



January 2019 EU affairs newsletter

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Public Sector Information

PSI: trilogue deal concluded on 22 January

The Commission, Council and European Parliament have struck a deal on the review of the PSI directive at the end of January 2019, thus expanding the data from Public Sector Bodies which are included in the directive's scope.

The compromise agreed upon concentrates on 3 majors elements :

- Increasing the scope of application of the PSI directive
- Putting in place a list of High Value Datasets
- Promoting the availability of PSI through APIs

The deal expands the scope of application of the directive to public sector information held by public enterprises, which are those on which the public sector has a « dominant influence ». But documents from public sector bodies for whom the production does not come from services of general interest are out of the scope.

Member States will have the possibility to enlarge the scope to encompass data from private enterprises, but this is not mandatory, as a recital states that MS can decide to apply the directive to private enterprises, especially those who offer services of general interest.

The scope is extended to PSI in transport, water, energy and postal services sectors but after insistence from the Parliament, there is an exemption for activities submitted to strong competition from the private bodies;

The review of the directive also puts in place a list of High-Value Datasets defined as data which have a strong commercial potential and can accelerate the emergence of a great variety of value-added products and services. The annex will list the 6 categories of High-Value Datasets (geospatial data, environment, meteorological data, statistical data, company and company ownership data and mobility data). The precise datasets associated with each category will be determined by an Implementing Act _ which allows a true debate with Member States who can then oppose some of the propositions of the Commission.

On charging, the general principle is that PSI data shall be available free of charge, but there are some exemptions where marginal cost for reproduction can be charged:

- for public sector bodies which have to generate revenues to cover their public service missions
- for libraries, museums and archives



- for public undertaking who will be able to charge a « reasonable return on investment”.

The reuse of High Value Datasets will be totally free of charge, except when these data come from public undertaking and when free data would cause a “competition distortion” between the public undertaking and its private competitors. Precise cases will be determined also by implementing acts.

HDVs from libraries, museums and archives won’t have to be made available free of charge and there is a 2-year transition period to enable public sector bodies to adapt their revenue models if free data would substantially impact their functioning budget.

The review also insists on making data available through APIs to enable a rapid development of mobility applications. Given the deal struck in trilogue s, dynamic datasets must be made available for re-use through APIs in real time – as soon as they are collected- and if possible, in downloading mode Same thing would apply for high value datasets.

The review also forbids exclusivity agreements for public sector bodies and public undertakings. If exclusivity agreements are needed for services of general interest, there should be a review clause every 3 years and when they are concluded after the entry into force of the revised directive, such exclusivity agreements must be publicly disclosed at least 2 months before their entry into force. The same thing applies to agreements which are not exclusivity agreements, but which reduce the data availability. Existing exclusivity agreements cannot be reconducted or have to cease before July 2043 and for public undertakings maximum 30 years after the entry into force of the directive.

Consumer Credit

EU Consultation on the review of the consumer credit directive

Following the Green Paper on financial services, the European Commission is now consulting on the review of the Consumer Credit Directive. The consultation runs until 8th April 2019 and aims at assessing the effectiveness, efficiency, coherence, relevance and EU added value of the Consumer Credit Directive. It will focus on progress made to date, costs and benefits in relation to different stakeholders and whether original objectives and tools of the Directive correspond to current needs. It will also monitor how the Directive works together with other pieces of legislation and whether the EU intervention has delivered additional added value.



For more information and to contribute to the consultation you can go [here](#).

Late payments

European Parliament adopts the Comi report in plenary

The European Parliament approved on 18/01/2019 a report on the implementation of the Directive 2011/7/EU on combating late payment in commercial transactions. MEPs stress the importance of deadlines for payment periods, the need for stricter controls, as well as of mandatory forms of adequate compensation for companies owed money by public authorities so that they are not forced to go bankrupt because of it.

“Late payments cause one in four bankruptcies in the EU. This harmful practice has a negative effect on the development of European companies, in particular SMEs”, said Internal Market Committee rapporteur Lara Comi (EPP, IT).

The report, approved in plenary by 570 votes to 23, with 26 abstentions, calls for a proper implementation of the 2011 directive in all its parts and proposes a combination of legal and voluntary measures to improve the payment behaviour in the EU.

Efforts should be made to move towards 30-day payment deadlines, MEPs say, adding that deadlines going beyond 60 days, as allowed by the current directive, “is a loophole that can enable the agreement of lengthy terms that could be damaging for companies themselves, especially for SMEs”.

Although in some cases longer payment deadlines can meet the needs of businesses, depending on the specificities of each sector, a level playing field between enterprises in dominant positions and small operators should always be ensured, MEPs say.

“Name and fame” for good payment behaviour

Parliament encourages the member states to consider the setting up of mandatory systems providing information on good payment behaviour (“name and fame”) and foster a culture of prompt payment in business relations. The European Commission should carry out a study on existing national systems of “name and fame” of both businesses and public authorities and explore the feasibility of establishing common criteria for these systems at EU level, it adds.

“Paying on time has been demonstrated to be a smart business strategy as responsible payers can negotiate better deals and rely on trustworthy suppliers”, states the report.



- **Support for SMEs**

MEPs urge member states' authorities to step up their efforts in providing further training for SMEs in credit management and to give due consideration to the possibility to publicly fund independent ombudsmen responsible for investigating late payment and non-payment disputes and assisting small businesses in resolving them. Free and confidential mediation services, as an alternative to court proceedings, should also be set up.

The value of administrative sanctions and their cumulative nature could deter companies from paying late, Parliament says, underlining that this regime should be applied progressively depending on the company's level of compliance.

- **Public authorities should set an example**

MEPs call on EU member states and the Commission to take the necessary steps to ensure that public authorities pay their suppliers on time and that creditors receive the automatic payment of statutory interest on late payments and compensation when payments are late without the need for overdue proceedings. They also ask the Commission to propose automatic interest computation.

"Companies' tax, fiscal and social security debts should be offset against any outstanding amounts owed by the public authorities", they say, urging member states to "set up guarantee funds for SMEs that guarantee the bank debts of SMEs that are owed outstanding amounts by the public authorities".

The report also calls for the consideration of enhanced synergies between the Late Payment Directive and public procurement rules, in particular the possibility for contracting authorities to take action to enable exclusion of non-performing contractors from future procurements if subcontractors are not paid in time by the main contractor when it is required to do so.

Digital contracts

EP and Council agree on new rules for contracts for the sales of goods and digital content

The "digital content directive" concerns business-to-consumer (B2C) contracts for the supply of digital content and covers: data produced and supplied in digital form (e.g. music, online video, etc.), services allowing for the creation, processing or storage of data in digital form (e.g. cloud storage), services allowing for the sharing of data (e.g. Facebook, YouTube, etc.) and any durable medium used exclusively



as a carrier of digital content (e.g. DVDs). 'Over the top' interpersonal communication services (OTTs), bundle contracts and the processing of personal data are included within the scope of the DCD directive.

The Council and Parliament negotiators agreed on 29th January on a package comprising a directive on contracts for the supply of digital content and services (Digital content directive - DCD), and a directive on contracts the sales of goods (Sales of goods directive - SGD). This provisional political agreement will now have to be confirmed by the two institutions.

The directives lay down common rules on certain requirements concerning sales contracts concluded between the seller and the consumer. The objective is to provide a high level of protection and legal certainty to European consumers, in particular when buying across-borders as well as to make it easier for businesses, especially SMEs, to sell EU-wide.

- **Main elements of the compromise**

The overall compromise includes a number of technical modifications and alignments to ensure provisions in both directives are as close as possible and provide a coherent and clear legal framework for consumers and sellers.

Both directives are based on the principle of **maximum harmonisation**, which means member states cannot deviate from the requirements. However, on some aspects, some room is foreseen for EU countries to go beyond the requirements in order in particular to maintain the level of consumer protection already applied at national level.

In the digital content directive (DCD), the main elements of compromise are:

- **remedies for lack of supply and non-conformity:** the compromise foresees that suppliers should be allowed a "second chance" in case of lack of supply before the contract can be terminated.
- **time limits for the supplier's liability:** to take into account the differences at national level, the compromise text does not fully harmonise prescription or guarantee periods, but states that the liability of the supplier for cases of lack of conformity may not be shorter than two years.
- **right to terminate long-term contracts:** institutions agreed to remove this question from the scope of the directive.

In the sale of goods directive (SGD), some of the elements of the compromise text are:

- **scope of the directive:** both institutions agreed that products with a digital element (e.g. smart fridges) would be regulated only through the sales of goods directive.
- **Rules on the obligation to update digital content embedded in goods:** the provisions have been substantially redrafted to bring them closer to those in the digital content directive. The final compromise foresees an obligation for the seller to supply updates during a period of time the



consumer may reasonably expect depending of the type and purpose of the products. In some cases, a fixed time period may be foreseen.

- **Rules on non conformity** remains largely as in the Council's position. They include flexibility for member states to introduce an obligation for the consumer to notify within two months a lack of conformity to the seller.
- **Rules on time limits for guarantee periods and on the burden of proof** remain as foreseen in the Council's position.
- **Durability guarantee:** the compromise include provisions on additional durability guarantees for consumers, besides the legal guarantee which remains compulsory for 2 years.

Once the provisional agreement is confirmed by the two institutions (for the Council, this will be for EU permanent representatives at Coreper), the text will be revised by lawyer linguists before being formally adopted, most likely before the end of the Parliament term.



About FEBIS– Federation of Business Information Services

Benefiting from the opening of markets within Europe and overseas, world-wide business has experienced substantial growth. As business grows so does the demand for business information, in particular, intelligence for cross-border business activities.

In 1973, leading European credit information agencies joined forces to form the Federation of Business Information Services FEBIS (initially known as FECRO), with its registered office in Frankfurt. Today, FEBIS has developed into a sizable organization comprising more than 100 members from all over the world involved in providing Business Information and credit information services of national and International importance.

As the industry association, FEBIS strives to look after common interests of its members. While monitoring new legislation like data protection laws and insolvency laws, FEBIS also oversees and the application of public sources and information.