

PUBLIC SECTOR INFORMATION: IDENTIFICATION OF EXCLUSIVE AGREEMENTS IN CZECH REPUBLIC

Abstract:

In 2009, European Commission awarded the survey in some of member states of the EU, in order to identify potential Exclusive Agreements, in terms of the PSI Directive. This paper describes the course and the results of the survey in Czech Republic, which led to the identification of two potential Exclusive Agreements. It was very interesting to delve in public sector bodies as all the survey was made with the highest transparency with using of the FOIA requests.

1. Introduction

The area of Public Sector Information (PSI) has been the subject of interest of the European Commission (EC) for years, as it is very important in different (social, economic, legal) aspects. In terms of EC, PSI is *“data produced and collected by public bodies (digital maps, meteorological, legal, traffic, financial, economic and other data). Most of this raw data could be re-used or integrated into new products and services which we use on a daily basis, such as car navigation systems, weather forecasts, financial and insurance services”* [1].

In 2003, the European Union (EU) adopted the Directive on the re-use of public sector information [2], which has introduced a common legislative framework regulating how the public institutions should make their information and data available for re-use in order to remove discriminatory practices, monopoly markets, the lack of transparency and other barriers.

As the Directive brought completely new approach, the real transposition of the Directive into national legal systems of EU member states and the practical everyday process of the providing data from the “supply” side (Public Sector Bodies) to the “demand” side (re-users) have to be researched and reviewed in order to gain some kind of sustainable situation. EC therefore published a review of the application of the PSI Directive encouraging EU member states and their public institutions to take proactive measures to promote re-use. [3]

One of the reviewing and observing actions is the current study for assessing the existence of possible exclusive agreements (EA) concluded by Public Sector Bodies within certain Member States. The preliminary results for the Czech Republic are presented within this paper.

2. Exclusive Agreements

The PSI Directive forbids, as one of the general rules, the existence of exclusive agreements.¹ According to the terms of the directive, *“...where an exclusive right is necessary for the*

¹Directive itself uses the term of „Exclusive arrangements“

provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years... The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public... Existing exclusive arrangements that do not qualify for the exception under paragraph 2 (above) shall be terminated at the end of the contract or in any case not later than 31 December 2008." [2]

Exclusive agreements between public sector bodies and private re-users have already been phased out in some Member States before the 31st December 2008 deadline, within application of the Directive. We can name the examples of the Dutch car register or the Swedish population register. However, only two Member States (the Netherlands² and the UK³) have taken action to identify potential EAs within the public sector bodies in their respective countries before the 31st December deadline. As both assessments have identified the existence of EAs and no other Member States have taken a systematic approach to identify and phase out such agreements, the EC has launched a study for assessing the existence of possible EAs. The first set of countries is covered by the first phase of the project, including Czech Republic.⁴ Javier Hernández-Ros noticed: *"..we launched the "Exclusive Agreements Study" in the following countries: Austria, Belgium, Czech Republic, Denmark, France, Germany, Italy, Poland and Spain. These MS represent, together with the UK, NL and SW, more than 80 % of the GDP and more than 75 % of the inhabitants of the EU27. In terms of the market size and its potential it could be assumed that for these countries the study would cover 80 % of the EU25 market. We will investigate the situation in other MS next year. The work already started in Austria, Belgium and Italy, while we are finishing with the administrative procedures for the others."* [10]

3. Research in the Czech Republic – Public Sector Bodies

A web survey and a desk research of the main Public Sector Bodies (PSB) in the selected sub-domains have been conducted. The focus has been given on PSBs' web pages, articles, interviews, on-line discussions and other evidence of existence of potential EAs. This has resulted in the identification of one potential EA at the Ministry of Transport, regarding the public database of the public transport schedules.

The important reference feature has been the obligatory information, which must be published on-line by any public body. The structure of this information is defined by the Act No. 106/1999 Coll., on Free Access to Information⁵ and by the obligatory public notice⁶ of the dissolved Ministry of Informatics (currently, the agenda has been moved to the Ministry of Interior). For the purpose of this study, the point 16.2 of the public notice "Exclusive Licences" has been one of the official sources of information on possible existing Exclusive Agreements.

The fact is that only some of selected PSBs have really published the information point 16.2 "Exclusive licences"; all the PSBs, who included the point 16.2 into the overall structure of the obligatory information, stated that they do not have any "Exclusive Licences". The

²http://ec.europa.eu/information_society/policy/psi/facilitating_reuse/exclusive_agreements/index_en.htm

³<http://www.opsi.gov.uk/advice/psi-regulations/exclusive-agreements>

⁴http://ec.europa.eu/information_society/policy/psi/docs/pdfs/other_activities/awardedoperatorsfullfinal.pdf

⁵http://www.czechpsi.info/data/ZakUZ-1999-106_svob-pristup-info_zneni2007-110.pdf

⁶<http://eagri.cz/public/eagri/legislativa/ostatni/100075744.html>

problem might be that the term “Exclusive Arrangements” of Directive 2003/EC/98 has been transposed into the term “Exclusive Licence” of Act No. 106/1999 Coll., which does not seem to be exactly the same.

All the selected Czech PSBs (26 in total) have been contacted by the unified request, according to the Act No. 106/1999 Coll., on Free Access to Information. It focused particularly on the awareness and the existence of „Exclusive Arrangements“, in terms of the Directive. The following table summarises the results of the survey:

Table 1 Results of the PSB survey

PSB Name	Response in	EA awareness	Remarks	EA stated
Ministry of Finance	1 day	YES		NO
Ministry of Justice	4 days	YES		NO
Czech Post	7 / 25 days	YES	Refused to response initially, because of the Directive terms. Had to be updated by Czech FOI terms	NO
Institute of Health Information and Statistics	5 days	YES		NO
Czech Statistical Office	3 / 21 days	NO	Prolongation (10 days) requested	NO
Ministry of Defense	10 days	NO		NO
Office for Personal Data Protection	11 days	YES		NO
Industrial Property Office	13 days	YES		NO
Ministry of Foreign Affairs	14 days	YES		NO
Czech Cadastral Office	5 days	YES		NO
Ministry of Health	13 days	NO		NO
Ministry of Regional Development	13days	YES		NO
Ministry of Interior	13 days	YES		NO
Ministry of Culture	13 days	YES		NO
Ministry of Transport	14 days	Refused to answer (subjective opinion)	EA identified, based on the initial survey	NO
Czech Government Office	19 days	YES	Objection to request in terms of	NO

			Directive	
Road and Motorway Directorate of the Czech Republic	18 / 27 days	YES	Prolongation (10 days) requested	NO
Ministry of Environment	19 days	YES	Apologize for late response	NO
State Mining Administration	19 days	YES		NO
Ministry of School, Youth and Physical culture	23 days	NO		NO
Ministry of Labour and Social Affairs	24 days	NO		NO
Czech Hydrometeorological Institute	30 days	NO		NO
CENIA	1 day	YES		NO
Ministry of Industry and Trade	11 days	YES		NO
Ministry of Agriculture	12 days	YES		NO
Office for the Protection of Competition	5 days	YES		NO

As we can see, all the PSBs replied to the request (however, not all of them replied in time) and there was identified no EA during this official survey. Personal interviews were conducted with representatives of the Ministry of Transport (due to the identified EA during the desk research), Office for the Protection of Competition (personal request of its representatives) and Czech Statistical Office (because of possibly EA identified within the MEPSIR⁷ study). The meeting with the representatives of the Czech Statistical Office has been organized after the notice from the EC that there were identified possible EAs in the MEPSIR study in the Czech Statistical Office. A standard agreement, intended for R&D institutions only, has been found – it describes the conditions for non-commercial re-using of confidential statistical data by R&D institutions, which is in accordance with the Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009, on European statistics⁸. This standard agreement is not therefore believed to be an EA

4. Research in the Czech Republic – re-users

The selected 25 potential principal re-users, companies and national associations were contacted by the email request. This request included the necessary information (an official letter) with references to the European scale of the Study. Where possible, the request has

⁷ http://ec.europa.eu/information_society/policy/psi/mepsir/index_en.htm

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:087:0164:0173:en:PDF>

been sent directly to the owners or legal representatives of PSI re-using companies.

The main problem of this task has been the general lack of interest from the side of contacted re-users. This is probably connected with traditional euroscepticism of the Czech society. Very few of selected PSI re-users responded. Not responding re-users were contacted via phone to verify their situation - they were generally not interested in the study or they did not have any idea about potential Exclusive Agreements in the market. Due to the lack of interest and in order to gain as much relevant data as possible, it has been decided to contact other 20 PSI re-users of the Czech market. The results of this survey have not been available in time of writing of this paper. Those PSI re-users, who expressed their interest in the study and their will to provide some relevant information to the researcher, were asked for their official statements.

Generally, the re-users do not see any problem with their business in relation to potential EAs. What they see as the main obstacle is the impossibility of obtaining of the raw and complete data of important Czech public databases (e.g. Business Register, Cadastral Register), but this goes beyond the scope of the study and this paper.

5. Conclusions

The realization of the study in Czech Republic has been a very challenging and interesting task. A very important part of the study has been the raising of awareness among Czech public sector bodies, because they probably have not paid the broad attention to this issue yet, partly due to the little unclear transposition of the respective Article of the Directive into the Czech legal system. A very strong tool has been the official request according to the Czech FOI Act, in which all PSBs responded, but on the other hand, the relevance of official information has not been the highest, as the Ministry of Transport stated they had no EA. However, the initial research pointed out that there has been potential existing EA in the Ministry of Transport. The general lack of interest of the PSI “demand” side has not been a big surprise and it has resulted in further contacting of another set of PSI re-users, in order to get as much relevant information as possible.

All the identified potential EAs were analysed by the legal experts of the Institute of the Law and Technology of the Masaryk University in Brno. Two EAs has been indicated as void in terms of the Directive. This should lead to their termination, to ensure the same right of access and commercial re-use of Czech PSI for all market actors – in terms of the Directive.

6. References

[1] European Commission. *PSI – Raw Data for New Services and Products*. 2010. Available at: <http://ec.europa.eu/information_society/policy/psi/index_en.htm>.

[2] European Commission. *Directive 2003/98/EC on the re-use of public sector information*. 2003. Available at: <http://ec.europa.eu/information_society/policy/psi/docs/pdfs/directive/psi_directive_en.pdf>

[3] European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Re-use of Public Sector Information : review of Directive 2003/98/EC*. 2009. Available at:

<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0212:FIN:EN:PDF>>.

[4] OPSI. *Exclusive Agreements*. 2009. Available at: <<http://www.opsi.gov.uk/advice/psi-regulations/exclusive-agreements>>.

[5] EPMA. *Czech PSI Info*. 2010. Available at: <http://www.czechpsi.info>>.

[6] Česko. *Zákon č. 106/1999 Sb., o svobodném přístupu k informacím*. 1999. Available at: <http://www.czechpsi.info/data/ZakUZ-1999-106_svob-pristup-info_zneni2007-110.pdf>.

[7] Česko. *Vyhláška č. 442/2006 Sb., kterou se stanoví struktura informací zveřejňovaných o povinném subjektu způsobem umožňující dálkový přístup*. 2006. Available at: <<http://eagri.cz/public/eagri/legislativa/ostatni/100075744.html>>.

[8] European Commission. *Regulation No 223/2009 on European Statistics*. 2009. Available at: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:087:0164:0173:en:PDF>>.

[9] European Commission. *MEPSIR Study*. 2006. Available at: <http://ec.europa.eu/information_society/policy/psi/mepsir/index_en.htm>.

[10] ePSIplatform. *ePSIplatform webportal*. 2009. Available at: <<http://www.epsiplatform.eu>>.