermore, PSI holders as a group differ considerably in their opinion on charging policies. Some feel charging should be restricted to a subset of data, whereas most feel that charging policies should differ for data types (raw vs. value-added) and for types of use (public, business, academic).

Overall, citizens and PSI re-users establish one main point. The Directive should, in their opinion, be amended to include an obligation for PSI holders to provide raw data, free of charge (at the very least for non-commercial purposes). Licences are considered “a frequent barrier to re-use” (re-users) and should be GPL, LGDL or CC licenses (citizens). A number of other issues to be amended include redress mechanisms, standardization and unification of (open standard) data formats, licensing frameworks, pricing strategies, etc.

Although academics usually plead for introducing a general obligation to make PSI available for re-use, their opinions form (overall) a bridge between the answers from re-users/citizens and PSI holders. They call for clarification of pricing strategies and licensing

*Provide clear guidelines clarifying admissible tariffication policies. Differential tariffication philosophies across Member States being a potential cause of trade distortions in the Inner Market, I suggest establishing a clear distinction between data that is demonstrably part of the Member-States operations and needed as such, which should be reusable for free including commercially; and data that is produced as part of a service provision activity in the competitive sector, wether by a public, semi-public or private body, which should legitimately be charged for, provided the raw PSI that may allow for the generation of such services be reusable for free. — Academic*



standards at a more nuanced level than both these groups. Also, academics think that establishing better and more precise definitions in the Directive would create a better directive (assumed to have more impact).

Most of the issues described here were also put forward in the 2008 public consultation, albeit in very different relative numbers and at a much 'cruder' level. Clearly, the level of thinking about PSI has reached a more nuanced stage, where stakeholders of all groups feel the need to include the benefits of other groups in their own reasoning, coming to more nuanced opinions. At the same time, the differences in interest seem to have risen. Citizens are, as a group, still quite resolute and seem to favour more radical ways of amending the Directive. One typical example is by an anonymous respondent: "Essentially, the directive should state that all documents are to be made available for re-use without condition, except where this would be in conflict with other legislation (e.g., privacy law), or in conflict with judicial processes. As currently stated, the directive is merely trying to facilitate trade." Another example is: "The directive should require all public sector information to be available to the citizens and re-usable for non-commercial purposes. Exceptions to this should be justified by the public body."

## 5 Extension of scope

One of the more important topics in the 2008 public consultation was the question of whether or not the scope of the PSI Directive should be extended to include information held by cultural, scientific and broadcasting institutions. Quite a significant group of stakeholders expressed their support for extending the scope of the Directive. It was thought that this would have an impact on developing the content market. In 2010, almost 43% of the respondents 'agree strongly' with the extension of the scope to cultural, educational and broadcasting institutions, another 29% 'agrees', while over 7% 'disagree'. Most (of whom a considerable number of citizens) argue that all public information should be available because it was produced using public funds, entitling the taxpayer to

*First of all, as such entities are public, their information belongs to the public. The entities concerned are merely guardians of that material on behalf of the public. This is by itself reason enough of the shunning of exclusiveness. Additionally, digital technology has substantially altered the nature of the activity of "holding on to information material". While it is reasonable for a public library to only provide partial access to the public for its books (books are perishable and deteriorate through use), it is not reasonable for any public entity which makes available on-line some of the material it holds (on behalf of the public) to make it available in a discriminatory fashion (e.g. against payment). Digital goods are non-rivalrous, and non-perishable. — a citizen*

ownership. Several respondents elaborated that because of their public service mission, all documents created and/or held by public service broadcasters and by educational research

and cultural establishments should not be held as proprietary goods, but should be opened to public access and consultation, notwithstanding intellectual property rights held by their creators.

In the 2008 consultation, associations representing the broadcasting, educational and cultural sectors expressed their views against an extension of the scope of the Directive, indicating that the administrative burden that they would incur would be considerable. In addition, they stated that most of the content they hold would in no case fall within the scope of the Directive since it is subject to third-party copyright.

In the 2010 consultation, several representatives of the excluded sectors pointed out that information is created under a number of different models, including third-party funding, and that significant resources would be required to identify what can and cannot be made available. If the scope of the PSI Directive was extended to include them, the task of identifying and clearing the third-party rights would impose a major burden on these organisations and there would be a significant overhead cost in managing access to this information. Also, especially for the cultural sector, costs of digitisation and arguments against the 'commercialization' of public heritage were factors against extension of the scope.

## **6 Differences in Member States' position papers**

Of the 12 Member States that submitted a position paper in 2008, five (France, Belgium, Denmark, Netherlands, UK) submitted a position paper in 2010 as well. If we analyse these position papers, we find that the stances of Member States have not changed significantly. The main difference between the 2008 and the 2010 position papers delivered to the EC is that the depth and nuance in the answers have grown considerably since 2008. Member States seem to grasp the PSI concepts more fully and are willing to give more expansive answers. The positive impact of the PSI Directive was recognized more fully in 2010 as compared to 2008.

*2008: The Ministry of Science, Technology and Innovation has made great efforts in the area of data standardization and common open data standards. Standardization is the foundation for creating coherent IT solutions in the public sector and a potent means to ensure interoperability and hence better services for citizens and businesses. Standardization serves — among other things — as an instrument to ensure a quick and flexible exchange of data between the public authorities and between the public sector and the private sector, and hence the re-use of public sector information.*

*2010: The Danish ‘Open Data Innovation Strategy’ (ODIS) is about creating easier and more uniform access to public data as raw material for the private sector in the development of innovative digital products and services, useful analyses, data visualisations and data journalism. [Denmark is] working on developing a vision and a concept for how a business, an entrepreneur or a citizen can access government data in a uniform way — possibly creating a ‘one entry to public data reuse’ policy and service, where legal, economic and practical aspects are dealt with in a uniform and efficient manner. — Denmark*

Member States (in general) have a positive attitude towards the raising of awareness, promotion of standards and communication of best practices by the European Commission. New (stricter) regulation cannot quite count on the same positive stance. All Member States point to their own efforts of implementing PSI-promoting programs and projects. The position papers would suggest that Member States were slightly more aligned in their expectations and wishes on the topic of PSI re-use in 2010 than in 2008. This can be misleading, however, since a smaller subset chose to submit a position paper in 2010.

## 7 Conclusions

We set out to answer the following five questions on the differences between the 2008 and 2010 public consultations.

- (1) How do the respondents compare from 2010 to 2008.
- (2) Has the PSI market reached its full potential?
- (3) What is the impact of the PSI Directive and should it be amended in order to have more impact?
- (4) Should the PSI Directive be extended to broadcasting, cultural and scientific institutions?
- (5) Have Member States changed their opinions towards PSI re-use and the PSI Directive?

The overall impression of this analysis of differences between the 2008 and the 2010 public

consultations is that, in fact, not a lot has changed. The PSI market has not reached its full potential yet and the Directive can be amended in a number of ways to be more effective. How the Directive should be amended was a point of contention, both in 2008 and in 2010. Extension of the scope of the Directive to the cultural, educational and public broadcasting sectors is still considered to be positive by many, except for the institutions representing these excluded sectors. Member States have not changed their stances towards the PSI Directive considerably.

However, a lot has also changed. Thinking about PSI issues has clearly progressed between 2008 and 2010, a trend that can be seen in all groups of respondents. The public consultation has also drawn considerably more attention from almost all stakeholder groups, most notably citizens. We feel the conclusion on this comparison between the 2008 and the 2010 public consultations should therefore be that PSI re-use and the PSI Directive are growing both in size and maturity, promising bright PSI developments in the future.

## 8 Sources

For this article, we used a number of EC documents available on the web. We have used them as a source of information and have quoted from them.

### **Directive 2003/98/EC on the re-use of public sector information (PSI)**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0090:0096:EN:PDF>

### **2008 Public online consultation**

Questions to the respondents in the 2008 public online consultation

[http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/online\\_consultation/review.pdf](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/online_consultation/review.pdf)

Responses to the 2008 public online consultation from stakeholders and Member States

[http://ec.europa.eu/information\\_society/policy/psi/archives/news\\_archives/online\\_consultation/stakeholders/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/archives/news_archives/online_consultation/stakeholders/index_en.htm)

[http://ec.europa.eu/information\\_society/policy/psi/archives/news\\_archives/online\\_consultation/member\\_states/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/archives/news_archives/online_consultation/member_states/index_en.htm)

Overview of responses to the 2008 public online consultation

[http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/online\\_consultation/report\\_psi\\_online\\_consultaion\\_stakeholders.pdf](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/online_consultation/report_psi_online_consultaion_stakeholders.pdf)

## 2008 Review of the Directive

Official Communication on the 2008 review of the Directive

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0212:EN:NOT>

Staff working document accompanying the official communication on the 2008 review of the Directive.

[http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/directive/com09\\_212/staff\\_working\\_document.pdf](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/com09_212/staff_working_document.pdf)

## 2010 Public online consultation

Detailed report on the results of the online consultation

[http://ec.europa.eu/information\\_society/policy/psi/docs/consultations/cons2010/Results%20of%20the%20online%20consultation%20of%20stakeholders%20final.doc](http://ec.europa.eu/information_society/policy/psi/docs/consultations/cons2010/Results%20of%20the%20online%20consultation%20of%20stakeholders%20final.doc)

Results of the consultation can be found here:

[http://ec.europa.eu/information\\_society/policy/psi/index\\_en.htm](http://ec.europa.eu/information_society/policy/psi/index_en.htm)

Under news, 20 January 2011 you'll find, amongst others, the questionnaire, responses, statistics and viewpoints from individual stakeholders and Member State

Questionnaire [http://ec.europa.eu/information\\_society/policy/psi/docs/consultations/cons2010/questionnaire.pdf](http://ec.europa.eu/information_society/policy/psi/docs/consultations/cons2010/questionnaire.pdf)

Responses [http://ec.europa.eu/information\\_society/policy/psi/docs/consultations/cons2010/responses.xls](http://ec.europa.eu/information_society/policy/psi/docs/consultations/cons2010/responses.xls)

Statistics [http://ec.europa.eu/information\\_society/policy/psi/docs/consultations/cons2010/stat.xls](http://ec.europa.eu/information_society/policy/psi/docs/consultations/cons2010/stat.xls)

Presentation with condensed results [http://ec.europa.eu/information\\_society/policy/psi/docs/pdfs/minutes\\_psi\\_group\\_meetings/presentations/14th/grazyna.ppt](http://ec.europa.eu/information_society/policy/psi/docs/pdfs/minutes_psi_group_meetings/presentations/14th/grazyna.ppt)

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