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Centrum Cyfrowe Foundation

## **Feedback on Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the re-use of public sector information (recast) COM(2018)234**

At the beginning, we would like to welcome the proactive approach of the European Commission regarding the re-use of public sector information. In particular, we are happy to support the extension of the scope of the directive to “certain research data, a specific category of documents produced as part of scientific research, namely results of the scientific fact-finding process (experiments, surveys and similar) that are at the basis of the scientific process”.

However, we think that there is still much to do in order to achieve the goals set in the Directive. In particular, there are still significant differences in regulations and practices regarding the re-use of public sector information in various EU countries. Unfortunately, this proposal is not sufficient in this respect. A year after an implementation of the Directive to the Polish law, we conducted a study regarding the scale and practices of re-use. Report can be found at

<https://centrumcyfrowe.pl/blog/2017/09/04/reuse-of-public-sector-information-act%E2%80%8A-%E2%80%8Aone-year-after-coming-into-effect/> .

Centrum Cyfrowe Foundation is a part of Communia Association, which also took part in this consultations. We fully support Communia’s feedback and thus we focus our comment on the problems with third party intellectual property rights, which in particular concerns situation in our country.

### **Third parties intellectual property rights**

The biggest disappointment of a new version of the Directive is the lack of clarification the uncertainty to understanding the scope of the Directive because of third party intellectual

property rights. As we explained that in our [remarks](#) (PL) regarding the consultation process of the polish draft act on the re-use of PSI in November 2014:

"There are 3 types of situations that may occur in the practice of applying regulations regarding the re-use of information: (1) resources are subject to third-party copyright protection (2) resources are the subject of copyright protection of obliged entities; and (3) resources that are not protected e.g. protection time has expired, etc.). In our opinion there is no doubt that only the situation described in item (1) may constitute grounds for refusing access to information, whereas in the situation indicated in item (2) and (3) do not constitute grounds for refusal. In the situation indicated in item (2), the provision of art. 3 (2) of the consolidated text of the Directive apply, whereas in the situation described in item (3), access will depend only on the availability of a given resource (general rule expressed in the provision of Article 3 (1) of the consolidated text of the Directive apply). "

Unfortunately, Poland has wrongly implemented (based on Recital 9 of the Directive 2013 amendment) that the resources referred to in point 2 are not subject to re-use. In our opinion, this creates unjustified restrictions on the re-use of many valuable resources such as descriptive metadata, bibliographic descriptions or catalog data.

At the European level, it leads to a lack of harmonization of the scope of cultural heritage resources, which are subject to re-use and is not conducive to the inclusion of Polish cultural heritage resources in international projects - applications and services.

Unfortunately, the European Commission did not take the opportunity to clarify this discrepancy and left Recital 9 without major changes (new Recital 49).

### **Re-use of research data held by educational and research establishments**

We fully support the extension of the scope of the directive to "certain research data, a specific category of documents produced as part of scientific research, namely results of the scientific fact-finding process (experiments, surveys and similar) that are at the basis of the scientific process". However, the extension of the scope of the directive in this respect should be combined with making them available under permissive open licenses (such as [CC BY](#)), or even put into the worldwide public domain using a tool like the [CC0 Public Domain Dedication](#).

At the same time, the proposal excludes publications in scientific journals from its scope. The Horizon 2020 programme Model Grant Agreement already requires that grantees must ensure open access to all peer-reviewed scientific publications — meaning that "any scientific peer-reviewed publications can be read online, downloaded and printed." It should go further to require that re-use rights be granted to both publications and associated datasets, by requiring that permissive open licenses be applied at the time of publication. For this reason, we urge the Commission to ensure that policy efforts to improve access to publicly funded scientific research (including the upcoming Horizon Europe framework) are complementary — and not in conflict with — each other.

As Member States will be obliged to develop policies for open access to research data resulting from publicly funded research while keeping flexibility in implementation, we urge the Commission to prepare guidelines in this area.

### **Open licensing as standard mechanism for sharing PSI**

Unfortunately, the new proposal doesn't go far enough in requiring open licensing for PSI. Instead, it only relies on the 2014 guidelines. The 2014 guidelines provided recommendations for standard licences, datasets and charging for re-use of documents, and put a lot of emphasis on the use of standard open licenses. Therefore we recommend the Commission codify their [earlier guidelines on recommended standard licences for PSI](#), and also ensure accurate licensing metadata across PSI and open data portals that reflects these licensing options.

### **Charging for re-use**

Centrum Cyfrowe welcomes improved language for clarity on charges and changes in the general rule of charging for PSI, which cannot be more than the marginal costs for dissemination. We are pleased that re-use of research data and the high value data-sets must be free of charge.

We recommend that cultural heritage institutions should only be able to charge marginal cost. The same rule should apply as well to publicly funded undertakings, which are also excepted from 'marginal costs at most' principle.