



July 13, 2018

Thank you for the opportunity to comment on the proposal for a Directive of the European Parliament and of the Council on the re-use of public sector information (recast) COM(2018)234.

Creative Commons (CC) is a nonprofit organization that provides standard, free, open licenses and other legal tools to make it easier to share and build upon the creativity of others, consistent with the rules of copyright.¹ We've provided guidance and recommendations on licensing for public sector information (PSI), including during the Commission's consultation last year, and also via the LAPSI 2.0 project.

We're pleased that the revised proposal (April 2018) would increase the availability of PSI by bringing new types of public sector data into the scope of the directive, including data related to transportation, research data, and "high value datasets".

We continue to advocate for better clarity of the Commission's definition of open licenses within the PSI Directive. This is the only path forward for PSI to fully contribute to the EU Digital Single Market. We agree with Open Knowledge: "Europe's data economy can only benefit from open data if licence terms are standardised. This allows data from different member states to be combined without legal issues, and enables to combine datasets, create cross-country applications, and spark innovation."²

We've argued that PSI should be shared as a part of the global public domain (using the CC0 Public Domain Dedication), or by using standard, permissive open licensing (such as CC BY or another Open Definition-compliant license).³ A positive change in the 2013 Directive was the removal of text encouraging the development of additional open government licenses, which would have complicated re-use by creating incompatibility between PSI, and creating confusion among potential re-users. The Commission's July 2014 "guidelines" was a step in the right direction, as it recommended standardized, open licenses such as CC 4.0, and also CC0.⁴

There are still barriers to PSI re-use because the Commission's guidelines are non-binding. For PSI to reach its full potential, it must be licensed under permissive licenses, or shared as a part of the global public domain, in alignment with the recommendations of the LAPSI 2.0 project.⁵ The Commission should codify its 2014 guidelines by making them mandatory for PSI re-use

¹ <https://creativecommons.org/>

² <https://blog.okfn.org/2018/06/21/europes-proposed-psi-directive-a-good-baseline-for-future-open-data-policies/>

³ <https://opendefinition.org/>

⁴ [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XC0724\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014XC0724(01)&from=EN)

⁵ <https://ec.europa.eu/digital-single-market/en/news/legal-aspects-public-sector-information-lapsi-thematic-network-outputs>

under the Directive. In addition, it should require that public sector bodies and other entities subject to the Directive provide accurate licensing metadata for PSI so that it can be discovered easily online via search engines under terms that downstream users can understand.

There is a lot of interest in promoting and sharing “high value datasets,” but if the Commission permits this high value PSI to be released under non-standard terms with additional licensing conditions, it will destroy the utility of the PSI for downstream re-users because the license terms will be incompatible with PSI licensed under existing standard open licenses. In practice, this means that the high value PSI cannot be re-used, combined, or integrated with other PSI licensed under standard terms, which defeats the purpose of sharing PSI broadly and undermines its potential value.

The Commission’s April 2018 proposal says that high value datasets “shall be available for free, machine-readable and accessible via APIs. The conditions for re-use shall be compatible with open standard licences.” But then the text goes on to say that there might be instances when these open conditions need not be applied to high value data, such as if an impact assessment shows “considerable distortion of competition in the respective markets.” If such is found to be the case, then some high value datasets could have additional restrictions attached to them. And if this happens, these high value datasets won’t be able to be licensed and shared under standardized open licenses such as CC0 or CC BY 4.0. This means that interoperability will be broken and the EU won’t see the maximum possible re-use of high value datasets. Instead, it will create competing and siloed sets of data, some licensed for broad re-use under standardised open licenses, and some under custom terms that cannot be fully re-used or combined with open data. The Commission should avoid this situation by requiring that all PSI falling under the scope of the Directive be shared under standard open licenses laid out in the Open Definition.

Again, thank you for the opportunity to provide feedback, and we’re happy to answer any other questions you may have.