

## RECAST OF THE PSI DIRECTIVE<sup>1</sup>: THE RE-USE OF PUBLIC DATA MUST BE FAIR AND IN THE PUBLIC INTEREST

In a connected society, the re-use of public sector information is full of promises. Public transport operators, members of UTP, are fully aware of the need for and benefits of such a policy, to the advantage of public authorities and citizens alike.

**F**or several years now, public transport operators have been developing new services and applications to make public services more appealing and to promote the development of companies that specialise in new technologies. Nevertheless, the development of these tools is not virtuous in and of itself. It is therefore vital to determine the objectives pursued by this directive. Is it about improving the transparency of public authorities? About developing the potential for innovation and growth of companies, whether European or from third countries? Or about creating a European start-up ecosystem in digital technologies?

If these questions are not raised, there is an ever-present risk **that this re-use of public data will be beneficial to a restricted number of stakeholders only, particularly to the internet giants**, who are the only ones capable today of processing the quantity of information available and of benefiting from it. **It is therefore essential to set the right conditions for re-use of public sector information.** The re-use of this information must continue to serve the public interest. The licences, charging principles and formats imposed by the directive must enable undertakings that provide public transport services to maintain a high level of service quality at the best price, and to continue their work in favour of more inclusive, greener and less congested territories.

### A SCOPE THAT MUST REMAIN LIMITED TO THE RE-USE OF DATA FOR SUBSIDIARITY REASONS

Originally, "Open Data" referred to information released voluntarily by a data producer with no third-party solicitation, often for free and freely reusable by all, as long as the principles of attribution, share-alike<sup>2</sup> and openness were complied with. Today, "open data" is more commonly used to refer to the opening of public data, i.e. the publication of data by public sector bodies, as provided by law, for the sake of transparency in public life.

This principle is at times extended to undertakings tasked with a public service mission.

<sup>1</sup> PSI : Public Sector Information.

<sup>2</sup> Share-alike: enriched data is returned to the community of re-users, including to the original data producer.

# Recast of the PSI Directive: the re-use of public data must be fair and in the public interest

A requalification of the directive into an “Open Data” directive as is currently being discussed, could lead to a poor understanding of the subject-matter. It is not “open data” in the original sense of the term that is at stake here, but only the re-use of data that public sector bodies decide to make accessible. For subsidiarity reasons moreover, UTP considers that the question of open data must continue to fall entirely under the purview of Member States.

## THE PASSENGER TRANSPORT SECTOR IS ALREADY SUBJECT TO A LEGISLATIVE FRAMEWORK ON DATA

The public transport sector is explicitly mentioned in the PSI Directive which is cross-sectoral in nature. Yet, many texts at the European<sup>3</sup> or even national level already provide specific rules on accessing and reusing passenger transport data, in particular travel information. The adoption of a European Regulation on multimodal travel information services<sup>4</sup> in 2017, which is now in the process of being implemented, took more than five years to negotiate.

UTP therefore calls on the European institutions not to impose additional constraints on the public transport sector so as to prevent the risks of overall incoherence and legal insecurity.

## ALL UNDERTAKINGS, PUBLIC OR PRIVATE, TASKED WITH A PUBLIC SERVICE MISSION MUST FALL UNDER THE SAME LEGAL FRAMEWORK

UTP is surprised that public undertakings are included in the new scope of the directive. It believes that a choice must be made: either exclude public undertakings from the scope, or include private undertakings tasked with a public service mission, so as to ensure healthy and fair competition between actors of the same sector. In fact, in view of the principle of neutrality<sup>5</sup> enshrined in the treaties, no distinction should be made between public and private undertakings, especially when they carry out public service missions. This should be the case irrespective of their status, shareholding and mode of intervention. The criterion selected must be the nature of the service (public service or commercial service) and not the company’s property ownership.

UTP would moreover like to draw attention to the importance of not creating distortions between the different management methods of public services (in-house operators, or third-party operators under public procurement or concession contracts), which are already competing with each other.

## PUBLIC SECTOR INFORMATION HAS A COST THAT MUST BE RECOGNIZED

The desired effect of this directive is more extensive re-use of public sector information. How will the production of public sector data be financed if the re-use of data free of charge becomes the established principle?

The re-use of public information must not paradoxically lead to a reduction of their diversity, content and relevance. Appropriate sizing of the data platform, formatting and updating are operations that come at a cost for the producer.

The anonymisation of data and the protection of commercially confidential information, now included in the proposal, can also generate a significant cost for the undertakings and public sector bodies concerned. For this reason, UTP supports the Commission’s proposal to review the calculation of the costs incurred in making this information available. Furthermore, this provision will help achieve consistency between the different pieces of EU legislation, in particular the General Data Protection Regulation (GDPR).

<sup>3</sup> Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport.

<sup>4</sup> Commission Delegated Regulation (EU) 2017/1926 of 31 May 2017 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of EU-wide multimodal travel information services.

<sup>5</sup> Article 345 of the Treaty on the Functioning of the European Union.

## **PUBLIC SECTOR INFORMATION HAS VALUE THAT MUST BE SHARED FOR THE BENEFIT OF INNOVATION**

Data has value too, which comes from its re-use, not only by third parties but also by its own producers. In fact, undertakings tasked with a public service mission and public sector bodies innovate regularly. Data can be used for all sorts of purposes: to adapt services, improve service quality, respond better to specific customer expectations, manage capacity availability better, etc. This capacity for innovation must be protected at the risk of fuelling the relocation of R&I jobs in countries that do not impose the same obligations.

It is therefore vital to protect undertakings, whether public or private, from the misappropriation of their know-how, and not to dash their innovation-related efforts. It is precisely because data comes at a cost for the companies concerned and has value, that it cannot systematically be available free of charge and that licensing is crucial.

## **THE IMPORTANCE OF HIGH-VALUE DATASETS, ALTHOUGH RECOGNISED, HAS TO BE PRESERVED**

“High-value datasets”<sup>6</sup> are defined by their suitability for the creation of value-added services and applications and by the important social-economic benefits with which they are associated. If their value is recognised for re-users, it should be all the more so for the undertakings that make such datasets available.

UTP believes that the provision and re-use of high-value datasets must not necessarily be free of charge either. Furthermore, whereas the re-use of documents may be limited to the marginal costs of provision in the rest of the directive, it must be also be the case for these high-value datasets.

## **FAIRNESS BETWEEN START-UPS AND INTERNET GIANTS CALLS FOR DIFFERENTIATED CHARGING RULES**

UTP is in favour of the “freemium” principle under which the smallest users can use information free of charge, while fees are charged over a predetermined volume of re-use or frequency of access to data, which may then require a resizing of the available platforms. This principle helps to promote the development of a local economy of start-ups by ensuring that the internet giants are not the only ones benefiting from the available data, and at a lower cost for them at that.

## **LICENCES GUARANTEE SHARED ENRICHMENT OF RE-USED INFORMATION**

As in the case of charging, the choice of licence also makes it possible to recognise and protect the value of the information made available.

UTP encourages in particular the promotion of licences that include a “share-alike” clause<sup>7</sup> so as to ensure compliance with the principle of reciprocity. Furthermore, as undertakings tasked with a public service mission mobilise sizeable public funds, it is only

fair that part of the added value created from their data should be reinvested in the public space to benefit the citizen.

Nevertheless, licences can and must vary depending on the type of data released. That is why this choice should continue to be entirely up to the undertaking or public sector body making the information available, as it is always better placed to determine the appropriate licence.

---

<sup>6</sup>. Article 13 of the proposal for a recast.

<sup>7</sup>. See note 2 above.

## AN OPEN BY DESIGN AND BY DEFAULT PRINCIPLE INCOMPATIBLE WITH PROTECTION AND SECURITY

The principles of protection and security “by design and by default” have been enshrined in the GDPR. The aim of these principles is to prevent data from being corrupted or falsified as much as possible. The discussions initiated on the current proposal for a recast of the PSI directive show a determination to establish a similar principle that would be that of “open by design and by default.”

However, where the notions of security and protection have real meaning in a hyper-connected world, that of open by default is a contradiction in terms. First, because some types of data are, in point of fact, not designed to be open. More specifically, such a principle would stand in the way of taking the necessary time to define the level of data sensitivity so as to avoid harming public security, personal data protection, or the economic interests of public service operators (particularly in Europe).

An “open by default” principle would also preclude compliance with intellectual property rights that might exist. Many types of information used in transport networks fall under trade secrets or are strictly necessary for industrial operation specific to each company. Others are the work of third parties. Such data is not designed to be open; quite the contrary, it must remain confidential by default.

## CONTACTS

### Claude Faucher

General Director UTP  
cfaucher@utp.fr  
+33 (0)1 48 74 73 67

### Valérie Beaudouin

Director - Legal and European  
Affairs Department  
vbeaudouin@utp.fr  
+33 (0)1 48 74 73 49

### Annabelle Huet

European Affairs Expert  
ahuuet@utp.fr  
+33 (0)1 48 74 73 30

### Dominique Fèvre

Communications Manager  
dfevre@utp.fr  
+33 (0)1 48 74 73 46

**L'UTP.** (Union des Transports Publics et ferroviaires) is the professional association of France's urban transport and rail transport undertakings (passengers and freight). It represents its members at the European and French levels and pursues lobbying actions aimed at authorities and decision-makers.

UTP represents over 170 urban transport undertakings all over France. Most of them are connected to international transport groups such as CarPostal France, Groupe RATP, Keolis, SNCF Mobilités, Transdev, Vectalia France. Others are independent and may be members of AGIR association.

Since 2006, UTP has gathered railway undertakings such as Azenia, CFTA, Colas Rail, Euro Cargo Rail, Europorte, Eurostar, Groupe RATP, Keolis, Objectif OFP, RRT PACA, SNCF, SNCF Mobilités, Thalys International, Thello, Transdev, VFLI.

Since January 2013, UTP also welcomed Infrastructure Managers (Eurotunnel, LISEA, SNCF Réseau) as members, thus embodying the unity of the railway sector.

