ESF Exploratory Workshop on

Articulate | Accentuate
Understanding the Emergent Regulatory Framework Governing Public Sector Data

Amsterdam (The Netherlands), 7-9 November 2012

Convened by:

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Executive Summary

Information is the currency of democracy, or so it is said. Emanating from different sources and informed by an array of policy objectives, the law on public information is mushrooming and rapidly becoming more complex. So is the potential for inconsistencies and conflicting norms. The aim of the workshop was to bring together legal scholars from different disciplines to debate the contours of this new "field" of research, and explore which (legal) theories and methodologies can lead to a better understanding of the myriad of legal issues implicated in access, dissemination and use of public sector data and the way they relate.

To this end a one and a half day workshop was held at the Law Faculty of the University of Amsterdam, organized by its Institute for Information Law (IViR) in collaboration with the Interdisciplinary Centre for Law and ICT (Leuven) and the Centre for Intellectual Property and Information Law (Cambridge).

In attendance were 18 scholars from 10 European countries. The participants were a mix of senior and junior researchers, some of whom were newly introduced, while others where already familiar with each other's work (or even having worked together on public sector data). It proved a fruitful mix for sharing knowledge and experiences. The rich debate provoked by the presentations showed how important the topic becomes.

A discussion paper distributed beforehand highlighted the key issues of the workshop: the sources of regulation of public sector information /data (PSI), the sources of tension and the role of legal scholarship in contributing to a more coherent body of law. In response to the paper, two methodological approaches were proposed in an attempt to better understand how to apprehend the complexity of PSI and assess its practical implications. One consisting of an information-functional approach, the other an empirical methodology based on the impact of new technologies on public management. Illustrations of existing tensions stemming from competing norms regulating the production and use of public sector information were extensively discussed (notably in key areas: freedom of information, intellectual property, competition law and data protection).

Participants shared information on on-going research relevant to the domain of public sector data, plans for future research and possibilities for cooperation. We also discussed various grant programmes which would allow us to take cooperation forward. In conclusion it was decided to focus on the possibility of gathering research groups under an ESF-COST scheme. The conveners Van Eechoud and Janssen will take the lead.

1   Scientific content of the event

The law governing public information production and use is mushrooming and rapidly becoming more complex. So is the potential for inconsistencies and conflicting norms. These dangers are real, as the rules originate from a plethora of authorities that have different regulatory competences, are geographically distinct and institutionally diverse. The aim of the workshop was to debate in three sessions, over one and a half days, legal theories and methodology to better understand the various legal issues linked to access, dissemination and use of public sector data and the way they relate with each other. A discussion paper prepared by the two organizers was sent beforehand to the participants in order to prepare the discussions. The paper highlighted key disciplines involved (intellectual property, competition, freedom of information and data protection), raised specific issues and suggested possible approaches.

1.1   Contours of a field?

The morning session of DAY ONE, **chaired** by *Katleen Janssen*, was dedicated to the contours of public sector information/data regulation (PSI) as a developing field of research. The session was divided into two general presentations of the topic by the convenors followed by two presentations of distinct methodologies.

In her presentation, the "*Emergent Framework: Challenges for Legal Science*", *Mireille van Eechoud* (Amsterdam) stressed that the study of law within the academy has always been closely connected with legal practice. There is little overt attention for methodologies, other than work on the sources of law. Methods of interpretation have a long history, also as regards principles for dealing with conflicts between norms. Within academia the division of law in sub disciplines is still dominant which makes it easy to disregard conflicting norms between disciplines (e.g. private, public, international, criminal).

The research programme of the Institute for Information Law is always centred on the idea of crossing traditional divides by taking the production, dissemination and use of information as the object of study. This approach can work for public sector data regulation. But a challenge is that the concept of PSI is so dynamic (it changes with time and place) and relates to such a broad array of activities. The notion depends on the perception of what a public sector body is and to what extent the production/collection of certain data is part of its public task. A number of information types are consistently regarded as PSI, such as texts produced by courts and lawgiving bodies (decisions, acts). For other types this is much less obvious, especially in areas where there is growing private sector production (e.g. geographical data, financial data, and medical data). If we try to think of a visual to represent the existing information relationships, we could think of a network of public sector bodies (and private?) with central and peripheral nodes and the density of relations expressed in terms of information exchange. Or maybe the norms regulating PSI are better thought of as a fabric, in which uneven patches are normal. Or as a web, although a spider's web would be a misleading image because it is ordered and concentric (unless spider is on cocaine).

The current PSI Directive (Directive 2003/98/EC on the re-use of public sector information), despite its drafters' ambition to make it a central piece of legislation, is not of much use when trying to map the PSI landscape and the way legal norms shape it. It only focuses on the practical and legal conditions of re-use. The Directive does not contain any obligation to access information or any obligation for Member States to allow re-use.

There are many basic questions that still need answering. We do not know the expanse of the field/network, nor the strength of connections in terms of information relationships (i.e. in what way

is regulating one aspect of information relationships likely to affect others?) One thing that needs critical evaluation is also: how does our recent tendency to take the PSI Directive as a starting point affect the way we analyse and evaluate the wider framework?

The body of law that directly regulates or impacts the access, dissemination and use of public sector data is growing at a fast rate and rapidly becoming more complex. ***Katleen Janssen*** chose to illustrate in her talk "***the Role of Law in Data and Information Infrastructures***" how the isolated approach to rulemaking in some recent fields has caused problems. The INSPIRE Directive (Directive 2007/2/EC) c.a. on the establishment of an EU spatial data infrastructure is a good example. It is a body of law that addresses information management within the public sector to enable data exchange of (very broadly defined) spatial data. It creates obligations to manage and exchange spatial information in certain ways, but shows that no awareness existed of other (generic) legal instruments affecting access and management of spatial data. This will likely cause problems when Courts had to decide cases on geospatial issues.

The lack of knowledge about the existence of public sector information rules and the lack of consideration for the interactions between the PSI Directive, Access to environmental information directive and other areas led to disputable rulings: in the Landmark case (on database rights in environmental data), the Kompass Verlag case (concerning the concept of undertaking applied to holders of public sector data) and the Central Registry Address Database (concerning control over postal codes). The law in many fields covering public sector data is in transition. It is crucial to first understand the interaction between them and the practical implications to be able to create a coherent framework.

1.1.1 Methods and approaches

After having framed the general issues of the discussion, the convenors gave the floor to ***Herbert Burkert*** (St Gallen) to present some "***Methodological Issues***". His purpose was not to focus on public sector information but to present a generic model, also applicable to public sector information. The predominant traditional methodological approach in law is reductionism: one breaks down a problem into smaller units and interprets these using grammatical, historical, systematic or teleological forms of reasoning. But this proves not to be sufficient. To supplement the traditional legal methodologies, Herbert Burkert proposed an information-functional approach in five steps and based on information flows. In a first step, the problem is reformulated as an information flow issue. The second step leads to a historical analysis of the issue and permits to reconstruct historical changes in information perception. The third step analyses the issue with legal tools. The fourth step is a functionality analysis, which permits to analyse and assess the difference between desired and realized flow effects. The last step is the normative (re)-assessment i.e. the legal issue is re-assessed and analysed against higher ranking legal values (such as the Constitution).

Herbert Burkert showed then how the five-step approach could apply to public sector information. First of all, he reframed the issue as a legal policy objective, which is to improve flow of government information within society. Then he looked at the interrelations (nodes and links) and suggested a direction for historical analysis to retrace the development of the database industry in Europe. In five different phases, he explained how the relationships between the different players involved (database industries, Members States, European Union and later NGOs) led to the ultimate adoption of the PSI Directive and the Database Directive.

The legal analysis permits to identify four basic issues linked to public sector information: copyright, competition, privacy and freedom of information (access to information). The functionality analysis reveals how these issues have interacted with public sector information. Copyright is the first element to restrict information flow; privacy is also another way to restrict information flow.

Competition law on the other hand is indifferent to information flow in the sense that it neither encourages nor discourages it. Finally freedom of information should be seen as a factor to encourage information flow. The analysis allows the transcription of the results in a matrix (combining general and public sector information issues).

From the results, critical links can be identified and translated into two types of strategic goals for legal policies. The first goal focuses on a (legal) "discipline" oriented approach and resolving or adjusting tensions identified. For example to address the issue of government copyright, the solution would be to amend copyright laws. The second goal is "object" oriented. It would take into account desired information flows with respect to specific data such as statistic data, weather data, drivers' licence data, etc. The solution would lead to the adoption of the public sector directive or to the adoption of public register laws. As a conclusion, the normative re-assessment result into re-assessing public sector information in the context of national constitutional law and higher raking international law. The model has already been tested twice (for a project on public sector information television and archives and for the analysis of the Swiss law relating to genetic research for non-human).

Albert Meijer (Utrecht) presented a second approach under the title "*New Technologies, New Challenges*". Meijer brought a public governance perspective to the discussion. A conscious choice had been made to bring together mainly legal academics, as experience in the EC's thematic network on Legal Aspects of Public Sector Information had showed the conveners that among legal scholars from different disciplines alone there were many bridges to cross. However, the conveners also recognized the value of looking beyond law. Meijer and colleagues study how how various social transformations impact on democratic and accountable governance in the public sector. His presentation opened the discussions to public management and new technology issues.

Meijer first pointed out that in public management research, 'methodologies' refer to the types of data collection and analysis esp. in empirical studies (so a narrower concept than that put forward in the discussion paper). Building on work my Castells, he then analysed the technological dynamics described in the discussion paper and focused on three key dynamics that affect public information management. The first one relates to the individual's production of information ("individualization") as opposed to the production and management of information by collectives/organizations. Collective production traditionally is characterised by top down implementation of information management and IT (hierarchy), whereas the individual production is characterized by a bottom-up implementation (from individuals to colleagues). New technologies challenge notion of ownership of data as well as possibilities to control data and the allocation of responsibility for data. The issue of control is illustrated by the second technological dynamic: the rise of inter-organizational IT management ("networking"), where a number of organizations collaborate, sharing control and responsibility over information systems. This form is on the rise, but does not necessarily displace organizational and open IT (in the latter case, no one has real control over all data).

The third dynamic shows the effect of new technologies on the nature of public sector information management: new technologies cause continuous change in working methods, data management, etc. Technology is needed to access data across changing systems. This makes it important to codify for learning and change, e.g. through sunset laws. Media-neutral regulation appears to be problematic. New technologies may offer more options in terms of management but also lead to higher expectations of service (e.g., a citizen who submits a request via e-mail expects a quicker reply). Different technologies impacts what are considered good practice standards in different ways, e.g. in conservation and access. There may be pressure from prospective users to lower legal (procedural) standards so that IT systems can be more effective.

An additional development that affects public sector information management is the removal of territorial boundaries. They challenge the legal assumption that a public organization is tied to a legal

territory in which it has authority to act. Cloud computing provides a good example of the new type of issues. Another one concerns virtualization of social interaction and the way this may affect basic notions in law, e.g. about what a person is. We understand little of this. As a conclusion, Albert Meijer pleaded for a more dynamic framework through further experimentation. New practices cannot be codified without knowing how the codification will work.

1.1.2 Discussion

The presentations in the morning session set the stage for an hour's debate. Participants explored how information flow analysis would likely work for a number of legal issues surrounding access and re-use of public sector data, and what the implications for legal research may be if information management dynamics from a public governance perspective are taken into account. Topics tabled included interoperability (technical, legal) as a means to facilitate access, learning from unexpected results from early experiments; the importance of observing weak signals (i.e. softer indications of what can happen) to see what effects policies may produce; the (non)specificity of public sector information from a technological background, and a comparison between public and private sector information from a competition perspective.

Participants also shared their thoughts on the discussion paper and proposed expansion on some points. One such concerned the notion that public sector data can be viewed as a reservoir of information to be used for alternative purposes. This notion is not wholly accurate in the face of failures to preserve data (e.g. in case of destroyed archives).

More could also be said on the view referred to in the paper that the (commercial) reuse of data necessarily contributes to general welfare. On this specific issue, one participant stressed that the link between PSI and social welfare could indeed be explained thanks to the historical analysis presented by Herbert Burkert. In the late 1980's, most of the information used originated from US databases since there was not content market in Europe at that time. However, there were issues of quality of data as well as neutrality/integrity of data. The EC considered it necessary to stimulate the development of a European content market and looked to the US for inspiration. In the USA, most of the commercially traded information came from public sector. As a consequence, the EC looked to information held by public sector bodies in European Member States as a resource. There was the issue of opening up public sector information from European institutions as well (to ensure transparency) but originally policy was aimed at creating a European information market, i.e. an economic market. This explains why welfare was invoked but also why the role of price as an efficiency mechanism was not disputed.

1.2 Principles and Approaches in Key Disciplines

The afternoon session of DAY ONE, chaired by *Lionel Bently* (Cambridge), was dedicated to the "*Principles and Approaches in Key Disciplines*". The shared premise was that the growing body of norms impacting public information production and use leads to an increased risk of inconsistencies and conflicting norms. Some of the more obvious tensions between principles and theories underlying the different set of legal norms involve fundamental rights of communication, economic regulation (competition), data protection and intellectual property. These are the principal areas identified 20 years ago by the early 'PSI scholars' reporting to the European Commission on commercialization of public sector data (notably in the 1991 'Publaw' study by Burkert, Michael, Davio, De Terwanghe, Poullet). The purpose of the afternoon session was to get the views of specialists on the existing tensions between PSI and key disciplines and to better understand the methodological approach used in these areas.

1.2.1 Freedom of information

One area of tension is where fundamental rights discourse of a free flow of information meets instrumental legislation focused on innovation and economic growth. In her presentation, **Maeve McDonagh** (Cork) described the characteristics of "**Freedom of Information Research**" in Ireland, the UK and other Anglo-Saxon jurisdictions. She identified possible new directions freedom for information research when one takes into account the changing information law landscape. Freedom of information research is traditionally conducted by a broad range of scientists (such as political sciences, social sciences, legal scholars) and legal practitioners. NGOs contribute to monitoring access to information in specific sectors. There is some degree of cross-disciplinarily; however researchers from different disciplines do not really work jointly. Legal theory in freedom of information is a relatively new area of research.

Freedom of Information research takes a variety of forms. Broadly speaking most work follows one of four approaches: theoretical, doctrinal legal, comparative legal or operational (practical), that is research into the general operation of freedom of information in practice or of the operation of specific aspects. Monitoring access to specific laws as well as field tests are also used as research tools. The broader impact of freedom of information laws is also assessed to determine for example how the political process could change.

Maeve McDonagh stressed that the traditional research approaches could be supplemented by new directions, in particular to take into account the intersections between freedom of information and other aspects of the regulation of PSI. She proposed to investigate the implications of four developments on freedom of information: the effects of commodification of PSI (re-use issue), the application of freedom of information to private sector (issue of the changing shape of government and governance), the proactive publication under freedom of information (issue of open data policies) and the potential inadequacy of the freedom of information laws to the new technological environment (issue of technological developments).

1.2.2 Intellectual property

Another area of tension relates to intellectual property. Given that the key legal basis for legislative action by the EU lies in its role to ensure a functioning internal market, economic arguments dominate law making in the field of public sector data. In the field of intellectual property also, economic arguments dominate. To date, despite far-reaching harmonization of copyright and database rights, no special attention has been given to by the EU institutions to government information or data as protected subject matter.

In his talk on **Intellectual Property** (IP) *Marco Ricolfi* (Turin) reviewed the questions raised in the discussion paper, identified the tensions and presented his view on the connection between laws specifically aimed at PSI and intellectual property law, esp. copyright and database law. He found three potential areas of tensions. First of all, the values attributed to information differ between IP and PSI instruments: information generated by the public sector has several dimensions (not just economic but also political and a fundamental rights one) whereas in IP data are considered primarily as an economic resource. Second, the exclusive nature of IP entails a system of prior authorisation for in principle all uses. This exclusivity can be overridden in limited specific cases (copyright exemptions) and by the intervention ex post of competition law, but still IP is the antithesis of PSI regulations aimed at access, sharing and reuse. Finally, the techniques used in European Directives and Regulations to create links (or bridges) between IP and other branches of the law (including the Directive on the re-use of PSI) are not helpful to apprehend the issue.

Two approaches are traditionally considered to address the tensions arising from the exclusivity rationale of IP as set against the PSI as a public political, social and economic resource rationale that characterizes the PSI Directive. One is a reductionist approach; it would limit the scope of regulation like the PSI to the business oriented and economic aspects. The other us a "positivist" approach, which consists in accepting the conflicts in laws as they are, with a limited effect of the PSI Directive on the ability to reuse data held by public sector bodies as a result. However Marco Ricolfi considered that the topic could be addressed from a different perspective. He shared what he called his optimistic view on what legal scholars should take into account when they are analysing the relationship between IP and PSI. They should distinguish: IP rights held by third parties from IP rights held by public authorities. The first type of IP rights are arguably very restrictive for reuse of data but the way to make them more flexible should be researched. The second type of IP rights offer more possibilities, supported by Recital 22 of the PSI Directive (opening up government copyrighted works for re-use).

Marco Ricolfi suggested linking the discussions on IP and PSI with the results of the LAPSI group, albeit with a less positivistic approach and more critical reflection on norms. Focusing on an economic effect-based approach might be most promising. He concluded by remarking that although his approach might lead to greater dissemination of information and the facilitation of PSI re-use, a drawback was that it could increase costs for public sector bodies and therefore cause resistance.

1.2.3 Discussion

The two presentations were followed by a lively debate on the two themes. Concerning freedom of information, some interesting precisions were brought on the existing link between access to and use of information in freedom of information laws. The notion of 're-use' in the PSI Directive is very wide. If freedom of information laws do not explicitly specify the type of use that can be made, they implicitly refer to potential uses through the list of exceptions they contain. Also, the (re)use of information could be regarded as lawful in light of the many reasons for which access is allowed. For example, if a journalist requests access public sector information it would be a legitimate expectation that re-use of the information will take place (and is allowed). Some participants noted that the distinction between access and re-use is not really clear in freedom of information laws. They also considered that re-use is contained in the principle of transparency on which freedom of information laws are based. Whereas in the PSI Directive, the possibility of re-use is based on a more economic rationale, and not on transparency since (fundamental) rights of access are not within the scope of the PSI Directive (or the legislative competence of the EU).

The function of intellectual property in stimulating or hindering new uses of information held by public sector bodies also provoked much discussion, especially on the economic approach and pricing of PSI. Some competition scholars pleaded for a paying access to PSI as this would create an incentive for users to efficiently use the data. Fair price was deemed inefficient from a competition perspective. Price as a mechanism for efficiency requires that price discrimination is possible. Equally, without a downstream market with competition, a price-mechanism does not work. The question raised was also how to maximize the value of PSI, especially if governments have to support the costs of re-use.

It was also argued that the incentive rationale of copyright and database rights do not apply to public sector bodies, so the real question is if and what intellectual property rights should exist in PSI. The positive effects of placing public sector information in the public domain were also tabled. This approach followed by the United States for their federal government information has arguably led to the development of a content market much bigger than in Europe. The non-economic value of secondary uses of public sector information should not be overlooked. Some applications (such as Dutch traffic apps for cyclists) might have a low market value but may contribute to the social

welfare. The approach followed must also take into account the fact that the IP sector is changing and that digital goods are different from physical goods. Finally a brief discussion on the type of licences under which public sector information should be re-used (such as an open-type licence containing share-alike clause and avoiding non-commercial clause) completed the debate on the topic.

1.2.4 Competition law

The floor was given to Maria Teresia Maggiolino to present "***Antitrust Analysis: the Approach and some Basic Notions***". As preliminary remarks, she set the framework of anti-competition by characterizing the antitrust approach and the objectives of antitrust law. Competition law is consequentialist, in that it is triggered by the consequences of (economic) acts. The objective is to support the creation of a competitive market and the prevention of harms to its functioning. She explained the key notion of 'undertaking' (agent able to affect, via its behaviour, competition) to assess under which conditions public sector bodies could be considered undertakings subject to competition law. The crucial element is the purpose of PSI re-use. If public sector bodies re-use their own PSI (or a third-party's PSI) to offer well and services, they will be considered as undertakings. But if they use or license PSI to pursue a public task, they will not be considered as undertakings.

As an answer to the discussion paper, she analysed the Dutch postcode case relating to the re-use of authentic dataset of addresses and postal codes held in public registries. Whether the registries are publicly accessible or not is not directly relevant for the analysis. But the purpose for which the data would be used would determinate the status of the registries: any use for a purpose other than the performance of a public task would be crucial to qualify the registries as undertakings.

1.2.5 Data protection law

The last presentation of the day was on "***Reconciling the Re-Use of Public Sector Information with EU Data Protection Regulation***". ***Orla Lynskey*** (London) first outlined the relevant legal framework of her discussion (including the European and International instruments). She then turned to the similarities and differences between esp. the PSI directive and EU data protection law. To some extent they share the same goals, such as achieving better data management and empowering individuals to control their data. But there are more fundamental differences. Data protection is a human right in the EU legal order; whereas the principle of re-use is interest based. Further, the bodies of law start from different precepts: in data protection the legality of data processing is subject to the precautionary principle which limits the collection and use of personal data, whereas the PSI Directive is based on the idea of promoting the widest possible use of data.

Lynskey considered a number of potential conflicts and ambiguities associated with the data protection and reuse policies as they are currently pursued. These concern inter alia the extent to which data protection rules apply to public sector data and the effects of the broad interpretation that is given to the concept of 'personal data'. It is unclear what the legal consequences are of the increased possibilities to de-anonymise personal data through a recombination of anonymised data from different (public) sources. Another question is how (supply for) reuse must be viewed in light of the requirement of legitimate processing. Also issues of responsibility for and control over data quality surfaced. Orla Lynskey pointed to a few mechanisms that could help find (some) solutions to overcome the tensions. Article 52 (1) of the EU Charter could be invoked to limit the right to data protection in favour of effective reuse policy. Another possibility could be the instigation of a dialogue between the European Commission (as initiators of PSI regulation) and the European Data Protection Supervisor (EDPS). She pointed out that the EDPS had not been consulted on the

proposal of the European Commission to amend the PSI Directive despite the proposal's potential effect on personal data.

1.2.6   Discussion

Because of time constraints, the session ended by a short round of discussions. A recurrent theme concerned the need for and role of specialised regulators as mediators of conflicts and guardians of improved possibilities for reuse. The draft proposal amending the PSI Directive suggests that there is a need for an independent authority to help realize the economic potential of PSI as a resource. However, participants agreed it would not make sense to ask a PSI regulator to also apply competition rules or data protection rules in light of existing forms of supervision and dispute resolution. Divergent views were expressed on the desirability of a PSI 'regulator', what its role would be and whether if needed at all, it should necessarily be in a form prescribed by the EU or be left to the local level.

Where it concerns data protection in relation to access to public sector data, the limits to EU action were discussed. One reason why potential conflicts may not easily be resolved is that the EU is not competent to regulate freedom of information law with respect to data at member state level. Nor does it have competence to legislate on fundamental rights beyond what is in the treaties (e.g. on data protection). Yet coordination of policies seems desirable to prevent data protection arguments from unnecessarily restricting the access to public sector data for the development of information services.

DAY ONE ended with a quick-recap of the discussions and an exchange on themes that were felt to be of particular relevance to consider first in a discussion of public sector data regulation as a field. This includes ways to understand and accommodate the dynamic nature of PSI and of the technological changes relevant to its management, as well as revisiting the paradigm of technology-neutral regulation. A key theme would also be the reasons why and ways in which a useful distinction can be made between public and private sector as sources of data. Further, it would improve insight if the different principles and approaches in subareas of law would be mapped more extensively, e.g. as was illustrated for data protection (with a dominance of the precautionary principle) and competition (consequentialist/utilitarian approach with particular relevance as an ex-post instrument as opposed to ex ante regulation.

1.3   Round tables

DAY TWO consisted of a morning session divided into two round tables. The first one aimed at identifying the key findings of the previous discussion. With the second one we sought to explore possibilities for further cooperation.

In order to get a better idea of research already undertaken and planned, each participant explained what type of research relevant to public sector data/information regulation was conducted or in the pipeline at her/his group and what areas caught their imagination most. The work already undertaken spans many topics in or relevant to the field of regulation of public sector data, including the regulation of complex systems (e.g. internet governance), control over access to and removal of data (e.g. right to be forgotten, tax data), the role of governments in furthering access to publicly funded research and cultural heritage (e.g. open access, open science), changing perceptions of public versus private spheres, the impact of technology on public sector information management policy and practice (e.g. with respect to changing face of freedom of information laws, models for sustainable digital access to cultural resources), the role of intellectual property in public sector information infrastructures, ways of addressing barriers to the exchange and sharing of certain categories of data

(e.g. compatibility of licenses, interoperability in geographic data networks) and legal-historical research into access to information.

1.3.1 Round Table: Take up of 1st day key findings

Participants recognized that the legal disciplines highlighted on day 1 (freedom of information/transparency, intellectual property, data protection / privacy and competition law) were indeed of major importance, the first three certainly in terms of preconditions and barriers to enabling the wider dissemination of data held by public sector bodies. But there are more elements to a legal framework and knowing these and finding ways to understand relations between elements is important. Much interest was also expressed in linking more traditional legal research methods to empirical research on information management technologies, practices and attitudes in the public sector, in order to better understand potential effects of regulation (intended or not).

The presentation of the different projects and interests of research provided the opportunity to exchange views on a plethora of topics. A recurring basic theme was how and why the distinction between public sector information/data and private sector data is important to make. A connected question discussed was whether authenticity/reputation of the public sector as source is something that distinguished public sector data from private sector sources. Perceptions of data quality, value and liability also seemed relevant to explain current public sector practices, as are links between information management and information quality. Interoperability as a pre-condition for optimizing use of data resources was discussed as a topic for research, e.g. on the role of governments in fostering interoperability of platforms, software and data formats (e.g. through use of its position as major buyer). The shape of production of PSI in a future of sharing and exchange (also with businesses, civil society) is in a reciprocal relation with legal norms worth studying. Among other relevant topics tabled were confidentiality and cultures of secrecy as well as privacy by design (esp. big data developments).

1.3.2 Round Table: Taking research further

The second session of the morning was dedicated to research and funding opportunities. Participants shared information on national programmes (mostly those run by national research councils) and experiences with different types of EC funding (FP7, networks of excellence, thematic networks). The ESF representative professor Akile Gürsoy had already given a very insightful presentation on the ESF's role and funding programmes on the first day. The group was interested to hear more of the COST scheme, which the she now explained in more detail. Participants agreed that public sector information regulation could be considered a field, and that given the amount of basic work still to be done the COST scheme seems the ideal fit. The presentation of the COST requirements permitted to address several issues such as the level of commitments that participants could afford, the other domains (other than the legal field) to involve and the type of activities to include. As time was running short, it was agreed that Katleen Janssen and Mireille van Eechoud would on the basis of the workshop discussions and their knowledge of other interested research groups do some preparatory work and come back to the participants with ideas for a COST application.

2   Assessment of the outcome, contribution to the future direction of the field

The conveners are very pleased with the outcome of the workshop and look forward to elaborating the work already undertaken into a COST application. That the topic was well chosen is confirmed by the fact that all academics invited were eager to take part in the Exploratory Workshop and that especially the speakers took great pains in preparing. Unfortunately in the end five invitees could not attend, three because of diary conflicts having arisen, the other two because of last minute serious emergencies in the personal sphere.

As for the immediate future, Janssen and Van Eechoud will write an article for an international peer reviewed journal which will build on the discussions in the workshop. They have also taken the lead in preparing for a COST application.

Since the COST scheme does not fund research but only meetings, conferences or summer courses it will be vital to ensure it builds on ongoing and pipeline research and activities of the prospective partners, while at the same time making it a means to help direct at least some future research to basic research which will benefit all. Because much legal research is practice oriented and policy driven, a COST action can act as a multiplier for basic research on methodologies and models that is relevant across sub-disciplines and topics. Ideally a succesful COST action leads to subsequent structured cooperation on central issues, eg in a Network of Excellence under the next FP.

Any initiative will have to be designed in such a way as to reflect the strong dynamics in policy- and rulemaking affecting the public sector data domain. The conveners trust that their involvement in the EC Thematic Network LAPSI 2.0 will benefit a fruitful exchange with COST activities. LAPSI 2.0 focuses on a number of legal aspects of public sector information specifically from the perspective of EU reuse policy development. The network kicks-off early 2013, and ICRI is the coordinator (Katleen Janssen) while IVIR (Mireille van Eechoud) and several workshop participants are partners.

3   Final programme

Thursday, 8 November 2012

09.30   **Welcome by Convenors**
               Mireille van Eechoud (IViR, Amsterdam, the Netherlands) /
               Katleen Janssen (ICRI, Leuven, Belgium)

09.40-10.00   **Presentation of the European Science Foundation (ESF)**
               Professor Akile Gürsoy (Standing Committee for Social Sciences (SCSS))

10.00-10.10   **Introduction round**

Morning Session: Contours of a field? Chair: Katleen Janssen (ICRI, Leuven)

10.10-10.40   **The Emergent Framework: challenges for legal science**
               Mireille van Eechoud (University of Amsterdam, Institute for Information
               Law)

10.40-11.00   **Response**
               Herbert Burkert (University of St. Gallen Research Center for Information
               Law)

11.00-11.10   *Coffee/tea break*

11.10- 11.30   **Response**
               Albert Meijer (Utrecht University School of Governance)

11.30-12.30   **Discussion**

12.30-14.00   *Lunch (@Academische Club, adjacent to Law Faculty)*

Afternoon Session: Principles and Approaches in key disciplines (Chair: Lionel Bently (CIPIL,
               Cambridge)

14.00-14.15   **Freedom of information**
               Maeve McDonagh (University College Cork, Faculty of Law)

14.15-14.30   **Intellectual Property**
               Marco Ricolfi (University of Turin, Faculty of Law)

14.30-15.15   **Discussion**

15.15-15.30   *Coffee/tea break*

15.30-15.45   **Competition**
               Maria Teresia Maggiolino (Bocconi University, Milan)

15.45-16.00   **Data protection**
               Orla Lynskey (London School of Economics, University of Cambridge)

16.00-17.00	**Discussion**
17.00- 17.15	**Summing up of day's findings**
19.30	*Workshop Dinner (restaurant BIHP)*

Friday, 9 November 2012

Morning Session Chair: Mireille van Eechoud

09.30-11.00	**Round Table: Take up of 1st day key findings** Katleen Janssen/ Mireille van Eechoud kick-off semi-structured discussions. Questions to participants: what are the key findings? Can we identify and prioritize research questions and approaches, focussing on aspects of methodologies and legal theory?
11.00-11.15	*Coffee/tea break*
11.15- 12.30	**Round Table: Taking research further** Leading questions: what is the place of research on aspects of public sector data regulation in your programme? Can we identify which opportunities there are for cooperation? How do we take cooperation further?
12.30-13.00	*Farewell lunch (on location)*

4 Final list of participants

Convenor :
1. **Mireille van Eechoud,** Institute for Information Law (IViR), University of Amsterdam

Co-convenors :
2. **Katleen Janssen,** Interdisciplinary Centre for Law and ICT (ICRI), Katholieke Universiteit Leuven
3. **Lionel Bently,** Centre for Intellectual Property and Information Law (CIPIL), University of Cambridge

ESF Representative :
4. **Akile Gürsoy,** Yeditepe University, Istanbul

Participants :
5. **Herbert Burkert,** Research Center for Information Law, University of St. Gallen
6. **Cécile de Terwangne,** CRIDS, Bruxelles
7. **Simone van der Hof,** eLaw@Leiden, University of Leiden
8. **Catherine Jasserand,** Institute for Information Law (IViR), University of Amsterdam
9. **Orla Lynskey,** London School of Economics
10. **Mariateresa Maggiolino,** Angelo Sraffa Department of Legal Studies, Bocconi University
11. **Christopher Marsden,** Law School, University of Essex
12. **Maeve McDonagh**, University College Cork, Faculty of Law
13. **Albert Meijer,** Utrecht School of Governance, University of Utrecht
14. **Marco Ricolfi,** University of Turin Law School
15. **Indra Spiecker,** Karlsruher Institut fur Technologie
16. **Prodromos Tsiavos**, KTE, Hellenic National Research Council
17. **Hanns Ullrich**, Max Planck Institute for Intellectual Property and Competition Law (em.)
18. **Raquel Xalabarder,** Law and Political Science Department, Universidad Oberta de Catalunya

5   Statistical information on participants

Of the participants that had initially accepted, five were unable to attend (two due to emergencies of a personal nature on the day).

The data below are based on the actual participants (excluding ESF representative).

Number of actual participants	17
Gender	65% women, 35% men.
Geography	participants based in institutions from 8 European countries (nationality based spread wider)
Age	(as indicator of experience) 53% <45 yrs, 47% >45 yrs.