

Comments on Green Paper COM(1998) 585

Public Sector Information : A Key Resource for Europe

The Belgian Ministry of Economic Affairs

The Ministry of Economic Affairs (MEA) would like to give some comments on the Green Paper COM (1998) 585 for two reasons, on the one hand because the Ministry is an important actor in Belgium's economy, and on the other hand because it wants to position itself in the information society.

General Comments

The MEA welcomes the initiative to issue this green paper, because the information supplied by the public sector is a breeding ground on which companies and content firms should draw more intensively, as it is a source of competitiveness to the former and a potential of growth to the latter. Any European initiative to improve the access to public sector information and the dissemination of that information should therefore be supported.

The MEA considers that free access to information is indispensable if dissemination of information comes within the duties of the public sector, and that free access to information can be contemplated if the information is of general interest. In other cases a "marginal" price should be charged, i.e. a price exclusively based on what has been spent to make the information available. If this price is too high it can be reduced to a "reasonable" price to enable everyone to have access to the information.

A partnership between the public sector and the private sector seems a promising method for the dissemination of more specific information of economic interest. The main obstacles to this partnership should therefore first be identified and then removed. Furthermore, the roles of the actors involved - the public sector and the private sector - ought to be clearly defined and circumscribed in order to maintain general access to information.

Finally, the MEA fully agrees with a more intensive use of information and communication technologies (ITC), and recognises that it is essential to invest in infrastructures that make electronic networks accessible to all. However, some portions of the population are reluctant to use ITC and/or do not have the necessary tools or knowledge to do so.

This situation is likely to last for several years and has to be taken into account in order to maintain equal access for everyone to public sector information. For this reason the MEA advocates the use of both "paper" and "electronic" versions as well as physical and digital counters.

Specific Comments on the Questions

Q1

The definition of public sector based on a functional approach seems the most adequate as it comprises the activities of general interest exercised by the public authority and the services of general interest transferred to private bodies. This includes the collective needs satisfied by the public sector. However, an institutional approach should not be excluded, as it is a better way to identify bodies that have a public sector character.

The most appropriate type of information to be disseminated is the one that is relevant for a general public (§ 75) and the one that can be divided according to its economic value (§ 76). The other concepts suggested by the Commission (§ 73 and § 74) are useful indeed but not relevant for a dissemination and pricing policy.

Another way to classify public information is to draw a line between three types of information : information that is subject to a dissemination obligation, information that is subject to a dissemination ban and the remaining types of information.

1. Some information is subject to a dissemination obligation pursuant to a legal provision or a regulation or in accordance with a re-examined or «essential» public service mission. The dissemination of this information is regarded as fundamental, as it is an extension of the public service mission or as it meets the citizens' basic interests.
2. Some other information is subject to a dissemination ban pursuant to legal provisions - e.g. the Private Life Protection Act or the Belgian act on the public nature of administrative files in which a number of restrictions on dissemination are listed.
3. The remaining types of information are not subject to any obligation or ban and should be largely disseminated as they are frequently requested in the context of the exercise of the right of access.

Q2

Obviously, the existence of different conditions for access create barriers at European level. The most important problems are the diversity of interpretations placed on the standards of exemption to the right of access, the standards themselves and the variety of deadlines set to respond to an access request.

Harmonising the standards of exemption could be a possible solution. It would be useful to link this with a harmonised procedure of appeal in case of refusal. A generalised appointment of "ombudsmen" would also be a way of settling most of the refusals. Finally, another solution would be to set the same deadline to respond to an access request in all countries of the EU.

At European level consultation has to be organised between the departments and authorities in charge of controlling whether the rights of access have been honoured, in order to harmonise the policies with the proposal for a directive on certain aspects of electronic commerce. The setting-up of contact offices in every country would provide easier access to information.

Q3

The establishment of European meta-data could indeed help citizens and businesses in finding their way. After all, the requester expects to be correctly informed or, at least, to be guided directly to the right spokesperson. Moreover, due to the large number of interesting but not connected databases, many resources remain unexploited. It is therefore of the utmost importance that public authorities have easy and rapid access to "information on the information" and that all national and supranational initiatives to link these databases be supported, in order that a maximum of information becomes available to companies and consumers.

A user-friendly European Internet site could be developed. Such a site could be made up according to various themes with hyperlinks to national sites. At national level each site dealing with a specific theme could have hyperlinks to similar sites in all other member states. Another interesting tool could consist in search methods using key words or indexes. Still another tool could be the dissemination of leaflets mentioning national contact offices.

A final possibility could be the development of a system of simple, multilingual, standardised files with decentralised management (each producer of information being responsible for his own file). Such a system would have a limited number of fields to describe the available information source. It could be developed on the pattern of already existing and efficient standards.

Q4

Pricing is a very important issue indeed, but it is also quite intricate. Pricing varies from one European country to another, which can be explained by economic reasons (range of the market), cultural reasons (higher pricing e.g. because of the existence of two languages in Belgium) or other reasons. Needless to recall that a public service has no profit-making purpose.

The MEA considers that free access to information is indispensable if dissemination of information comes within the duties of the public sector, and that it can be contemplated if the information is of general interest. If some information is "essential" to the democratic exercise of the citizen's rights, it has to be made available free of charge. In the other cases the price has to be based on a "marginal" cost price. If this price is too high or prohibitive, it can be reduced to a "reasonable" or "affordable" price to enable everyone to have access to the information.

If public services intend to develop new services to meet specific needs of the market, they could sell the information at market prices in conformity with the rules of competition or, if those services prove more successful, disseminate the information in partnership with an economic actor, i.e. without any cross-subsidising.

Finally, it should be emphasised that the dissemination of information becomes much cheaper with new technologies and the Internet make than with traditional carriers. Consequently, the mass of information disseminated by public services is likely to increase as it will become available on the web.

Q5

If dissemination of information comes within the duties of the public sector, the public sector shall not be subject to the rules on competition (Art. 90 of the Treaty of Rome).

On the contrary, if dissemination of information does clearly not come within the duties of the public sector, the public sector shall be subject to the provisions on competition and find itself in a similar situation to the one of private companies on the market : the price of dissemination will then be fixed according to the market price. If

this price is clearly lower, the private sector will then have the right to claim that the rules on competition have not been respected.

Divergent application of the competition rules in different member states may create market distortions.

Q6

As a rule, official information is not protected by copyright. There is however a slight difference as to the protection of databases. The public sector can legitimately have copyright for certain types of information to which an intellectual or documentary value has been added.

There are two restrictions to that right. Holding the copyright does not imply that the public sector is free to choose whether the information can be disseminated. Copyright does not preclude that information can be obtained at a reasonable price, even if the requester intends to draw commercial profit from it.

If the States do not abide by these principles, this might create barriers to the exploitation of certain types of information.

Q7

Yes, this is a very important issue, which deserves full attention since the overwhelming emergence of networks accessible in electronic format. Privacy is therefore one of the major challenges in connection with the development of the information society.

The MEA considers that directive 95/46/EC must be observed in cases of personal data held by the public sector.

Partly personal data can be made available for the public in two ways. The first method is to aggregate the provided information (examples, statistical data) in order that it is not possible to go back to the source. The second method is to "anonymize" the information, i.e. removing personal information (e.g. suppressing the names of plaintiffs). It has to be stressed that these two methods (and especially the second one) require many technical and human resources).

Q8

The different member states' liability regimes have to be as clear as possible. In view of the difficulty of establishing which national law applies in cases involving several countries, a coordinated European approach to this issue is required.

Q9

The policies pursued by the EU institutions seem adequate since they suggest various themes of the Union's policy. It would be useful to introduce such improvements as hyperlinks, a consistent integration of existing networks, as well as the possibility of reading the information in more languages.

A flexible development of the gateways would enable a state to surf on similar sites in other states.

It would be appropriate to set up a European body with a view to coordinating the different member states' practices.

Q10

It seems to us that priority attention should be given to a clear and harmonised legislation on the conditions for access and to identical respond deadlines for all.

Initiatives to increase public awareness as well as educational and training actions would also be welcome.

A partnership between the public sector and the private sector also seems appropriate to disseminate more specific information of economic interest. It would therefore be necessary first to identify and then to remove the main obstacles to such a partnership, but also to see to it that such actions do not lead to private monopolies or weaken the rules the State has to apply.

It could be useful to organise consultation and discussion between the social and economic actors in order to agree on the information to be disseminated, the public that will have access to it and the most adequate carriers.

Priority has to be given to the exchange of information between the different states. Each Internet site in one state has to give direct access to similar Internet sites in other states.

Each state has to possess tools to identify the available information rapidly and in a structured way and to communicate it to any market operator in such a way that he can draw commercial profit from it.

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