

Opening Up Europe – A Single Market With a Common Data Policy

Pencho Kuzev

Directive 2003/98/EC, which addresses the re-use of Public Sector Information (PSI), is a core instrument for opening up governmental data. It encourages member states to make as much information in their possession as possible available for re-use. This should foster transparency, data-based innovation, and fair competition. All information that can be accessed under national access to information laws is in principle re-usable for all purposes. The EU Commission conducted a public consultation in which the Konrad-Adenauer-Foundation participated.

Governmental Transparency strengthens the EU-Economy

Public sector bodies like ministries or local authorities collect or produce data to fulfill their public tasks. This include statistics (i.e. economic data) or performance data (i.e. school inspection data or agricultural data) financed by public funds. Use of such documents for reasons other than the initial purpose constitutes their re-use. Transparency in public administration is nowadays an inescapable feature of democracy. At the same time, the transparency of public business is a type of specific economic promotion because governmental data has been the raw material of many processes of economic and social relevance.

Information, Documents, or simply Open Data?

The description “re-use of public sector information” prevents a uniform understanding of this concept. In the political discourse, one speaks of Open Data. It would be more consistent to consider a precise definition of Open Data and re-name the PSI-directive. Open Data in a narrow sense should reflect data that shows how our societies function (performance data). This should be defined as distinct from personal data. In this way, confusion with personal data can be avoided.

At the same time it will contribute to legal certainty. Addressees should be all institutions that provide public services. The generation of data should come about thanks to public funds. This should include any unprocessed representation of acts, facts, or information (raw data).

Harmonization as a Precondition for the Completion of the Single Market

De facto, no single market for “Open Government Data” exists. One reason for this is related to different access regimes. The PSI Directive stipulates the right to reuse, but does not affect national rules on access to information. The information that is available is determined by the states themselves, so that administrative practices vary considerably.

The vague data definition and unregulated access rights run counter to the stated goals of an internal market. The term “public sector bodies” is so limited that it restricts the effectiveness of the directive as well. The public sector should include any body, regardless of its legal form, which has been commissioned (by decision of a public authority and under its control) to carry out a service of public interest. The public sector should include not only publicly-owned enterprises whose legal form is private, but also private

enterprises acting by virtue of administrative delegation or authorization in managing an aspect of public services.

Proactive Data Policy or Today's Patchwork

According to the EU Economic and Social Committee, access to information involves accessibility to administrative archives and registers. This means not only passively making them available, but rather the duty of active promotion designed to facilitate citizens' access to high-quality information in a practical form. As long as this obligation is not binding, no data ecosystem can be expected.

Data-driven Processes and fact-based Journalism

Open Data is an essential starting point for a community-wide information market. Each traffic app, for example, is based on open data. Decisions that are made on an empirical basis allow

more accurate solutions to societal challenges. These data are non-competitive in form and have no exclusivity. Therefore, in principle they should be available free of charge. In the current political context, the promotion of transparency is of particular importance. Indeed, a proactive data policy can be an effective tool against fake news. It promotes fact-based journalism.

High Value Datasets

The proposed directive authorizes the European Commission to define "high value datasets." It would be welcomed if this competence were also to include the modalities of data provision. This is also true in respect to the implementation of high standards, such as the machine readability of data. This should apply to data that has a high societal potential. Such data could indeed be considered as an EU data infrastructure.

Konrad-Adenauer-Stiftung e. V.

Dr. Pencho Kuzev LL.M

Data and Digital Policy Coordinator
Politics and Consulting

pencho.kuzev@kas.de



The text of this publication is published under a Creative Commons license: "Creative Commons Attribution-Share Alike 4.0 international" (CC BY-SA 4.0), <https://creativecommons.org/licenses/by-sa/4.0/legalcode>