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Dragos, Dacian C.; Neamtu, Bogdana

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Abstract
The paper addresses the issue of the commercial reuse of public sector information (PSI) and analyzes from a comparative perspective various reuse regimes to be considered by national legislators. Directive 2003/98/EC provides at the EU level the policy context in which the Member States operate with regard to reuse.
The paper has a threefold structure: The first section discusses mainly theoretical issues regarding the establishment of a PSI reuse model and tries to highlight several alternatives countries have and how a certain alternative influences the growth and future development of the PSI market; the second section analyzes the provisions of the Directive 2003/98/EC on PSI reuse and discusses how this Directive was transposed into national legislation by some of its "older" members; Finally, the third part focuses on the case of Romania and provides an in-depth analysis of the provisions of the reuse law. It tries to highlight practical challenges and ways in which they could be overcome.

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Dacian C. Dragos is Jean Monnet Associate Professor at the Public Administration Department, Babes-Bolyai University, Romania.
e-mail: dragos@apubb.ro

Bogdana Neamtu is Lecturer at the Public Administration Department, Babes-Bolyai University, Romania.
e-mail: bogdananeamtu@apubb.ro

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Dacian C. Dragoş and Bogdana Neamțu

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1. Introduction

Public bodies hold a range of information and content ranging from demographic, economic, and meteorological data to art works, historical documents and books. Given the availability of information and communication technologies (ICTs), public sector information can play an important role in producing innovative value-added services and goods which are presumed to have positive (direct and/or indirect) economic and social benefits (OECD, 2006a:6; see also Janssen and Dumortier, 2003; Rocheleau, 2000; Arzberger *et al*., 2004).

Public sector information (PSI) constitutes the “raw material” for a variety of products and services in applications across a wide range of industries (OECD, 2006a:11) and it is regarded as a valuable commodity (MEPSIR, 2006; European Commission, 2004). Worldwide, the implementation of the freedom of information laws usually makes room for a *satellite*

industry interested in facilitating the access to information or to services and products that use or transform the raw information collected by public bodies, while in the same generating added value. In some cases, the requests are not made directly by those seeking the information, but by organizations of "data brokers" or "surrogate requesters" who acquire information under the Act and sell it to the interested persons (Birkinshaw, 2001; Macdonald and Jones, 2003). The commercial reuse of PSI is built on the end customers' willingness to pay for customized information, whose value and usefulness has thus been enhanced by commercial reusers (Khattak, Yim, and Stalker-Prokopy, 2003).

Such recent developments are possible mainly due to the rapid development and spread of information and communication technologies (ICTs). There are two main forces which allow the reuse of PSI – technologies that enable digitization of public documents and data, and the development of broadband technologies which allow for the dissemination of public data and support various applications based on combined and enhanced public data (OECD, 2006a).

The paper is organized around three main themes. Section two discusses the theoretical issues regarding the establishment of a PSI reuse model and tries to highlight several possibilities countries have and how a certain alternative influences the growth and future development of the PSI market. By using the comparative approach, two main policy models are scrutinized – the US model and the EU model. Section three analyzes the provisions of the EU Directive on PSI reuse and discusses how this directive was transposed into national legislation by some of its "older" Member States. When discussing the case studies, the main research question was if there are some policy efforts related to the reuse of PSI, general enough to fit the legal-administrative context of other Member States, that could be emulated. Finally, section four focuses on the case of Romania and provides an in-depth analysis of the provision of the reuse law. While it is important to examine the actual national legal provisions surrounding the reuse of PSI, the assessment of the context, both legal and administrative, was equally relevant for this paper. It tries to highlight practical challenges and ways in which they could be overcome.

Sections two and three of the paper are mainly theoretical and are based on the examination of the relevant literature, legal provisions and case law in the countries scrutinized. Section four, however, contains an empirical analysis regarding the case of Romania. From a methodological standpoint, the analysis in this section is the result of the use of a combination of methods, mostly qualitative ones, given the fact that this is an exploratory research, and there is little, if any, previous data to base a more quantitative inquiry on. For describing the general legal and administrative context, previous research regarding the administrative reform process were used. Specific items referred to the administrative capacity of public institution, electronic services and digitization, and expertise of human resources have been considered. We looked also at the websites of two national agencies responsible for cadastral and weather information as well as to the ones of all the ministries in order to determine if there are any information asset list posted or any other relevant information on reuse. This was done twice – first in June 2007, and then again in January 2009. Finally, a series of ten interviews were conducted by phone with officials from the public relations departments of local authorities in order to determine if there are actual instances when they have applied the provisions of the reuse of PSI national law provisions.

2. Choices of policy regarding the creation of a PSI model

In order to develop a market for the reuse of PSI, governments have to consider and clarify

several important issues such as the type or categories of information that can be disclosed and reused for commercial purposes, the type of mechanism(s) used – licensing, exclusive contracts, free access, etc., and prices charged – no price, prices that allow public bodies to recover their costs with the production and/or management of public data. In addition, in order to develop a competitive PSI market, most countries strive to ensure that private service providers face the same conditions as public institutions, to enable access to public data by private users, and to clearly spell out the conditions under which these data can be used for commercial purposes (OECD, 2006a).

2.1. What constitutes public sector information (PSI)?

Public sector information (PSI) can be broadly defined as any kind of information that is produced and/or collected by a public body and it is part of the institution's mandated role. Other similar concepts used are public knowledge information resources, government information, or simply public information (OECD, 2006a). PSI is sometimes described as a "by-product" from the internal functioning of the government, which has not being produced with a commercial purpose in mind from the very beginning (OECD, 2006b).

Woods (2001:244) offers the following distinction with regard to PSI:

- A core of public sector activities which can be clearly categorized as directed towards the production of information by mandate (i.e. national statistics services);
- A second set of activities which are not primarily directed towards producing PSI, but which nonetheless produce valuable information as a by-product on a significant scale (*i.e.* education and healthcare systems);
- Activities such as scientific research or the financing of libraries and museums, which are not always included in the narrow definitions of PSI.

A distinction is sometimes made between public sector information and public content (OECD, 2006a). Public sector information is characterized under this approach as dynamic and continually generated by the public sector, associated with the functioning of the public sector (meteorological data, business statistics). On the other hand, public content is defined as static, held by the public sector rather than being directly generated by it (cultural archives, artistic works). While the former is usually considered suitable for reuse, there is currently a growing debate at the European level as worldwide regarding the inclusion of cultural works in the realm of reusable PSI. Public information is also categorized by domains or subfields; they represent the most common criterion used to break it down. According to Pira (2000) the following subsets of public data can be encountered – geographic, meteorological and environmental, economic and business, social, traffic and transport, tourism and leisure, legal, etc. Studies show that among the aforementioned categories, the most important one – based on its share in the total PSI produced is geographic information along with business, economic, and social data. For example, geographic information covers almost 80% of all information held by public institutions (European Commission, 2004). This information is also presumed to have the highest potential for reuse – in 2000 the estimated value of geographic information in the EU was EUR 35.8 billion (more than half of the total estimated value of the EU PSI sector) (Pira, 2000; Fornefeld *et al.,* 2008).

Another classification is based on the way in which PSI is obtained. Thus, there is "privileged" information, that can be obtained only by using the public authority (public prerogatives), and information that can be obtained by public bodies in the same manner as private companies or individuals (Bellanger, 2002:14). The latter should be more freely accessible for reuse than the former. On the other hand, even the second category can

comprise information obtained by public bodies in preferential economic conditions when comparing to individuals; this information should also be considered "privileged" information (Bellanger, 2002:14).

Pas and De Vuyst (2004:2) argue that what truly distinguishes PSI from other types of information are its unique features: it can – where necessary – be collected pursuant to a legal obligation weighing on the information provider, it is associated with neutrality, and it provides an 'informational backbone' to economic and scientific activities. It is also considered as being complete. Most of all, it is inexpensive, since civil services operate on a non-profit basis.

2.2. Key actors in the reuse process and the value-chain

Reuse centers on commercially exploiting the value of public information. A distinction is sometimes made by national legislations between the access of citizens to PSI for personal purposes and the commercial reuse of PSI. Access to public sector information constitutes a human right to be exercised at the lowest possible price, while commercial reuse constitutes an activity based mainly on the principles of competition and intellectual property law reflected in the price of such dissemination (Papapavlou, 2000:2). In Italy and Norway for example, the general pricing policy is that everyone has free access to PSI but it is not clear if this is also the case if the user then wants to commercially exploit the information. This creates uncertainty and risks for organizations wishing to exploit PSI (OECD, 2006b). On the other hand, there are countries where there is no connection between the model that applies to access and respectively to the reuse of PSI. Sweden, although has one of the strongest and most extensive FOIA (Freedom of information act) legislation, that has been in place since mid 1700s, imposes relatively high rates of cost recovery for the reuse of PSI (Pira, 2000; Woods, 2001).

The key actors in the reuse process of PSI are

- public bodies (or public content holders according to MEPSIR, 2006) which produce the information;
- private companies which buy the original information and transform and enhance it (public information can be simply systematized and published/printed or it can undergo more sophisticated transformations such as the integration of different sets of information which further support applications such as weather risk management systems); and
- end users who are usually represented by individuals who need that product or information.

The reuse cycle implies that usually private companies pay for the public information provided by public bodies whereas end users pay for the value added by the private companies which act as intermediaries. Other scenarios are also possible – for example public bodies, when they have the capacity to process the original information, may sell it directly to end users, without the "help" of private companies. However, this is not the typical situation. The process described above can be graphically summarized as follows:

Figure 1

The literature points out that there are five main scenarios referring to ways in which PSI can be commercially exploited (Papapavlou, 2000:3):

- (a) the public sector commercializes the information itself;
- (b) the public sector gives public service concessions or entrusts the commercial exploitation of its information through exclusive contract arrangements;
- (c) the public sector gives non-exclusive exploitation licenses;
- (d) the public sector gives exclusive contracts for the publication of the raw data – with conditions, and non-exclusive contracts for the production of value-added information products and services;
- (e) everybody who obtains the public sector information through the right of access has the right of commercial reuse, with specific conditions or with no conditions.

Models a-d can be described as "public business models". Other classifications highlight the idea of creating public-private partnerships for the commercial exploitation of PSI (OECD, 2006a). The public sector continues to play a significant role in the process of reuse. This is of course more prevalent in Europe than in the US, where the role of the public sector seems to be limited to the production of high-quality public record data.

The reuse process of PSI involves four main stages (OECD, 2006a):

- data creation,
- aggregation and organization,
- processing, editing and packaging, and
- marketing and delivery.

While the first two operations are usually performed by the public bodies, the last two represent functions that add value to the original information and are performed by private companies.

From the perspective of economic theory, information is a public good, with recognized social value and positive externalities, therefore the provision of public data and information, and improvements in the efficiency of that provision are identified as proper government roles (Nielsen, 2007:ii). There are however challenges associated with public sector's involvement in the provision and reuse of PSI. Information's public good nature and its characteristics (it can be easy to share, difficult to measure or value and its benefits are hard to determine) make difficult the processes of establishing its production cost, pricing and control (Nielsen, 2007:iii). Any pricing of public sector information is considered economically inefficient because cost-recovery prices cannot be determined based on objective criteria; and cost-recovery strategies are considered a barrier toward the maximizing the economic value of PSI (Nielsen, 2007:iii).

Another dilemma refers to whether or not public agencies should be adding value to the raw data they hold. Before the use of IT was widely introduced in government, a reasonably clear division of tasks existed between government agencies and the private sector regarding public sector information. It was felt that the public sector should make available, free of charge or at marginal cost price, raw data that was produced in the context of its tasks. It should undertake this towards citizens as part of their democratic and consumer rights or to businesses with a view to commercial reuse. Consequently, it was perceived to be the task of the private sector to add value to the raw data it had obtained from the public sector, and thus satisfy market needs. However, the introduction, during the seventies and eighties, of information technologies within government agencies, thus facilitating information storage and handling, gave rise to a number of problems in the long term. The difference between raw data and sellable information became vaguer. Indeed, nowadays it demands little effort to combine different data and obtain commercially valuable information. As a result, from an end-user

point of view, there is less need for added value to raw government data by private intermediaries, since such raw information already has a high value to start with. Furthermore, government agencies themselves bring together more easily data from different sources, and are able to present them in a format that can immediately be used by those requesting it (Pas and De Vuyst, 2004:4). From an economic standpoint however, if marginal costs are high (this means that the benefit is likely to be more specialized) then public agencies should not seek to compete with the private sector data providers (Nielsen, 2007:73).

2.3. Access and reuse regimes

Governments throughout the world have somewhat different approaches and level of access to and reuse of their PSI. Access policies vary from fully open to restricted, freely available or with various access fee charges, and ranging from unrestricted reuse to a broad range of use restrictions. Moreover, the variations on access and reuse policies and conditions vary not only across national governments, but also in many cases within each country at the state and local levels.

Two main reuse regimes can be encountered (OECD, 2006a; Perrit, 1994). On the one hand, commercial reusers have cheap and readily available access to PSI. No distinction is made between access and reuse, therefore commercial reusers gain access free of charge to public data, which are enhanced and resold to end consumers. Under this model, free access and exploitation of PSI are justified because it was already paid for when generated (Bargmann, Pfeifer and Piwinger, 2003). On the other hand, there are access regimes where the public sector holds public sector information for its own use or employs cost-recovery strategies that allow only limited and potentially expensive access. Both approaches have pros and cons. For the first scenario the following advantages can be highlighted - competitive market conditions for PSI reuse are created and the economic growth and the creation of new jobs are stimulated. As a downside, commercial reusers may have low-cost access to data that was costly to create for the government. Under the second scenario there are arguments that potential consumers of those data may have only restricted access to it, and that this approach is more costly for the consumer and the taxpayer. Moreover, the potential economic gains from development of new commercial activities based on PSI reuse may be foregone. Pira (2000) goes even further and argues that this type of model does not only hurt the interest of the private sector and of the consumers but it also operates against the financial interests of governments. Although governments gain income from the commercial license fees, they lose the taxation and employment benefits from the higher volumes of commercial activity that would be generated by abandoning charges.

The American government employs the first model. The federal information policy is based on the premise that the economic benefits to society are maximized when publicly funded data and information are made available freely and as widely as possible. Besides US having one of the most utilized FOIA legislation in the world, there are extensive possibilities for the reuse of public sector information. Citizens and businesses enjoy a broad right to electronically access this information and have extensive possibilities to reuse it for commercial purposes. All these aspects have determined some authors to argue that there is no policy in place in any of the EU Member States with the simplicity and clarity of that of the US Federal Government (Pira, 2000; McMullen, 2000). The main characteristics of the access and reuse model in place in the US include:

- a strong freedom of information law,
- no government copyright, fees limited to recouping the cost of dissemination,
- and no restrictions on reuse (European Commission, 2004).

A circular issued by the Office of Management and Budget, US Federal Government (OMB, Circular no. A-130) states: government information is a valuable national resource, and the economic benefits to society are maximized when government information is available in a timely and equitable manner to all. The OMB establishes as guiding principle for federal agencies that

- all public information be actively disseminated without imposing restrictions or conditions,
- access should involve costs only to the extent that those cover expenses of dissemination and
- it establishes that advantage should be taken of the various dissemination channels (e.g. private and academic) as well as of the available technologies (including Internet, satellite downcast, etc) (Weiss, 2002).

Furthermore, the Supreme Court has clearly instructed that, as a general rule, "the identity of the requesting party" does not have any bearing on the proper disclosure of information under the Freedom of Information Act (*United States Dep't of Justice v. Reporters Comm. for Freedom of the Press 1989*)(1); it is well settled that it is not appropriate for a court to order disclosure of information to a Freedom of Information Act requester with a special restriction, either explicit or implicit, that the requester not further disseminates the information received. As the Supreme Court recently put it: “There is no mechanism under Freedom of Information Act for a protective order allowing only the requester to see whether the information bears out his theory, or for proscribing its general dissemination” (*NARA v. Favish 2004*)(2).

In Europe PSI is often seen as an asset to be exploited by the public sector. Access conditions diverge but many European public bodies and governments see the commercial exploitation of PSI as a welcomed revenue stream. As a result, most countries price PSI higher than the marginal cost. But in 1998 the European Commission formally recognized PSI as a key resource in its related Green Paper (European Commission, 1999) and has since enacted legislation providing certain agreed principles on making PSI accessible for commercial reuse (OECD, 2006a).

There are several aspects that can explain the differences between the US and the European states. First, in the US an open records system is in place and public data is not protected by copyright. This is certainly not the case in Europe, where a number of countries have their PSI protected by copyright. Access and reuse are basically similarly treated under the US law while in Europe access to public data is regarded as a human rights matter while reuse relates to the realm of intellectual property rights and fair competition. Second, in the US, commercialization of government information by the private sector is a well-established practice and the discussion rather focuses on what role public agencies may play in commercializing their own information; while in Europe the discussion is on whether government information can be disseminated for commercial purposes at all. Third, there is a tension between freedom of information and privacy. The fact that government agencies possess a large amount of private information is an important issue in Europe, rather more than is the case in the US (Pas and De Vuyst, 2004:4).

The access and reuse model chosen by a country is important because it is believed to influence the growth of the PSI market and even more, the economic and social welfare in a society (OECD, 2006a). The marked differences in the investment and economic values of the European PSI market compared to the US market consequently have resulted in attempts to improve the commercial exploitation of PSI and to improve measurement of both the value of PSI and the impacts of different access and reuse regimes.

2.4. Economic and non-tangible effects that can be derived from the commercial exploitation of PSI

One rough estimate puts the value of the PSI at the EU level at EUR 68 million in 2000, approximately 1.4% of GDP (Pira, 2000). At a first glance this figure may appear small, however it is significant if one takes into consideration that the value of the textile industry is 1% of the GDP and the value of the printing and publishing industry is 1.7% of GDP (Pira, 2000).

There are two ways in which PSI provides economic value. First of all, PSI is directly commercially exploitable as raw material for value-added products and services (OECD, 2006a:19). For instance, the information about profession and studies of the residents of a certain area, gathered by public bodies for statistical reasons, can be used by marketers with great success. Or, topographical and geographical measurements already done by public authorities for their own use are compiled by those who manufacture maps.

Direct economic benefits include new income, new jobs, innovations, and market development from the provision of new PSI-based goods and services. For example, database industry in the US grew from $4 billion in 1994 to more than $10 billion in 2002, and the number of database vendors grew from 900 in 1991 to 2,400 vendors in 1999 (Weiss, 2002). Secondly, it has an element of indirect economic potential as input into economic activities to improve efficient decision taking and production. For example, the analysis of demographic changes over time can be critical to businesses to enable them to identify emerging markets or to target customers. The benefits of PSI do not merely arise for private companies; public bodies as well may reuse information to add value to their own products. In fact, governments and ministries are the most powerful users of PSI given the impact of public decision taking (OECD, 2006a).

The intangible, non-economic social benefits of different types of PSI are harder to measure but can also be very significant. They include educational, research, good governance, and various other applications for improving the welfare of the society (Weiss, 2002).

It is important to keep in mind the idea that the economic and non-economic benefits generated by the commercial exploitation of PSI need to be assessed in reference to a very broad category of stakeholders. For example, there is a limited analysis in the literature on how better access to PSI and to the commercial applications it supports empowers citizens as economic actors and allows them to make better-informed decisions.

An important issue that arises refers to how the actual value of the PSI industry can be measured. Very often the evidence is merely anecdotic. There are numerous barriers that hinder an exact quantification of this value and this is considered to represent one of the weakest aspects of the PSI literature. Most studies and reports on this topic conclude that neither the economic and social roles nor the value of PSI are easy to quantify (OECD, 2006a). Steps have been taken nonetheless. The 2000 study by Pira proposes an estimate based on an apparently simple distinction between investment value and economic value. Investment value is what governments invest in the acquisition of public sector information whereas economic value is that part of the national income attributable to industries and activities built on the exploitation of PSI. In other words, it is the value added by PSI to the economy as a whole.

Using this distinction, a comparison can be made between the value of the European Union’s

PSI sector and the American one. It can be easily observed that the value added by the private sector in the US is far greater than the economic valued added by the EU private sector.

Table 1

A more recent study (MEPSIR, 2006) tried to evaluate the size of the PSI market for the EU and Norway. The results obtained are somewhat different from the ones presented by Pira (2000). The different methodology used by MEPSIR accounts for these differences. MEPSIR's estimates for the overall market size for public sector information range from EUR 10 to EUR 48 billion, with a mean value around EUR 27 billion. This amounts to 0.25% of the total aggregated GDP for the EU and Norway. The total of MEPSIR is solely based on the total value added by all first-order reusers. The total of Pira encompasses all firms that are in one way or another related to PSI. It is important to note however, the issue highlighted by the MEPSIR study (2006) – the heart of the matter is not whether the information industry represents a significant part of a national economy, especially in the US, but how much of the added value can be traced back to public sector information.

There are different types of barriers in the way of accurately assessing the value of the PSI market. There are without any doubt technical barriers related to the existence of incompatible data sets across countries, lack of agreement with regard to which industries are supported by the reuse of PSI, etc (Pira, 2000; MEPSIR, 2006). Craglia (2006:57) contends that technical barriers are only a part of the story: "We are still grappling with the theoretical models applicable to digital information that link rights to citizen obligations and to the responsibilities of the government. Until those are developed, the access debate will continue to be driven by bottom-line considerations, but we hope at least to have opened up the discussion by breaking up the monolith assumption about what is 'good' about increased access to information".

Another interesting issue that arises when comparing the US and the EU PSI market refers to possible reasons for why the US market is more developed. Though existing estimates are not exactly comparable, the US PSI market is considerably larger than that in the EU (OECD, 2006a). Most studies argue that the type of reuse regime in place – namely the existence of restrictions and significant costs, represents the most important barrier that hinders the development of the PSI market in the EU. In addition, there seems to be a lack of reuse culture in Europe, as opposed to the US, where it is stronger and its roots can be traced back in time. There are also difficulties in aggregating national data for the entire EU due to language and different standards barriers (Pira, 2000). In a different opinion, EU - US differences are not due to pricing. The real story is that the US government is much better at creating high quality data. The issue is not cheaper access per se. Rather, it is about who benefits from profitable high-end markets. In the European Union, it is often public bodies behaving in a commercial way and squeezing out private sector competitors some of whom may be potentially highly innovative. It is not about pricing but about competition law. Opening up the market – that is, removing the monopoly position of pseudo-public reusers, is the real driver, not charging for PSI at a marginal cost (OECD, 2006b:18).

In 2007 the EC commissioned a new study (see Fornefeld *et al*., 2008) to assess the reuse of PSI in three specific sectors – geographical information, meteorological information, and legal and administrative information; an emphasis is placed on identifying the direction of change since 2002, pursuing the adoption of the Directive 2003/98/EC on reuse. As opposed to previous studies, a bigger and more varied set of indicators was used in order to assess the value of the PSI market, from the standpoint of both holders (income, number of requests, download volume) and reusers (income related to PSI, data volume, type of procured data

group).

2.4.1. Value of the PSI market

The Directive 2003/98/EC has had its strongest impact in the sector of geographical information (GI). The GI market is growing all across Europe; the income of GI reusers is increasing (for 66% of respondents) and the market is enriched by new reuser groups which offer innovative applications for geographical information. The market for legal and administrative information is growing as well; since 2002 an average increase level of 40% was reported by holders. The vast majority of reusers have recorded ever-increasing income. It is in particular those who add value to PSI who have reported exceptional growth rates. In addition, several new online information portals have been set up which offer convenient search tools to access judicial information. The market for geographical information is currently growing(3) – most of the respondents have recorded an increasing data volume download and from those that reported numbers related to income all confirmed significant increase in recent years, however at a slower pace than the other sectors (Fornefeld *et al*., 2008:3).

2.4.2. Policy change

Reusers of GI confirm that holders have improved their delivery services in recent years. It is particularly the speed of delivery and the formats offered that have improved, in their eyes. Although they still complain about restrictive licensing and high prices, they have also highlighted some positive changes referring to pricing and licensing. The majority of holders of legal and administrative documents have indicated that they have made noticeable changes in their data policy since 2002, nearly half of them confirming that the changes have been brought about by legislation. The majority of them (79%) offer legislative and administrative information free of charge on the internet. In the legal sector most of the respondents (reusers) criticize the lack of information on what PSI is accessible and where to find it for reuse. In the sector of meteorological information, the results of the study suggest that the Directive has had little impact thus far (Fornefeld *et al*., 2008:3).

Another important conclusion of the study is that most reusers in all three sectors are not aware of the Directive 2003/98/EC; thus, there have been so far few formal complaints from reusers (Fornefeld *et al*., 2008:5). This is directly linked to some of the criticism expressed toward the Directive which does very little to ensure that public bodies will take the necessary steps to span the commercial review of the information they hold (develop and publish asset list, conduct comprehensive analysis in order to identify new sets of data for reuse, etc).

2.5. Challenges ahead

Pira (2000) contends that the private sector in the EU is hindered by the smaller size of the PSI market and by a less rapid progress regarding the necessary technologies that support the reuse of PSI. Also, Member States need to increase their investment in the PSI, to invest in more skilled, educated human resource to work in the PSI sector, and to reconsider their pricing strategies.

The very existence of the right to access public information excludes in some respect from the beginning the commercialization of most of the PSI held by public authorities (Bellanger, 2002). It becomes more and more useful, in this context, to buy public information when the access is hindered by administrative measures, or in the case when the target is the whole data

base, not an individualized part of it, which can be obtained through individual access under FOIA legislations.

Fornefeld *et al*. (2008) argue that though conditions vary across sectors there are some common challenges: pricing, transparency and licensing, as well as the lack of predictability of data that will be made available, which does not allow reusers to develop business models based on the reuse of PSI. Private reusers are also dissatisfied with the behavior of public authorities (delays, non-transparent practices, no asset lists).

3. PSI regime at the EU level

3.1. Early efforts toward regulating PSI

The adoption of the Directive 2003/98/EC on PSI reuse was preceded by a number of efforts directed toward the enhancement of the Information Society in Europe. Since the 1980s, the European Commission has tried to stimulate the public sector to make its information available for reuse (Janssen and Dumortier, 2003). The Commission's White Paper on Growth, Competitiveness, and Employment published in December 1993 stressed the urgent need for a pan-European infrastructure to help boost economic growth and competitiveness at a time in which Europe was facing significant problems of industrial restructuring, and long-term unemployment. As a follow-up to the White Paper, the Bangemann Report was published in June 1994, and stressed the need to speed up the process of liberalization of the telecomm sector in Europe, hitherto largely in the hands of state monopolies, and reinforce universal service. It also stressed that financing the information infrastructure should come from the private sector, while the role of the EC would be to help target long-term investment in the exploitation of available technology. In 1999 the Green Paper on "Public Sector Information: A Key Resource for Europe" was published. It has played a major role in raising the debate across Europe on the opportunities created by the increased availability of public sector information (PSI) in digital format for its reuse beyond the purposes for which it was originally collected. The paper recognized existing barriers to accessing PSI including different legal frameworks and pricing regimes, and posed pertinent questions on the extent to which such frameworks ought to be harmonized across Europe differentiating between administrative, and non-administrative data, and "essential" versus value-added data. This green paper has been followed-up by a Communication which makes the case for action at the European level to remove the barriers identified, and puts forward a number of measures, inter alia the option of a Directive to create a minimum level of harmonization on the commercial and non-commercial reuse of PSI (Craglia and Masser, 2001).

3.2. Directive 2003/98/EC

In order to create a framework that encourages the reuse of PSI, the European Commission has defined a set of actions ranging from legislation to project financing. This section focuses on highlighting both the merits and the limits of the Directive on the reuse of PSI adopted by the European Parliament and the Council on 17 November 2003.

Directive 2003/98/EC states in Article 1 as its main objective to establish "a minimum set of rules governing the reuse and the practical means of facilitating reuse of existing documents held by public sector bodies of the Member States". From the preamble, it can be seen that the Directive sets out to establish a framework for fair, proportionate and non-discriminatory conditions for reuse of information held by public sector bodies in the European Union. This objective should be placed in the context of the wider goal of facilitating access to knowledge

for citizens and business promoting the emergence of Community-wide services as an important part of the internal market (MEPSIR, 2006). Other broader goals of the Directive include the enhancement of an effective cross-border reuse of the information for added-value information and services, and to limit distortions of competition on the Community information market (European Commission, 2004). The Directive 2003/98/EC is built around two key pillars of the internal market, transparency and fair competition.

The Directive also aims to harmonize the rules in this area across the European Union in order to make it easier for organizations wishing to use public sector information in their products or services to determine which information is available and what the conditions for its use are (MEPSIR, 2006). Thus, the Directive provides a minimum set of standards across the European Union Member States. Consequently, the Member States are free to create a more extensive framework of rules to allow for a greater range of reuse.

The way in which public sector bodies deal with their information resources differs significantly between Member States. This is due to different administrative traditions in the Member States, as well as, in some cases, to the absence of a clear policy on the issue. This leads to a competitive disadvantage for European content firms which aggregate information resources into added-value information products in comparison to their American competitors. The lack of harmonization of the national policies and practices is a barrier to establishing European information products based on public sector information taken from different countries.

The Directive covers written texts, but also databases, audio-files and film fragments. It addresses material held by public sector bodies in the Member States, at national, regional and local level. Public sector bodies are for example ministries, state agencies, municipalities, but can also be organizations for the most part financed by or under the control of the public authorities, such as the national meteorological institutes (European Commission, 2004). It has to be stressed that the Directive only deals with the economic aspects of information and is not about the access of citizens to information. This aspect is covered by national legislation on freedom of information and Directive 2003/4/EC. It is also true that in some cases it is difficult to draw a clear line between free access and reuse for commercial purposes. The Directive incites Member States to make as much information available for reuse as possible.

The Directive also sets a maximum limit for charging for reuse of information. The upper-limit is based on costs incurred to produce the information, together with a reasonable return on investment. Lower charges (or no charges at all) can certainly be applied, and public sector bodies are encouraged to do so. Upon request, public sector bodies are required to specify the calculation base for the charges. The charges have to be established openly (published). Transparency has to govern the conditions applicable to reuse as well. It also has to be clear where applicants can complain about decisions that affect them. The Directive contains also obligations for public bodies to avoid discrimination between market players in the conditions for reuse (European Commission, 2004).

The European Commission expects the impact of the Directive to achieve at a minimum:

1. greater transparency;
2. fair competition;
3. a downward trend on the charges for data where charges for data are applied;
4. every member state to have a legal framework in place with respect to the reuse of public sector data;

5. faster harmonization with Member States aligning their legal framework with respect to the reuse of public sector data than otherwise would have occurred;
6. an improved understanding as to whether or not the reuse of public sector data is occurring across the Union as a result of the monitoring and review article within the Directive;
7. an increase in the reuse of public sector data by the public sector itself;
8. asset lists to become available in all Member States; and
9. increased reuse of public sector data by all parts of society (GINIE, 2003).

Member States were required to pass laws and regulations to implement the Directive by 1 July 2005. After a long and tedious process, in May 2008 all Member States reported complete transposition of the Directive on reuse. There are nonetheless states against which the Commission has started the infringement procedure because they did not properly transpose the Directive.

Pas and De Vuyst (2004:12) expressed several critiques regarding the text of the Directive. The result is rather poor since vagueness, repeated references to national rules and practices and refraining from deciding upon essential elements like pricing characterize the text of the Directive. Furthermore, the EU and in particular the Commission could have made advantage of the discussion on the commercialization of public sector information to open up the date to the matter of access as well, and to point out the need of a harmonized legal framework on the access and the commercialization of government information, both on the level of the Member States as on the level of EU-institutions themselves. Last but not least more importance should have been given to the respective differences between the US and the European continent with regard to the role of the market and market forces in the realm of commercial reuse of PSI. The market's role is at least in part socially produced under the influence of cultural, social and political conditions. Therefore, the mere transposition of US-based economic rationales for reuse is questionable.

3.3. Amending the Directive 2003/98/EC: Possible developments in the near future

The Directive itself establishes that the Commission will submit a report to the European Parliament and to the Council in 2008 on the results of the review of the application of the Directive (Saxby, 2008). Article 13.2 of the Directive provides that "the review shall in particular address the scope and impact of this Directive, including the extent of the increase in reuse of public sector documents, the effects of the principles applied to charging and the reuse of official texts of a legislative and administrative nature, as well as further possibilities of improving the proper functioning of the internal market and the development of the European content industry". A number of key initiatives commissioned by the EC acted as input for the review process. These include:

- a public consultation in the form of a questionnaire to gather information from the Member States on their views on different aspects related to the implementation, impact and scope of the Directive;
- an assessment study undertaken by MICUS Management Consulting on the impact of the Directive in the three sectors of geographical, meteorological and legal information; and
- the recommendations of the ePSIplus project (Janssen, 2008:1 and see www.epsiplus.net).

The survey used for public consultations was structured around three main dimensions,

namely the implementation and impact of the Directive, the scope of the Directive, and best practices that could be implemented in Member States in order to enhance reuse (European Commission, 2008). With regard to the scope of the Directive, the Commission was interested in determining whether cultural establishments, education and research organizations and public service broadcasters ('excluded sectors'), currently out of the scope, ought to be covered by the Directive.

The Commission received 37 responses to the stakeholders' consultation. These embrace the different actors present in the PSI value chain: content holders (governmental agencies), commercial associations, private firms, public–private and non profit associations, private individuals, and two others that do not fall into any particular category (a political party and a PSI thematic network) (European Commission, 2009).

Overall, respondents have signaled that the Directive has had a positive effect on promoting PSI reuse in their respective countries. Divergent views exist between public sector bodies (the supply side) and reusers (the demand side) on the PSI current reuse environment. While the former group considers it satisfactory and working well, reusers are more critical and consider that the implementation of the Directive has been much too slow. The barriers mentioned by the vast majority of respondents include: lack of awareness of the potential of PSI reuse and of the Directive amongst public sector bodies, especially at regional and local level, little effort from public bodies for facilitating and promoting reuse, lack of knowledge or mechanisms to identify what information is available for reuse, the non mandatory requirement for PSI reuse, strict licensing conditions imposed by public sector content holders, the limits of the public task when public bodies commercially compete with private firms, unfair competition practices by public sector bodies, very limited transparency on public bodies reuse policies and notably on the way charges are calculated, the absence of efficient means of redress in most countries (European Commission, 2009:2).

With regard to extending the scope of the Directive, the respondents expressed conflicting opinions. While including the documents held by cultural and education bodies under the scope of the Directive will, without any doubt, enhance the realm of data available for reuse, these public organizations feel that they will face a huge administrative burden, in addition to the fact that most of the content they hold is copyright-protected.

The majority of the respondents are in favor of amending the Directive. Some of the criticism goes along the same lines highlighted by Pas and De Vuyst (2004:12). The most important amendment refers to eliminating the vagueness of the language (not always clear what public body, marginal cost, reasonable return on investment mean) and mandate clearer obligations with respect to reuse for public sector bodies. In addition respondents suggested the implementation of national asset lists/repositories and the obligation for Member States to report annually to the Commission on their actions towards promoting PSI (European Commission, 2009:3).

3.4. Experiences from Member States

The Directive 2003/98/EC had to be transposed into the national legislation of the Member States. This section briefly analyzes three different experiences – UK, France, and Belgium – with the transposition and implementation of the Directive on reuse. The analysis herein intends to be neither comprehensive nor complete. It rather strives to highlight some best practices and common challenges.

3.4.1. United Kingdom

The UK experience with creating a national framework for the reuse of PSI appears to be one of the most relevant ones among the Member States. The UK currently holds a significant lead on the ePSIplus scorecard with 15 points out of a total 20 to date standing well above the average score of 3.2 across all Member States (OPSI, 2008).

There are several unique aspects to the UK experience with the reuse of PSI. One initiative that could be regarded as a best practice refers to the creation by the central government of a national office in charge with several of the enforcement aspects of the reuse law. The literature points out that the creation of national offices could better advance the proper implementation of PSI reuse legislation and also contribute towards raising awareness. In the UK, the Office of Public Sector Information (OPSI) provides online access to UK legislation including Acts of Parliament, Statutory Instruments and Measures of the General Synod of the Church of England. It also licenses the reuse of Crown copyright material, manages the Information Fair Trader Scheme, maintains the Government's Information Asset Register and provides advice and guidance on official publishing and Crown copyright. OPSI will oversee the implementation of the Directive 2003/98/EC on PSI reuse, which came into force on 1 July 2005 (OPSI, 2007; OPSI, 2008). In the UK the general consensus is that considerable progress has been made at central government level. This is largely because the management of copyright for central government information is handled centrally through OPSI (OPSI, 2007). But there is a lack of awareness of copyright and licensing at the local government level. Much of OPSI's activity has been devoted to trying to redress this issue (OECD, 2006b). The government through its newly created office has implemented several initiatives that are meant to facilitate the enforcement of the law on reuse. These include:

- Click-Use License –this is an on-line license that has recently been extended beyond central government to cover the wider public sector;
- the Information Fair Trader Scheme verification process which allows public bodies to see if they meet the requests imposed by legislation, and
- the issue of best practice guidance (OECD, 2006b).

Most challenges ahead are expected to be encountered at the local level. The consultations carried out by OPSI with local authorities throughout the UK raised some concerns: Over 40% failed to respond to requests for reuse; 75% of those that responded had not fully complied with the PSI Regulations; and there was confusion about the difference between access and reuse (OPSI, 2007). Based on the ePSIplus scores for the UK, there is also the need for further awareness, advocacy and clarification of the Directive and PSI reuse and for the enforcement of decisions made arising from PSI complaints, appeals and competition issues (OPSI, 2008).

3.4.2. France

The French Act on access to public documents from 1978, amended in 2005, and a subsequent Decree enacted in the same year provide the rules for reutilizing public sector information. Early attempts at encouraging reuse have existed since 1980s; however, after a good start in the 80's when the five majors agencies started to license their content, 20 years passed without major evolution (GFII, 2007).

France faces some similar challenges as other Member States with regard to the implementation of EC Directive on reuse (GFII, 2007):

- French administrations and local communities are not aware of the Directive. This is a common challenge among Member States.

- There are no web sites or repository to inform potential reusers.
- Pricing is not transparent and no explanations are provided to reusers. Major public data holders do not have a good communication of their tariff policy (no communication about the real costs and coordination or consistency on prices or pricing structures across sectors and public agencies lacks. There is the fear of the industry about proportional fees on turnover or abusive rise of prices.

France also faces challenges that are specific and embedded in the national context. In 2006 new regulation on intellectual property rights (copyright) and privacy policy were adopted and are currently enacted. There is growing concern, mainly among reusers, that they could affect development of PSI reuse. Pricing provisions exclude any proportional royalty, but some argue that intellectual property right could generate a royalty and the legislation does not exclude possible intellectual property rights. With respect to privacy, private reusers fear that it might become an excuse to keep all data confidential (GFII, 2006). In June 2007 the Immaterial Property State Agency (*Agence du Patrimoine immatériel de l'Etat*) was created and it is hoped to become the 'engine' for dissemination and reuse of PSI in France. Its main purpose is to valorize the assets of the French State. Its potential is however hampered by a lack of clearness with regard to its role and coordination with other various actors in the process of reuse (GFII, 2007). This sets it in stark opposition with its UK counterpart OPSI.

3.4.3. Belgium

The implementation in Belgium of the EU legislation traditionally takes more time due to the various legislative and governmental bodies involved at different state levels (federal and regional levels). This means that six sets of legislation were needed to fully transpose the Directive (Janssen, 2008). On 22 December 2006 the Commission took five Member States (Austria, Belgium, Portugal, Spain and Luxembourg) to the European Court of Justice for failure to implement the Directive on the reuse of public sector information (PSI) in time. The Court of Justice condemned Belgium for failure to transpose the Directive 2003/98/EC on 13 December 2007. The law of 7 March 2007 adopted at federal level transposes into Belgian law the general principles governing the reuse of public sector information in line with the provisions of the relevant Directive 2003/98/EC. It is worth adding that Regional and Community Governments had to equally transpose the Directive on the reuse of public sector information. Flanders, the Brussels-Capital Region and two Communities (French and German-speaking) also have their own legal texts (decrees) which are greatly inspired from the relevant federal legislation. Thus, Belgium was the last Member State to notify the transposition of the Directive on reuse in May 2008.

A best practice that could be emulated by other Member States refers to the existence at the federal level of an information service on the reuse of public sector information (*Réutilisation des informations du secteur public*) that is updated and maintained on a periodic basis. Belgium is one of the few European Union Member States that provide such a service. The Belgium information service provides the information in French and Dutch languages.

As for challenges, Belgium faces the same concerns as other Member States with regard to the capacity and willingness of local level institutions to get involved in PSI reuse activities. Janssen (2008) contends that local authorities in Belgium are very concerned about the consequences of the reuse legislation, and they are very weary of making their documents available for reuse. The impact of the PSI Directive will remain minimal if these public sector bodies are not stimulated to make their documents available. Another challenge that is particular for the Belgium context arises from the very strict interpretation of the legislation on the protection of personal data. The PSI Directive states in its article 1.4 that it "leaves

intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC". The Belgian federal law has implemented this by stating that public sector documents containing personal data can only be made available for reuse after they have been anonymised. This seems to go further than the Law of 8 December 1992 on the processing of personal data (adapted to Directive 95/46/EC in 1998) seems to require. The law assumes that any type of reuse that involves personal data is contrary to the legislation protecting personal data. However, for some types of reuse, e.g. research, this is not necessarily the case, provided that the conditions for the processing of personal data imposed by the law are fulfilled (Janssen, 2008:1).

This brief comparison alludes to the fact that though the legal text of the Directive 2003/98/EC had been transposed by Member States in a relatively similar way into their national legislations, there are challenges regarding implementation that are specific to each country. They are generated by a variety of factor among which the administrative structure, prior practices and regulations on access and transparency, type of coordination between public agencies, etc. There are however challenges that are common and in this field best practices could help improve the implementation of the Directive on reuse.

4. Implementation of the Directive 2003/98/EC in Romania

Romania had the obligation of adopting the *communitary acquis* before accessing into the European Union; in this context, numerous debates took place with regard to the transposition into national legislation of the Directive 2003/98/EC on the reuse of public sector information.

In April 2007 the Romanian Parliament adopted the Law no. 109/2007 on the reuse of public sector information. As in many other European countries, the legislative body opted for adopting a separate act from the already existing Law on access to public information (Law no. 544/2001).

The scope of the law is quite broad – it covers information recorded in any form, whether in writing or stored in electronic form or as sound, visual or audio-visual recording. The law contains several exclusions: It does not apply to documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies (*e.g.,* not directly related to its core responsibility), and to documents in which third parties hold intellectual property rights. The law does not apply to documents that are held by public service broadcasters, educational and research establishments, or by cultural establishments, such as museums, libraries, archives and theatres. Finally, the law does not apply in cases where citizens or companies have to prove a particular interest in the information in order to gain access to it.

How is reuse defined under this law? For the purposes of the law, reuse covers any use of a document for a purpose other than the purpose for which the document was produced. This obviously covers a broad range of activities. However, it specifically does not include the transfer of the documents within the relevant public sector body or the transfer of documents between different public sector bodies for the purposes of fulfilling their public tasks. Reuse does also not include the use of public data for personal information or for conducting a journalistic inquiry; also the use of public sector information by NGOs falls outside the scope of reuse. The law distinguishes between commercial and non-commercial reuse. Non-commercial reuse is based on a free access, no charges incurred model. It is not however clear which is the difference between free access to public information and non-commercial reuse.

The commercial reuse, on the other hand, was subjected to fees until 2008, when the law was modified in order to permit reuse for free.

The law places an obligation on public sector bodies to list the main documents in their possession that are available for reuse in an "Asset List". This is something that all public sector bodies should take note of as it may require a detailed analysis of the nature of the information held by that body. Companies or other interested parties who wish to use public sector information must file an application to the appropriate public sector body. The application must be in writing, provide a name and address for communication, specify the document requested, and the reuse planned. The request should be processed promptly and at the latest by the end of the twentieth day from the date of receiving the application, unless the request is particularly extensive or complex, in which case the response should be in another 20 days. It should be noted that requests under FOIA legislation are processed in 10 days, and for complex requests the deadline can be extended to 30 days. These conflicting provisions are a burden for the practitioners, now that reuse is also free of charge, because they have to be sure what type of request is addressed to them in order to apply the appropriate deadline.

One of the most important provisions of the law relates to exclusivity arrangements. The law prohibits public sector bodies from entering into exclusive arrangements with any applicant, unless this is necessary for the provision of a service in the public interest. Any exclusive arrangement already in existence that does not satisfy the public interest test must be terminated at the latest by 31 December 2008. This provision is in line with an important principle of administrative law: equality of treatment when providing public services (Bellanger, 2002).

Charges could be levied for the reuse of the information, but the law has set out strict provisions on the amount that could be charged. Before 2008, when the law was amended, the total income from the charge for reuse could not exceed the sum of the "cost of collection, production, reproduction and dissemination of the documents". After 2008, as it will be shown below, the charge is limited to the cost of copying the documents.

The charges represent revenues to the national budget. This provision was criticized, because it should have been applied the same rule as in the case of FOIA legislation, where the cost of copying documents is revenue to the budget of the institution that provides the information (whether local or central).

After the adoption of the Reuse Law no. 109/2007, the European Commission pointed out in a letter to the Romanian Ministry of Communication and Information Technology from July 2007 that the transposition of the Directive on reuse into the national legislation has been done with some errors which had to be corrected (Ministry of Communication and Information Technology). Thus, Law no. 213/2008 was adopted for the amendment of Law no. 109/2007. The amendments incorporated the recommendations received from the European Commission. They concern the following issues:

- The Commission highlighted the intention of the European legislator to allow the reuse of PSI regardless of whether or not public institutions have copyrights for that information. The initial text excluded copyright protected information from reuse, even if its holders or producers were public bodies.
- The Commission also pointed out that the non-discriminatory provisions regarding the reuse have not been properly transferred into national legislation. Thus, a new article was added reaffirming the non-discriminatory conditions for the reuse of similar types of documents.

- The Commission considered that the deadline stated in the national legislation for solving the requests for reuse is inadequate. In the initial version of the law, it was stated that the request should be solved in 20 days from the moment when the department in charge receives the request. This provision was amended and the 20 days deadline starts from the moment when a request is lodged with the public institution.
- Perhaps the most significant change to the law was the elimination of fees for the reuse. Initially, public institutions were allowed to charge a fee for reuse that would have covered the costs incurred to public institutions for the preparation, generation and dissemination of public sector information. The Commission argued that it would be virtually impossible for the Government to set some clear standards for calculating such fees that would be applicable in all sectors. It also pointed out that the main goal of the Directive is to trigger reuse for commercial purposes and not to allow public institutions to make money out of it. In its current form, the Romanian law on reuse allows public institutions to charge a fee only if there is a copying cost associated with making available for reuse the requested documents/information.

The challenges posed by the adoption of the PSI Directive into the Romanian legislation are not entirely different from the ones faced by the other Member States under investigation. In addition, the adopted Romanian law is not significantly different from similar pieces of legislation from other Member States. However, what sets aside the experience of Romania in respect to the reuse of PSI are the embedded context in which the law has to operate and the enforcing mechanisms that should allow public bodies to deal with reuse requests in a timely and optimal manner. We will briefly discuss each of these two issues.

During the adoption of the law, there were numerous public meetings organized by civil society organizations which protested against the adoption of this law and against several of its provisions. APADOR-CH, a national NGO, has protested against the way in which the Romanian Government understood to transpose into domestic legislation the aforementioned Directive, namely without correlating it with the general law on access to public information (FOIA - Law no. 544/2001). Due to this lack of correlation, the draft bill induced the idea of having to pay a fee for access to public information. The new law on reuse of public sector information, NGOs argued, should thus reaffirm the principles of Law no. 544/2001, in the sense that access to public information must remain free and unconditioned by any fee or proof of "legitimate interest". It should also make a distinction between *accessing* public information, still regulated by Law 544/2001, and *reusing* public sector information, a subsequent and distinct phase (APADOR-CH, 2006). Though numerous other NGOs have voiced the same complaints, the law clearly stated from the beginning that access to information for personal and research use is not covered by this piece of legislation, and non-commercial reuse is also open and free of charge.

Another major national NGO, Pro Democracy Association, also criticized the law. One of its recommendations deals with the issue of rather amending the already existing FOIA legislation than of having two separate pieces of legislation, in order to prevent confusion between access and reuse. This solution is not however the rule within the other Member States. The NGO also contended that more attention should be given to the situation of personal data protection. Finally, the organization also argued that the reuse of public information in exchange of a fee (no longer the case; this situation happened before the amending of the reuse law in 2008) was somewhat contrary to the spirit of free access to public information and would hinder the development of a strong civil society and civic participation (Pro Democracy Association, 2006).

All these circumstances underline the fact that confusion exists between the human rights

dimension associated with free access to public sector information and subsequent phases such as reuse. If some new legal provisions are perceived as a threat (real or imagined) to free access and transparency, then opposition from the civil society and mass-media is to be expected. On the one hand, NGOs could be accused of misunderstanding the spirit and the purpose of the reuse law – to boost a new industry based on the tremendous economic and commercial potential of the information held by the public sector. On the other hand, the reaction of the NGOs is justified by the fact that, in a newly established democracy, the reuse legislation has the potential to hinder free access to PSI. The reuse law states that in order to be able to reuse PSI, the reuser has to declare the way in which information will be reused. This provision worries NGOs as it could potentially apply to access as well, especially when there is no clear distinction between the two phases. At this stage the realistic recommendation would be to continue to educate and to inform the public about the potential economic value of PSI.

The second set of challenges specific for Romania deals with a limited capacity of public institutions to handle the process of reuse in a timely, optimal, and efficient manner.

- First, requests for reuse are likely to be combined with requests under the FOIA (Law 544/2001): Applicants will first attempt to get access to the information and then ask for permission to reuse it. Therefore, public sector bodies will need to make sure that anyone dealing with freedom of information requests is able to recognize a request for reuse, even if they do not handle it themselves. This may prove difficult, especially at the local level. Public institutions are mandated by law to have a person in charge with dealing with requests under FOIA. However it is common to just assign this responsibility to the legal supervisor (an important position within some of the Romanian local public authorities), and not to a person qualified and trained in advance to deal with all the complications of such requests. The most complicated situations will occur with regard to requests where the public sector body is minded to refuse the reuse.
- Second, commercial reuse of PSI usually involves large sets of data, gathered continuously over long periods of time that are made available in a predictable manner to commercial reusers. Public sector bodies need to respond to these requirements by deciding which information will be made available for reuse, by organizing their information asset lists, and by drafting licensing agreements. While public organizations throughout the world face budgetary constrains, the lack of resources is even more dramatic in the case of Romania. Aside from simply lacking the money and the qualified human resource, Romanian public administrative authorities (especially the local ones) have a strained institutional capacity. As with many other laws, implementation proves to be the missing link due to this limited institutional capacity (Dunn *et al*., 2006; Dimitrova, 2002). The websites of two national agencies responsible for cadastral and weather information as well as the ones of all the ministries were scrutinized in order to determine if there are any information asset lists posted or any other relevant information on reuse. In all cases no such information was posted online.
- Third, a significant barrier in the process of the commercial reuse of the PSI is the lack of digitization of public data. Literature points out that the digitization of data and the ability to disseminate it on line represent key factors for the development of the PSI market. Moreover, the most important segment of data that are commercially reused in Europe – namely geographic information (cadastral and land use data) – are only available in digital format in a limited number of cases in Romania. The fact that technology may be a challenge during this process is also acknowledged by the law that states that the request for reusing public data will be made online provided the public

body has the necessary technical means. It is rather difficult to imagine how public bodies that do not have access to minimum informational technologies could own and make available data in a format that is suitable for reuse. It is true that the technological capacity of public institutions is gradually improving. However for the moment it continues to be a challenge.

- Fourth, the issue of controlling for the proper implementation of the law may prove to be a challenge. At one end, it is difficult to imagine that public bodies will have the manpower or the willingness to monitor if reusers use public data without requesting this permission. At the other end, it is not clear what sanctions may apply provided public institutions do not take the necessary steps in order to allow the commercial reuse (it is true that the law does not force public bodies to make public data available but the spirit of the law and of the Directive 2003/98/EC is to allow for as much public information as possible to be commercially reused). Potential reusers may take public authorities to court, however it is not clear how informed they are about their rights and obligations. The survey conducted within Member States in 2008 emphasized that many reusers are not informed about this process (Fornefeld *et al*., 2008). Though Romania was not included in the survey, the same problems are probably to be expected to occur here as well.

In any case, from a series of interviews conducted by phone for this paper with officials from public relations departments within the public institutions, it emerged that the Reuse law is assimilated with FOIA legislation by both requesters and those who hold public sector information. There were no requests that could be treated as requests for reuse, or they were not processed as such.

5. Conclusions

The European public sector accumulates and holds substantial quantities of data related to their territorial areas as a result of their governmental functions. With the increasing use of information and communication technologies within the public sector over the past decade, an increasing amount of these data is gathered electronically and as a result this opens up new opportunities for the data to be used by others both within the public and the private sectors as well as by citizens. It can be argued that much of the information produced by the public sector has the potential for reuse in the market place. It can be the basis for new, added-value services created by private companies. Though the economic potential for the commercialization of PSI is broadly acknowledged, commercial exploitation of public sector information in the EU is still limited compared with the US. Among the reasons are the reuse regime chosen by most European Member States (based on the use of licenses and restrictions and costs that can cover not only the production of the material but in many cases a reasonable return on investment), the relatively low level investment in the production of PSI compared with the US, a lack of reuse culture, barriers that stem from the lack of a single European market for PSI, etc.

The adoption of the Directive 2003/98/EC on PSI reuse, preceded at the European level by a number of efforts directed toward the enhancement of the Information Society in Europe, has the objective to establish a minimum set of rules governing the reuse of existing documents held by public sector bodies of the Member States and to create a common framework in this field. With regard to the impact of Directive 2003/98/EC, o verall, respondents have signaled that the Directive has had a positive effect on promoting PSI reuse in their respective countries, though divergent views exist between public sector bodies (the supply side) and reusers (the demand side) on the PSI current reuse environment. While the former group

considers it satisfactory and working well, reusers are more critical and consider that the implementation of the Directive has been much too slow.

Despite the fact that the legal text of the Directive 2003/98/EC had been transposed by Member States in a relatively similar way into their national legislations, there are challenges regarding implementation that are specific to each country; they are generated by a variety of factors among which the administrative structure, prior practices and regulations on access and transparency, type of coordination between public agencies, etc.

Romania's PSI reuse legislation is comparable with the one of other EU Member States. It also has a specific feature – the reuse is free of charge (starting with 2008) similar to the initial access to public information. This specific feature poses more problems than having a fee for reuse, due to the fact that there is not enough differentiation between free access to PSI and access for the scope of reuse. In this context, most NGOs perceive it as a potential threat to the right to free access to public information established under FOIA legislation.

One specific solution for promoting reuse could be to have a specialized office (Ombudsman type, for instance) set up for this purpose, like in the case of Great Britain. The task of such an office would be to assist both providers of PSI (public institutions) and reusers in recognizing the reuse cases and dealing with them, and then to mediate in case of conflict. This solution could be also combined with the setting up of an Ombudsman type office for freedom of information cases.

In any case, the legislation on reuse is far less effective when there is no significant differentiation from the freedom of information one, like in the case of Romania. In practice, they are not applied separately, not even formally. The reuse law is practically just being "assimilated" with the FOIA legislation.

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Endnotes

(1) 489 U.S. 749, 771-72 (1989).

(2) 124 S. Ct. 1570, 1581 (2004).

(3) There are currently around 70 companies in Europe active in this sector, which is still a very small number for a market with such important information as weather and climate

Table 1

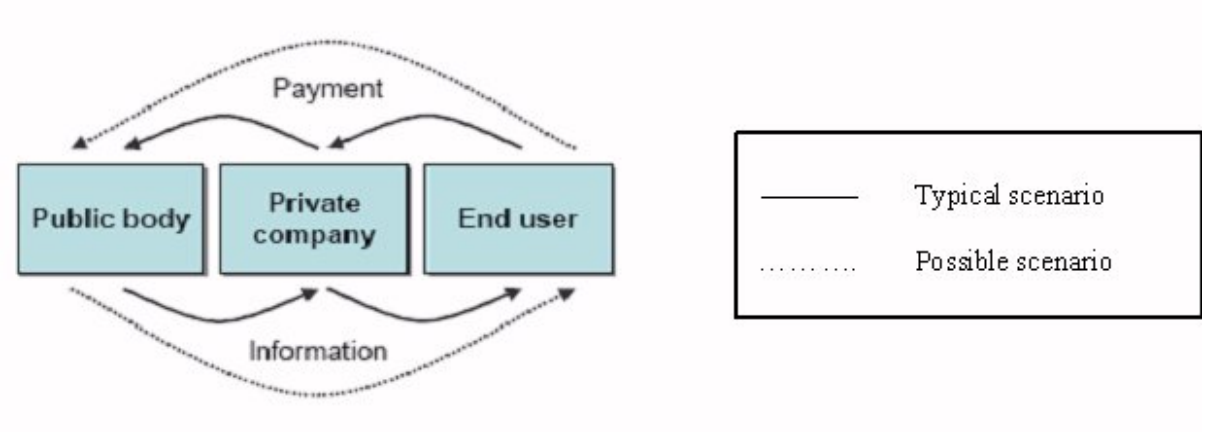
Value of the PSI sector in Europe and US (year 2000)

	Investment value	Economic value
European Union	EUR 9.5 billion per year	EUR 68 billion per year
USA	EUR 19 billion per year	EUR 750 billion per year

Source: Compiled from data provided in Pira (2000)

Figure 1

Key actors and their role in the reuse process of PSI



Source: OECD (2006a:12)