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## **FEBIS comments on the review of the PSI directive**

**October 2018**

### Introductory remarks

FEBIS welcomes the recast of the PSI directive as well as the IMCO draft opinion published on the 26.6.2018 as it will mean better access and re-use possibilities in the EU to the benefit of the society in general and help the market to be more effective ~~also~~ in terms of commercial and credit decisioning.

As a matter of fact, the job of Business Information Providers is to provide and permanently improve solutions and tools enabling businesses to manage their cash through the payment delays they grant to their customers or they are granted by their suppliers. Payment delays between trade-counterparts are de facto an implicit short term credit, but in many occasions not being notoriously recognized, even by the EC.

Also currently called “trade credit”, this kind of credit is often overlooked although it represents around 1/3 of the GDP in some EU member States such as France or Spain, and in the UK it is estimated that trade credit is at least 2-3 times the amount of bank lending. It is then essential to consider trade credit as part of SME funding, as well as banking credit, crowdfunding or other ways to access finance as promoted with the CMU.

Regarding information on businesses in particular, the main objective will be pursuing transparency and accuracy to promote effectiveness in credit and commercial decisions. To this end, data quality is a crucial aspect which should be guaranteed.

FEBIS members are “skilled” PSI re-users, especially those working in pro-active Member States where public bodies are dynamic but consider there are still some barriers on data availability and data quality remaining in some of them, ~~and~~ which can be addressed by the revision of the PSI directive.

FEBIS members would therefore like to comment on the following 6 elements which are of importance in the review of the PSI directive:

1. Differences in implementation and comparability of data
2. Format and reuse of information
3. Data Quality
4. High Value Datasets
5. Charging and fair level-playing field

## 6. PSI and GDPR and sole entrepreneurs data

Moreover, FEBIS, with its expertise in processing and managing (public sector) business data from all EU countries, will be pleased to contribute to any impact assessment, workshop or expert group that may be organized on the PSI and High Value Datasets topic.

### 1. Differences in implementation and comparability of data (recitals 12, 15 + article 13)

The first barrier impeding PSI re-use is **the differences existing in the implementation** of the PSI directive from one Member State to another, in terms of development of the open data “offer”, as described in the recital 12 of the draft directive. This results in a lot of crucial PSI that ends up being unavailable and represents a problem for the overall market. Credit managers from businesses of all sizes, banking and financial entities, insurances cannot do correct credit decisioning, very frequently, due to data constrains.

In order to improve the re-use of PSI on businesses, we suggest to **eensure a harmonised implementation of the directive by promoting the access to same data items from all EU Member States (such as the ones listed in attached annex which FEBIS would like to see included in high value datasets) which would increase transparency and help develop the internal market.** Businesses which are accurately informed about the situation of their trade counterparts / partners, while doing business, have, by far, a much higher success rate than those acting in the dark. An economy is only sustainable if transparency is flowing.

**If access to essential information is lacking, then no accurate credit and financial business assessment can be made and it therefore impedes the development of trade credit,**

Furthermore, one of the aims of the PSI directive is to foster comparable public datasets to be re-usable for pan-European applications (recital 15). **But as differences exist in national company and accounting laws or in the transposition of various EU sectoral directives, the raw data itself is not available or accessible in the same ways in EU Member States and the content of datasets may therefore be quite different, which makes comparability not so easy. to make.**

This was outlined in the mapping exercise realized in the EFSIR 2015 (page 207, [https://ec.europa.eu/info/system/files/efsir-2014-27042015\\_en.pdf](https://ec.europa.eu/info/system/files/efsir-2014-27042015_en.pdf)) and one of the conclusions of this report was that (page 211) : *“A minimum set of common, comparable data that is equally accessible by all interested parties is important to widening the investor base for SMEs, increasing competition and fostering the efficiency and integration of SME funding markets. This is relevant for a wide range of stakeholders including BI & Scoring firms, credit registries, banks, investors, SMEs, and public institutions.”*

It is also crucial to ensure that the essence of the PSI directive, which is to grant a re-use right for data held by Public Sector Bodies at EU level, remains and that the decision to make data available does not fall on the Public Sector Body itself.

## 2. On format and re-use (recitals 29, 30, 41- articles 5 (5), 11)

The recast proposal outlines that Public Sector Bodies should release all accessible documents but does not specify any format or time limit (except in article 4), and Public Sector Bodies can also argue against the release of the data if it would mean too much disproportionate effort to provide an extract.

**This should not be used as a way to deny access to PSI and FEBIS members consider that access should be granted under the original format if no structured data is available and within a specified time limit.**

The **purpose of re-use** of PSI should be considered when considering the PSI perimeter to be opened up. A better and deeper dialogue between public bodies and re-users should be encouraged. Business information providers are re-using PSI to produce high quality scores assessing the risk of default of a business as well as business reports that are for the benefit of businesses themselves (with their trade business counterparts) and also of the whole economy in general.

To this end, **comparable categories of re-use purposes** should be considered under recital 41 and article 11. Comparable categories of re-use may be understood in many different ways, and should also include comparable categories of re-use purposes.

*For example, in France, an article from the French Code of Commerce provides that sole entrepreneurs may require their data recorded to the National Enterprises Repertory not to be used by third parties for direct marketing purposes, in particular commercial direct marketing. When the PSI from the National Enterprises Repertory were chargeable and not available under an open licence, data about sole entrepreneurs having exercised this right used to be “flagged” as not available for direct marketing purposes but still available as open data. Now that the same PSI is free of charge and available under an open licence, this data is not available at all anymore, even if the purpose of re-use is different from direct marketing.*

**FEBIS members therefore think that the PSI directive should ensure that data is available for re-users having comparable re-use purposes for which access to data is granted.** As a matter of fact, re-use does not mean necessarily disclosing to the end-users. In the case of Business Information Providers, re-use may be also mean feeding of scoring calculation algorithms.

## 3. On data quality

Data quality is a crucial aspect which should be guaranteed. Data quality should ALWAYS prevail and be considered from the beginning (data production) to the end (re-use of that same data) of the “value chain”.

**If open data means free data but that this free data is not thought from the beginning as open data for re-use purposes, then the re-use itself will be very difficult.** A bit like the “privacy by design” principle, the PSI directive could put in place a “re-use by design” policy for data held and made available by public sector bodies.

“Data quality” has very different meanings, and each of them is essential for the re-use.

- **Completeness**
- **Freshness / accuracy:** getting access through APIs may resolve this, but APIs may not be an adequate solution for all categories of re-use.

- **Machine-readable data**: this also means under structured format, but sometimes a structured format is sometimes not the right one (for example : Companies' articles of Association won't be available as structured data, but are PSI)
- **Coherence / consistency checks**
- **Metadata / technical documentation**
- **Hotline / workshops**, for re-users and end-users to provide feedback "which allows the public sector body concerned to improve the quality of the information collected" (recital 11) and provided as open data.

As a matter of fact, if data is available at no charge but with no or bad quality, a commercial re-user will always have to pay at the end, because its end-users will not accept to get bad quality chargeable services.

A better and deeper dialogue on that topic between public bodies and re-users should be encouraged.

#### 4. On High Value Datasets (recital 6, article 13)

FEBIS welcomes the proposal of the European Commission to put in place high value datasets. If well understood, the adoption of these "datasets" could be one way to assure data quality and accuracy.

Some high value datasets, like Business Registers, elections for public offices etc., as proposed in the IMCO draft opinion, do include personal data. If this data has to be anonymised, the dataset value would clearly decrease.

In order to manage this, it seems to us **mandatory** that corresponding datasets should be, first of all, considered as "*of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security*" (art 23-1 (e) of GDPR), **also when these datasets are available as PSI / open data.**

**FEBIS members support the inclusion of company and business registers** (lists of registered companies, legal form, ownership and management data, registration identifiers, balance sheets, etc.) **in the list of high value datasets.**

But, as not all economic entities, having trade counterparts, have to register to a Business register (cf the directive 2017/1132), this wording should be modified in order to include all kind of enterprises (whatever their legal form) public registers / repertories.

Considering the re-use context by Business Information Providers of this type of PSI, we would like to insist on the fact that data quality and accuracy must be preserved in order to be able to provide accurate scoring and business information reports that are, in the end, used by sole entrepreneurs and companies to manage trade credit, contributing then to avoid late payments consequences (cf the directive 2011/7).

**A list of PSI data crucial for credit management and commercial decisioning (as outlined in the attached annex) could be assimilated to high value datasets and should therefore be available for re-use.**

## 5. On charging and fair level-playing field (recital 32 and articles 6, 11, 12 a)

Pricing which enables the recovery of the marginal cost for making PSI available as high-quality open data should be promoted. Then, pricing calculation should be periodically controlled, if possible by an independent body (as outlined in recital 35)

We do understand that “charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs” (recital 32), but – as explained here above – if “without charges” means bad quality open data files, either it costs a lot for the re-user to clean / correct the data or it provides bad quality services. Non-discrimination is not only a question of charges. It may also be a question of data quality, data perimeter or files format.

*For example, in France, there are cases where less PSI are available, or where the quality of PSI provided by the same Public Sector Bodies has decreased since their PSI ~~data~~ are not chargeable anymore.*

As PSI re-users, FEBIS members know very well the costs associated with huge databases management. Those costs also impact Public Sector Bodies. Side effects that may be generated by a general implementation of the “free of charge” principle should not be overlooked. **Therefore, we suggest a case by case analysis in order to avoid difficulties for the Public Sector Body or the re-users of “its” PSI available as open data.**

**FEBIS members also fully support the fair competition principle put forward by the amendment 123 to the IMCO draft report proposing a new article 12 a on fair competition between public authorities and re-users** which states that: *“Insofar as public authorities make a commercial use in their own benefit of public sector information outside a public service contract, Member States shall ensure that a fair competition under the same conditions is guaranteed.”*

## 6. On PSI on businesses and GDPR

### **a) Sole entrepreneurs**

In many EU countries, accessing and re-using PSI data on sole entrepreneurs for business reporting is an issue, mainly because they are still lying in a grey zone as regards personal data protection (cf [https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/do-data-protection-rules-apply-data-about-company\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/do-data-protection-rules-apply-data-about-company_en))

*For example, in France, an article from the French Code of Commerce provides that sole entrepreneurs may require their data recorded to the National Enterprises Repertory not to be used by third parties for direct marketing purposes, in particular commercial direct marketing. When the PSI from the National Enterprises Repertory were chargeable and not available under an open licence, data about sole entrepreneurs having exercised this right **used to be “flagged” as not available for direct marketing purposes but still available as open data. Now that the same PSI is free of charge and available under an open licence, this data is not available at all anymore, even if the purpose of re-use – Business Information - is different from direct marketing.***

Sole entrepreneurs have suppliers and customers just as legal persons. This is why they are also considered rightly as “enterprises” or “businesses”. **Acting in their professional / business capacity is different from acting in their private / personal capacity, as a consumer for example.**

GDPR should apply when the individual is acting as a private consumer/individual **only and not for sole entrepreneurs acting in their business capacity.**

The commercial transactions where sole proprietorships and non-registered businesses, as well as small and medium sized companies, are directly involved are highly significant in each Member State and the lack of information to properly assess the business (not the individual!) for contracting with causes losses in the overall economy. This affects their trade counterparts, and among them especially, weaker layers of micro (including sole proprietorships) and medium sized companies which, very often, do not have qualified means for assessment. These above-mentioned transactions represent a big portion of the *trade credit* which in turn reflect a significant percentage of national GDPs.

**It must be clear for all stakeholders, including Data Protection Authorities, that sole entrepreneurs are businesses, and that, as such, Public Sector Information about the latter should be easily available for re-use.**

More broadly, a same definition of sole entrepreneurs all over the different regulations and laws (company law, financial regulation, GDPR ...) would be helpful. As a matter of fact, they may be considered as enterprises in one regulation, and as individuals in another. Of course, for reasons provided here above, FEBIS members consider that sole entrepreneurs are enterprises / businesses.

#### **b) Legal representatives and beneficial owners**

The same situation more or less occurs with legal representatives or beneficial owners of companies (cf the 5<sup>th</sup> AML directive which is to be now transposed by Member States).

When contracting with a customer or a supplier, it is often required according to some regulations (like the anti-corruption law in France) to make due diligences, and not only from a solvency point of view. Making due diligences on the basis of questionnaires is one way, but cross-checking is essential.

If this data is lacking because the natural person, acting as a legal representative or a beneficial owner, can exercise his/her right to correction or right to be forgotten towards the re-user, even if this personal data must be filed and disclosed to registers created to inform third parties, then the transparency principle is not met.

For both sole entrepreneurs and legal representatives of companies, and maybe later for beneficial owners, it seems to us essential that the right to correction or to be forgotten (in exceptional cases, according to the ECJ Judgment of the Court of 9 March 2017 in case C-398/15, *Manni*) should be **exercised to the Public Registers / Repertories only, if and if only the purpose of re-use of this “personal / business” data is fully compatible with the initial purpose of processing by the public bodies providing these PSI**, ie the information of third parties / trade counterparts. Which is typically the case of BIP when providing credit management services as well as their customers, exclusively businesses.

As a matter of fact, it is essential for this kind of information to access the same data from the Public Registers / Repertories or from re-users like Business Information Providers. The legal value of the information is not the same as, for example, a certificate of incorporation, but the data is correct.

The WG29 opinion 06/2013 on open data and public sector information ('PSI') reuse ([http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp207\\_en.pdf](http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp207_en.pdf)) had already well identified these sticking points on purpose limitation and commercial vs non- commercial purposes in PSI reuse. (cf points 7.6 and 7.7),

in particular by stating that “ *Experience with open data initiatives has shown that re-use of PSI may also significantly contribute to enhancing transparency and accountability and may also lead to better use of public services. The distinction between re-use for commercial or non-commercial purposes should not be decisive when considering the compatibility of further use of personal data.* ”

*What needs to be carefully assessed is whether the purposes and the way in which data are further processed are compatible with the initial purposes under the criteria mentioned in Section 7.6.*

*In the case of PSI reuse this will inevitably lead to the consideration of a range of processing scenarios rather than just one.”*

Furthermore, in opinion 05/2018 on the PSI recast, the European Data Protection Supervisor stresses the need to put in place the following ‘key principles’, that according to the Commission should be respected in the context of data re-use, namely:

- Minimised data lock-in and ensure undistorted competition;
- Transparency and societal participation on the purpose of the reuse vis-à-vis the citizens/data subjects as well as **transparency and clear purpose definition between the licensor and the licensees;**
- Data protection impact assessment and appropriate data protection safeguards for reuse (according to a ‘do no harm’ -under the data protection viewpoint)

According to the concrete examples provided here above, it looks like it may be necessary to consider the purpose of re-use when PSI include personal data. If not, some purposes of re-use may be de facto not considered.

A better and deeper dialogue between public bodies and re-users should be encouraged on that topic too in order to develop solutions together.

Comparable categories of re-use (cf the recital 41 and article 11 of the draft directive) may then also include comparable categories of re-use purposes.

As you may have noticed, information on businesses (sole entrepreneurs and companies) are impacted by different regulations and directives, initiated by different DGs (especially DJ Justice, DG Growth, DG FISMA, DG Connect). As Business Information Providers, we have an outside view of the (non)-interaction, not to say contradictions, between all these legal requirements.

Therefore, FEBIS does encourage a **deeper and more transversal analysis** of their respective impacts, to which we are of course ready to contribute.

Annex: list of data items that should be included in the High Value Datasets for Business Information re-use purposes

<b>DATASET FOR BUSINESS INFORMATION RE-USE PURPOSES</b>	<b>COMMENTS</b>
<b>COMPANY BASIC DATA</b>	Company basic data has to be available on economic agents with activity. Companies, cooperatives, sole entrepreneurs, associations, public bodies and non-registered businesses
Company name	
Company ID number (local, VAT and LEI)	Only VAT number information , not VAT transactions
Company address, telephone	
Date of creation + date of incorporation	
Current number of employees	
Company status active /not active	
<b>COMPANY ACTIVITY</b>	
Sector/subsector of economic activity	
Activity code	
Subsidiaries/Branches home	
Branch abroad	
<b>LEGAL STRUCTURE</b>	
Legal form	
Capital	
Shareholders and subsidiaries	
Ultimate beneficial owner	
Publication in Official gazette (legal announcements)	
<b>EXECUTIVES</b>	
Board members	
Directors	
<b>PUBLIC RECORD FILING</b>	
Outstanding payments from government (taxes) and social securities / preferential claims	
Legal proceedings	
<b>ANNUAL ACCOUNTS</b>	Annual accounts filed to Business registers should be available to the public as PSI and, when including personal data, could be re-usable on the basis of the purpose of re-use (if required), and, if necessary, should be provided for a reasonable price based on the marginal costs. Registers have to run properly their

	services and they may need a sufficient source of revenue to provide high quality PSI.
<b>Articles of association and other company filings</b>	All corporate acts filed to Business registers should be available to the public as PSI and, when including personal data, could be re-usable on the basis of the purpose of re-use (if required), and, if necessary, should be provided for a reasonable price based on the marginal costs. Registers have to run properly their services and they may need a sufficient source of revenue to provide high quality PSI.
Balance sheet data	
Profit & Loss data	
Number of employees	
off-BS liabilities	All businesses must register with the Tax Authorities and prepare financial accounts for taxation purposes, when only part of them must file their annual accounts to the Business Register. Access and re-use such data for feeding scoring calculation algorithms, and of course not for displaying data “in clear”, would enable to go on improving credit assessments.
off-BS assets (mortgage / warranties etc.)	
Consolidated disclosure of group accounts (instead of the parent, subs only)	
Approved/audited annual accounts	
<b>IMPORT/EXPORT ACTIVITY</b>	
Subsidiaries/Branches abroad	
Information on import/export (financial, geographical)	