Professional training on Information and Communication Technologies Law

Re-use of public sector information: a new challenge for eGovernment

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Facultés universitaires Notre-Dame de la Paix – University of Namur

juritic@fundp.ac.be
http://www.juritic.be
http://www.crid.be
Minutes of the JURITIC Day:

Cristina Dos Santos - Researcher at CRID

A JURITIC training day about the “Re-use of Public Sector Information: a new challenge for eGovernment” was organised by the Research Centre for IT and Law of the University of Namur on Friday 15th May 2009. It was proposed within the framework of the training days in IT and Law for the academic year 2008-2009 (more information about the programme and content see: www.juritic.be/).

We have chosen to develop this issue as a new eGovernment challenge since it tackles a relatively unknown aspect of it, which is the use or reuse of public sector information (PSI) (by others than the original public body collectors or producers of the PSI) in order to produce new services and products with high added value in the market of the information society.

Indeed, re-use of PSI is a significant question at stake both for the public and for the private sector in a more and more digitalised work environment: it is not only a tool of internal management for the public sector (in order to find and list the information that it may hold) as well as a “commercial” solution for its traditional budget restrictions. Moreover, re-use of PSI is above all a challenge for the private sector, which could take it up and develop a new market of more personal and personalised services to the benefit of the citizens as “consumers”.

Why? Because public sector information is a unique and invaluable source of all types of data: economic, environmental, socioeconomic, legal, scientific, political, etc. Furthermore, on the one hand, the collection and the data processing of certain types of individuals personal data and of enterprises by public administrations are mandatory by law, whose work is paid by taxpayers as well, so it is natural that such financial investment returns to the public good. On the other hand, a lot of eGovernment services imply the re-use of information collected or produced by public sector itself, so it is useful to know exactly what kind of information is held by public bodies (to fulfil the transparency of administration principle as well) and how public bodies share such information.

As in any digitalised environment it is easier to obtain and reformulate information in order to produce added value to raw material owned by the public sector, the private sector could find new applications for such information and become a “privileged” partner of the public sector in the simplification of public administration procedures. Thus, the issue of re-use of PSI concerns all jurists and lawyers working within and with public administrations (in the area of Public law and Administrative law), but it also includes aspects of Competition law, Commercial law, Intellectual Property law, Transparency of public administrations, etc.

This training day tried to answer the numerous legal and practical questions that all stakeholders still may have.

In the first part of the JURITIC day, we began by explore the issue at the legal level, explaining the relevant legislation in force at the European, national and regional level:

- At the European level, Cristina Dos Santos\(^1\) (Researcher at CRID) has presented the European legal framework (the Directive 2003/98/EC\(^2\), the so-called ‘Re-use Directive’).

\(^1\) « La Directive 2003/98/CE concernant la réutilisation des informations du secteur public ».


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She focuses on some “weak points” of this directive as, for instance, that it doesn’t impose the re-use principle in itself; it doesn’t provide clear definitions of what it intends as a “public task” (there are different approaches following the legal culture of European Member States – e.g. Common Law or Civil Law); the possible barriers of interoperability of public documents (different formats, languages, conservation of data, etc.), moreover if we are in a cross-border re-use of PSI, but that should be put in balance with other fundamental rights (as privacy and the protection of personal data); the vague reference to a “reasonable return of investment” (art. 6) when charges are requested; and the relevant role of European Member States that have not implemented the directive on time and that have not taken the opportunity to overcome such points by clear provisions and definitions at their national level. The report of its revision by the European Commission to 2012 and the work that is still done by it should further provide clear guidance on such issues.

- At the national level, the presentation of Prof. Cécile De Terwangne³ (FUNDP – CRID) has demonstrated that the federal structure of Belgium has been a main barrier to the correct implementation of the “Re-use Directive” (2003/98/EC) in our country: indeed, the Belgian Regions (mainly the Walloon area, the Brussels-Capital and Flanders) have different decrees entered into force at different moments with different definitions of what is an “administrative document”, for instance.

She explained the main differences between access to public documents (the transparency principle) and re-use of PSI, which should not be mixed and confused (even if re-use of PSI system relies on the access to information system of Member States). She pointed some aberrations of the Belgian Law (of 7th March 2007⁴) that has chosen the full anonymisation of personal data, for instance, when neither the ‘Re-use Directive’ imposes such obligation, nor the Belgian Law of 8th December 1992 on the protection of personal data. This issue could become a big obstacle to the re-use of PSI containing personal data, essential for some potential re-users.

- At the regional level, Katleen Janssen⁵ (Researcher at ICRI – KUL) has presented the transposition of the ‘Re-use Directive’ and the INSPIRE Directive by the Flemish Region, focusing on the main differences between both legislations and giving practical examples at the Flemish level.

- Then, Dominique De Vos⁶ (Co-Director of the Belgian Administrative Streamlining Agency (ASA)) has explained how her Agency, a service accountable to the Belgian Prime Minister, has been asked to transpose the European Directive at the federal level, while it coordinates the transposition activities at other levels of governance.

She has presented the work done by the ‘Transparency Committee’⁷, put in place at the federal level in order to provide input on public directories of public sector information, guidance on charges, access to information (by a central website, electronic registers/databases, metadata, etc).

³ « Le cadre juridique belge de la réutilisation des données publiques ».  
⁵ « La transposition des Directives Réutilisation et INSPIRE : l’exemple flamand ».  
⁶ « Sous le signe de la transparence ».  
In the second part of the JURITIC Day, we saw more specifically some practical case studies found in the Belgian eGovernment panorama:

- The case of the Belgian Crossroads Bank for enterprises (BCE – Ministry of Economics) - which is a PSI holder – was presented by M. Leslie Paesschierssens (Adviser at the BCE).

He has explained the work already done by the BCE in the case of commercial re-use of PSI: its legal basis, how to buy data on enterprises, which data are concerned, the target public, the conditions of such re-use, the charges requested, the standard license already in place, the problems encountered, etc. Currently, the weak point of its practice is that a non-commercial re-use is not possible and the potential re-users may access to data buying only the full package (with a higher cost). Nevertheless, M. Paesschierssens stressed that it is still not possible to the BCE to reach such objective as the financial incomes, generated by such re-use, can not be re-used to improve the quality of BCE’s re-use of PSI services as they fall inside the global government finance (and are not allocated to the BCE itself).

- The case of AGORIA, the Belgian Federation of the Technology Industry – whose members are potential re-users of PSI – was presented by Tanguy De Lestré (Project Manager at AGORIA).

In addition to the GEO-CASE presentation, he has pointed out some barriers encountered by private sector re-users (mainly enterprises) as, for instance, the lack of knowledge on where to find the re-usable information of public sector, the financial obstacles, the lack of availability and interoperability of data, the lack of clarity on public licences, etc. A lot of work has still to have to be done by Belgian public bodies in order to fulfil the European ‘Re-use Directive’ provisions as well. Nevertheless, full collaboration between potential re-users and PSI holders is the main request of private sector in order to reach such objectives in the better way.

- Finally, we had a presentation of the new Belgian Federal Commission of Appeal on Access on and Re-use of Public Documents (called CARDA) by Prof. Frankie Schram (Secretary Member of the Commission).

He has presented the functioning of this Commission, created recently by the Belgian Law of 7th March 2007, its composition (a mix between public and private sector members), its tasks, how to deal with appeal requests, and its weak points (lack of financial means, no pay for its members - which could lead to an increased absenteeism – no legal protection of their status, lack of legal guarantees and means of action of this Commission, etc.

The day was concluded by an open discussion with the audience (made up by lawyers, civil servants, enterprises working with public sector, researchers, etc).