GEodata Openness Initiative for Development and Economic Advancement in Romania

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Report on Contradictory, Overlapping or Inefficient Geodata Related Legislation

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ETH Eidgenössische Technische Hochschule Zürich Swiss Federal Institute of Technology Zurich

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GEOIDEA.RO Report

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ABSTRACT:

The main objective of the GEOIDEA.RO project proposal is to improve the scientific basis for open geodata model adoption in Romania. It is our belief that publishing government geodata in Romania over the Internet, under an open license and in a reusable format can strengthen citizen engagement and yield new innovative businesses, bringing substantial social and economic gains.

The purpose of the report is to briefly analyse primary and secondary legislation, regulations and normative of the selected geodata producers in comparison with related national legislation regarding PSI re-use and to identify limitations or shortcomings which could be addressed in the future by the legislators.

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1. INTRODUCTION AND DEFINITIONS

1.1 Purpose of the document

The main objective of the GEOIDEA.RO project proposal is to improve the scientific basis for open geodata model adoption in Romania. It is our belief that publishing government geodata in Romania over the Internet, under an open license and in a reusable format can strengthen citizen engagement and yield new innovative businesses, bringing substantial social and economic gains.

The purpose of this report is to briefly analyse primary and secondary legislation, regulations and normative of the selected geodata producers in comparison with related national legislation regarding Public Sector Information (PSI) re-use and to identify limitations or shortcomings which could be addressed in the future by the legislators.

1.2 General Considerations

The current report builds up on previous reports of GEOIDEA on the same topic: "List with all the legislative acts that regulate the geodata production and dissemination in Romania" from August 2013, "Report on existing open data strategies" from October 2013. Thus several introductory remarks on the legislation governing PSI and geodata already covered have not been repeated here.

The report looks first into the general framework of policy and normative acts that concern the geodata-related information (access to information, re-use of public information and open data policies). It then covers in more the details the secondary legislation applicable to each institution, with a specific emphasis on the legislative and institutional framework, but also on the practical aspects of having access and re-use of their public data.

1.3 Definitions and understandings

1.3.1 *Data and Geodata*

While the report is dealing mainly with "geodata related legislation", it needs to be highlighted from the beginning that a distinction between data and geodata does not exist in the Romanian legislation, as a practical implementation of a principle of the neutrality of the law (with the exception of the implementation of the INSPIRE directive). In fact, due to the same principle, the term data is most of the times not even included in the definition of documents (as regulated by the PSI legislation) or of information (as is the case of legislation about the access to information). Therefore we would look at these terms while assessing the primary or secondary legislation, as they include the concept of geodata.

1.3.2 *Public Sector Information (PSI)*

The PSI Directive does not establish the meaning of public sector information. However, there are several international organisations and groups that defined PSI. Thus, the OECD broadly defines PSI as "information, including information products and services, generated, created, collected, processed, preserved, maintained, disseminated, or funded by or for the Government or public institution" (Working Party on the Information Economy 2008). Moreover, the European Commission explains that "public data is all the information that public bodies in the European Union produce, collect or pay for. This could include geographical data, statistics, meteorological data, data from publicly funded research projects, and digitised books from libraries" (European Commission 2008). At the same time, when it comes to the source of the information under the scope of the directive, the European Commission details that the directive "addresses material held by public sector bodies in the Member States, at national, regional and local levels, such as ministries, state agencies, municipalities, as well as organisations funded for the most part by or under the control of public authorities (e.g. meteorological institutes)" (European Commission 2014). However, as LAPSI1 points out, public sector information can be defined as "the wide range of information that public sector bodies collect, produce, reproduce and disseminate in many areas of activity while accomplishing their institutional tasks. PSI may include (among others) social, economic, geographical, cadastral, weather, tourist, and business information"(LASPI 2010).

1.3.3 *Documents*

A document refers to any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) and any part of such content. Indeed Recital 11 of the PSI Directive[2] details that documents are "any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (written on paper, or stored in electronic form or as a sound, visual or audio-visual recording), held by public sector bodies" (European Parliament 2013). Furthermore, the same recital explains that "a document held by a public sector body is a document where the public sector body has the right to authorise re-use". As Recital 9 of the revised PSI Directive mentions, computer software fall outside of the meaning of documents.

1 LAPSI 2.0 - The European Thematic Network on Legal Aspects of Public Sector Information

[2] The PSI Directive is officially called the Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public information, amended by the Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013

1.3.4 *Public Sector Tasks*

There is no clear definition of what public tasks represent, however, although this notion should be clearly separated from commercial activities, in the field of PSI and spatial data this may be less evident.

The definition of public sector tasks is also important in relation to the charges, which are applied by public bodies and for the requests issued between them. The exchange of documents between public institutions in respect of their public tasks does not constitute re-use (European Parliament 2003). Furthermore, article 10 paragraph 2 of the PSI Directive mentions that a public body must apply the same charges no matter if the documents for re-use are used by a public body or by any other user. Therefore, all PSI requests should be solved under the same conditions and there should be no difference in treatment. At the same time, this article acknowledges the fact that a public body can request information for re-use in order to conduct commercial activities; commercial activities which, of course, fall outside the scope of its public tasks. In other words, if a public body obtains and holds information for re-use (even if the information is outside its public tasks and it is used for commercial purposes), this public body can offer the information to other users and there should be no difference as regards to the costs for re-use in respect to any other users (European Commission 2014).

The Romanian Law (Law 109/2007) does not include such explanations and limits itself to stating that the conditions for re-use must not be discriminatory for similar categories of documents for re-use4. At the same time, Law 109/2007 does not include a definition of public tasks; it only mentions in article 2 that the law applies to the re-use of documents detained by public institutions. Article 2 further explains that the documents for re-use were created during the public institutions own public activities and that they can be used for commercial and non-commercial purposes but they do not apply to mass media5.

Even though the law or other national legislation does not define the public sector tasks, the revised PSI Directive included a new obligation in Recital 10 that “the public tasks should be defined in accordance with common administrative practice in the Member States, provided that the scope of the public tasks is transparent and subject to review. The public tasks could be defined generally or on a case-by-case basis for individual public sector bodies”.

Consequently, we can draw the conclusion that the definition of public sector task may limit or broaden the applicability of the directive. As already mentioned, under the current implementation of the directive, the Romanian law states that it applies to the documents, which were created during a public institution’s own activities. Therefore, for the implementation of the revised PSI directive, we recommend that this issue should be correctly addressed in order not to be restricted

only to the creation of documents during a public body's own tasks, but also to the collection, reproduction, preservation, storage and dissemination of documents.

1.3.5 *Public Sector Body*

It refers to the State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several such bodies governed by public law.

2. PRIMARY LEGISLATION

Several normative acts such as the **Law 109/2007** or the **Directive 2003/98/EC** on the re-use of public sector information (PSI Directive) have already been covered by the earlier reports.

We need to make a short note on the **Law no. 544/2001** on free access to information of public interest. The law requires public institutions and authorities to make information of public interest available to the public and it establishes the categories of information that are to be made available automatically by the institutions, as well as the right of every person to request and obtain information of public interest. Information of public interest is defined as "any information regarding the activities or resulting from the activities undertaken by a public institution or authority, irrespective of the support, format or expression of the information".

For the purpose of this report we focus our analysis on other primary legislation - the INSPIRE directive and its Romanian implementation, as well as on the revised PSI directive on the re-use of public sector information and possible considerations regarding its implementation. As it had an important effect in practice, we also include some aspects on the Open Government Partnership (OGP) and its implementation in Romania.

2.1 Inspire Directive

In 2007, the European Parliament and the Council of the European Union adopted **Directive 2007/2/EC** establishing an Infrastructure for Spatial Information in the European Community (INSPIRE). The aim of this Directive was to "lay down general rules aimed at the establishment of INSPIRE, for the purpose of Community environmental policies and policies or activities which may have an impact on the environment".

According to the Directive, Member States have the obligation to ensure that metadata are created and kept up to date for the spatial data sets and services corresponding to an established list of themes (such as administrative units, addresses, cadastral parcels, transport networks, hydrography, geology, buildings, land use, utility and governmental services, energy resources, mineral resources etc.). Metadata are defined as information describing spatial data sets and spatial data services and making it possible to discover, inventory and use them. Member States are also required to establish and operate a network of services for the spatial data sets and services for which metadata have been created:

- Discovery services making it possible to search for spatial data sets and services on the basis of the content of the corresponding metadata and to display the content of the metadata;

- View services making it possible, as a minimum, to display, navigate, zoom in/out, pan, or overlay viewable spatial data sets and to display legend information and any relevant content of metadata;
- Download services, enabling copies of spatial data sets, or parts of such sets, to be downloaded and, where practicable, accessed directly;
- Transformation services, enabling spatial data sets to be transformed with a view to achieving interoperability;
- Services allowing spatial data services to be invoked.

Public access to these services is to be provided through the INSPIRE geo-portal, established and operated by the European Commission at European level.

Although it is provided that these services should be easy to use, available to the public and accessible via the Internet or any other appropriate means of telecommunications, Member States are also allowed to limit public access to spatial data sets and services, in certain situations such as when the access would adversely affect the confidentiality of the proceedings of public authorities or of commercial or industrial information, the course of justice, the interests or protection of any person etc. However, when assessing whether to impose such restrictions, Member States are required to interpret the grounds for limiting access in a restrictive way and to take into account the public interest served by granting access.

There is a general rule set out by the Directive that the discovery and view services for spatial data sets and services should be made available to the public free of charge. As derogation from this rule, public authorities may be allowed to apply charges for view services when these charges would secure the maintenance of spatial data sets and corresponding data services. Where charges are levied for view services, download services or services allowing spatial data services to be invoked, member states should ensure that e-commerce services are available.

2.2 Romanian legislation – Government Ordinance no. 4/2010 establishing the national infrastructure for spatial information in Romania

The Romanian legislation regarding access to spatial information – Government Ordinance no. 4/2010 establishing the national infrastructure for spatial information in Romania – transposes the INSPIRE Directive and includes many of the Directive's provisions, while also regulating the creation of the national infrastructure for spatial information (INIS), through which Romania contributes to the INSPIRE European geoportal.

Similar to the Directive, the ordinance provides for the obligation of public authorities to create and update metadata for the spatial data sets and services corresponding to a number of 34 spatial data themes (such as: administrative units, addresses, cadastral parcels, transport networks, hydrography, geology, buildings, land use, utility and governmental services, energy resources, mineral resources etc.). The metadata have to be complete and of a quality which allow for the discovery, inventory and use of the described spatial data sets and services.

For the spatial data sets and services for which metadata have been created, the public authorities are requested to ensure public access, through the INIS geoportal, to several services:

- Discovery services, for finding and understanding data;
- View services, for viewing the content of the discovered data;
- Download services, for downloading the content;
- Transformation services, for enabling spatial data sets to be transformed with a view to achieving interoperability;
- Services allowing spatial data services to be invoked.

The ordinance also mentions that the transformation services are to be combined with the other services in order to allow for the use of all these services in accordance with the European norms regarding the interoperability of the available spatial data sets and services. Interoperability is defined as the possibility for spatial datasets to be combined and for services to interact, without repetitive manual interaction, in such a way that the result is coherent and the added value of data sets and services is enhanced.

The public authorities ensure these services through their own ICT (Information Communication Technology) applications, which are connected to the INIS portal.

Public authorities are required to share their spatial data sets and services, so that they can have access to the data sets and services of each other and to exchange and to use the respective data sets and service.

In line with the European directive, the Romanian legislation lists the conditions under which public authorities are allowed to limit access to spatial data sets and services, while also underlining that, when imposing such restrictions, due account should be given to the public interest served by having these data made publicly available. Therefore, public access to spatial data sets and services through discovery services may be limited where such access would adversely affect international relations, public security or national defence. Public access to spatial data sets and services through all other services may be limited where such access would adversely affect: the confidentiality of the proceeding of public authorities; international relations, public security or national defence; the

course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature; the confidentiality of commercial or industrial information, where such confidentiality is provided for by national or EU law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy; intellectual property rights; the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or EU law; the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned; the protection of the environment to which such information relates, such as the location of rare species.

The ordinance establishes that discovery and view services for spatial data sets and services are to be made available free of charge. As an exception, public authorities may impose tariffs for accessing view services when these tariffs ensure the maintenance of the corresponding data sets and services, especially in situations, which involve large volumes for data that are frequently updated. It is also provided that, in cases where public authorities impose charges for view services, download services or services allowing spatial data services to be invoked, public authorities ensure the availability of e-commerce services. Such services may be covered by disclaimers, click-licences or, where necessary, licences.

While the aim of this ordinance is to facilitate the access to spatial information, through making them available, together with the relevant metadata, via several services accessible through a single access point – the INIS portal, the ordinance lacks provisions regarding the availability of the spatial data sets in formats which facilitate their re-use. Having access to these data in open and machine readable formats (as provided for in the new EU Directive 2013/37/EU, implementable by Member States starting July 2015, which notes that public sector bodies shall make their documents available in such machine-readable formats where possible) would significantly contribute to encouraging innovation and the creation of new information society services based on the spatial data made available by public authorities.

The transformation services, which are to be made available by the public authorities, only refer generally to the fact that they should allow for the transformation of the spatial data sets to achieve interoperability. This is further explained on the INIS portal[3] as ensuring the possibility of "converting the data formats, the systems for reference coordinates and application schemes" (INIS 2013a). The INIS portal provides access to a service called "transformation service for INSPIRE coordinates" and it is explained that users have the possibility to transform coordinates between two systems, Stereo70

[3] http://geoportal.ancpi.ro/geoportal/catalog/main/home.page (accessed 27.11.2013)

and ETRS89 (INIS 2013b). However, there is no legal reference to the possibility of converting the existing data formats into open formats.

There is also a lack of legal certainty regarding the licenses under which the spatial data sets and the related metadata are made available to the public. The ordinance contains one provision which states that public authorities which provide spatial data sets and services may grant licenses and may impose charges for the public authorities, institutions and bodies which use these data sets and services; such licenses and tariffs need to be compatible with the general aim of facilitating the sharing of spatial data sets and services by public authorities.

The only mention regarding the re-use of information is an article which states that the ordinance does not prejudice the provisions of the **Law no. 109/2007** on the re-use of public sector information, law which transposes the **Directive 2003/98/EC** and provides that the re-use of the documents belonging to public institutions is free and that, where public institutions approve the re-use of their documents, these documents are made available in the original format.

In implementing the **Government Ordinance no.4/2010**, a Government decree was issued in June 2010, with the aim of regulating the organisation and operation of the Council for the national infrastructure for spatial information in Romania (INIS Council) – **Government Decree no.493/2010** for the approval of the Regulation on the organisation and operation of the Council for the national infrastructure for spatial information in Romania. The Council has the aim of putting in place and updating the national infrastructure for spatial information and it is composed of representatives of various ministries and other public institutions and associations of local public authorities. The Council has several responsibilities with respect to the geo-spatial data made available via INIS:

- Establishing and approving the spatial data themes, other than those provided for in the **Government Ordinance no.4/2010**;
- Establishing the responsibilities of public authorities and third parties with regard to the creation and update of spatial data sets, services and metadata;
- Making decisions regarding the public availability of the spatial data sets and services provided in the **Government Ordinance no.4/2010**;
- Making decisions regarding the spatial data sets and services for which tariffs are imposed;
- Making decisions regarding the spatial data sets and services for which licences may be granted.

The Council is also responsible for elaborating the annual Action plan for the implementation and update of INIS and for submitting reports to the Government on the implementation of the activities envisioned in the Plan.

In October 2013, the Ministry for Environment and Climate Chance and the National Agency for Cadastre and Land Registration proposed several amendments to this Government Decree, which, among others, were intended to provide details regarding the attributions of the expert groups, which assist the Council in its activity. Therefore, the proposed expert groups would focus on areas related to "metadata and spatial data", "network services" and "data sharing" and their members are appointed by the public authorities and associations composing the INIS Council and by other public authorities, which are not part of the Council. A coordination expert group is also envisioned, which would be formed from the coordinators of the three above-mentioned expert groups and whose aim would be to make proposals to the Council regarding: the adoption of spatial data themes, the information which can be contained in the metadata, the optimal operation of INIS and the adoption of measures related to the administration of the INIS information and communications infrastructure. By the time this report was finalized, the above-mentioned decree was not published in the Official Monitor and therefore not in force.

2.3 Directive 2013/37/EU - the revised directive on the re-use of public sector information

While the PSI directive did not impose the re-use of PSI as an obligation to Member States and public bodies, the revised directive introduces in Recital 8 a mandatory rule of making all documents re-usable, with certain conditions and exceptions. Therefore, all public data that is not covered by one of the exceptions will become re-usable.

In Recital 6, the directive mentions the fact that "Member States have now established re-use policies under Directive 2003/98/EC and some of them have been adopting ambitious open data approaches to make re-use of accessible public data easier for citizens and companies beyond the minimum level set by that Directive". However, in Romania's case, we cannot speak of public policies documents, but merely of the transposition of the directive. More information regarding Romania's assessment of the general PSI situation is shown on the PSI Scoreboard[4] made available by the EPSI platform.

Furthermore, Recital 8 gives a straightforward answer why there was a need for revision. It states that Member States have the obligation to make all documents re-usable (limited to very few exceptions) because it benefits to the knowledge economy[5] and it stimulates economic growth and promotes social engagement[6].

[4] http://www.epsiplatform.eu/content/european-psi-scoreboard (accessed 27.11.2013)
[5] Lege nr. 544 din 12 octombrie 2001 privind liberul acces la informaţiile de interes public
[6] Ordonanța nr. 27 din 30 ianuarie 2002 privind reglementarea activităţii de soluţionare a petiţiilor

Having this in mind, the scope of the directive has also been broadened to include libraries, museums and archives. However, the revised directive is not applicable to cultural establishments since there are more sensitive issues to be considered in relation to performance rights such as in the case of operas and theatres. Therefore, we may infer that this exemption is not rooted in the fact that cultural establishments are awarded a special regime, but merely in the desire to avoid future complications due to the fact that these public bodies mostly contain materials covered by third party intellectual property rights. In order to motivate this exemption, Recital 18 explains the fact that cultural establishments have been left out because opening up the non-intellectual property rights information would create little effect.

We question if this statement is based on certain figures or impact studies, which show more exact measurements of the effects, as the same logic could follow in case of the geospatial data.

At the same time, we believe that excluding public bodies on such basis (i.e. if a public body has little information for re-use would create little effect) is not suitable and could potentially create leeway for Member States to restrict the application of this directive to other public bodies on the same grounds.

There are also a number of documents excluded from the scope of this directive, namely:

1. Cases of information for which one needs to prove a particular interest to obtain access to documents;
2. Logos, crests and insignia;
3. Documents restricted for reasons of protection of personal data or the re-use of such data interferes with the law;
4. Documents held by educational and research establishments;
5. Documents held by cultural establishments.

Regarding the second case, there could be a discussion regarding if such information can be obtained through petitions. While **Law 544/20012** specifically mentions that requests to public information do not need to be motivated, for petitions you generally need to state the reason for making the request. In this sense there are general petitions as regulated by **Government Emergency Ordinance (OUG) 27/20023**, for which although the law does not particularly state the obligation to specify the purpose, in practice this is commonly used.

At the same time, the PSI directive from 2003 (as well as its revised version from 2013) is not applicable to:

1. Bodies of industrial or commercial character, e.g. public transport authorities;
2. Educational and research establishments;

3. Performing cultural institutions such as operas, ballets and theatres as well as public service broadcasters, as there may be issues related to intellectual property rights.

Recital 20 of the **revised PSI Directive** makes certain recommendations related to the format of the documents for re-use, as well as their metadata. In this sense, the format has to be open, machine readable, at the best level of precision and granularity, thus ensuring interoperability and compatibility. This is particularly important for meeting the requirements of use of spatial information under **INSPIRE Directive 2007/2/EC**.

An important principle mentioned in the revised PSI Directive, in Recital 31, is that "public domain material should stay in the public domain once it is digitized". Therefore, even if there is an exclusive right related to digitization of cultural materials, the period of this right should be limited to a maximum of 10 years and after the public private partnership ends, the institution should have full rights regarding the use of digitized cultural resources.

As regards the conflict between PSI and personal data, even though the European Data Protection Supervisor (EDPS)[7] has not been consulted before the adoption of the PSI Directive, it has issued a set of recommendations and adopted an opinion **(Opinion 06/2013)[8]** regarding the revised version of the PSI Directive. In its opinion, the EDPS highlighted that:

> "[…] rules for the protection of personal data should not constitute an undue barrier to the development of the re-use market. On the other hand, the right to the protection of personal data and the right to privacy must be respected. It is important to emphasize that as a concept the focus of open data is on transparency and accountability of public sector bodies, and economic growth, not on the transparency of individual citizens."

The opinion gives example of the most common uses of PSI concerning personal data and mentions "aggregated statistical data about crime rates, government spending, or about how well school children are doing in different geographical regions or in different educational institutions". Therefore, for using such aggregated data, personal data must be anonymised. At the same time, according to **Directive 95/46/EC**, the public bodies need to be qualified in the first place in order to collect the data and comply with all the requirements from **Directive 95/46/EC** such as informed consent, purpose of collecting and processing, limitations of use, period of storage etc.

[7] More information about the EDPS authority at https://secure.edps.europa.eu/EDPSWEB/edps/EDPS?lang=en (accessed 05.11.2013)

[8] Opinion 06/2013 on open data and public sector information ('PSI') reuse, 1021/00/EN WP207, adopted 5 June 2013. Available at http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp207_en.pdf (accessed 05.12.2013)

2.4 Future implementation of the revised PSI Directive

There are several issues to considerate for a future implementation of the revised PSI Directive, but we would like to highlight some of them that could really improve the PSI re-use framework.

First, the law transposing the revised directive must include specific conditions for processing personal data according the regulation in place . Therefore, provisions regarding informed consent, legitimate and explicit purpose of collecting and processing personal data should be respected. Furthermore, issues such as anonymisation and the possibility for re-identification have to be taken into account. At the same time, there could be discussions about unsolicited communication or about procedures for handling situations in which public data become available for re-use. Another important aspect is related to the fact that the public body acts as a data controller and it should respect all the conditions abide by **Law 677/2001**. For example, it should be clearly stated that the restriction on the re-use of information due to protection of personal data is applicable to any person, including law enforcement.

Another important aspect, which needs to be properly and fairly addressed in the Romanian law, which will transpose the revised directive, is related to the criteria for charging above the marginal costs. As Recital 25 mentions, such criteria could be part of the national law or it could be established by a competent body. The recital further explains that the competent body needs to be different from the public body producing the information and highlights the fact that this body needs to have budgetary executive powers and be under political responsibility.

As regards the license, the law transposing the revised directive needs to keep in mind several recommendations mentioned in the text of the directive (European Commission 2011):

1. Public sector bodies should impose conditions of re-use only when it is needed and with as less restrictions as possible;
2. Public sector bodies may have the possibility to impose mentioning the source and whether the document has been modified by the re-user;
3. Member states are encouraged to use already existing open licenses.

A particular aspect for the Romanian implementation of the revised directive represents the means of redress. As Recital 28 states, there needs to be an impartial body, which has the competence to review possible requests. The same recital suggests that this body could be either the national competition authority, the national access to documents authority or a national judicial authority. The appointed body for redress needs to be different from the one responsible for establishing the criteria for charging above the marginal costs. Among the body's responsibilities there should be the possibility to revise negative decisions, as well as decisions that although permit re-use still have different burdensome or incorrect approaches or decisions related to the charging costs. It also

highlights the fact that the review process needs to be efficient and response should be given in a timely manner.

Another important issue that needs to be properly addressed regards the exclusive agreements between public sector bodies and private partners. Such agreements may be authorized if necessary, however this is limited to the situation when "an exclusive right is necessary for the provision of a service in the public interest" and it has to be under regular review.

A sensitive and possibly problematic aspect will be the translation and interpretation of the definitions included in the revised directive. Although the new definitions included in article 2 of the revised directive are straightforward, there is a potential threat that an inaccurate translation of those terms in Romanian could cause possible confusion and may lead to unwanted, or least favourable, interpretations.

In **Law 109/2007** it is specified that the request to a public body to allow re-use of information must be motivated. The revised PSI Directive does not cover this provision and from our point of view it represents an unnecessary condition for addressing request. One of the reasons is because the request asks for information produced by public institutions, which are funded by public funds. Therefore, one does not have to demonstrate or motivate a certain interest for requesting PSI and its interest should be presumed.

On the positive side, **Law 109/2007** introduces the obligation for public bodies to indicate the right holder in case the negative response is based on documents for which third parties hold intellectual property rights. Therefore, this makes it easier for the interested party to ask the right holders for permission to use the documents.

2.5 Open Government Partnership and Open Data Movement

While the EU legislation and its implementation could have been enough for a real legal framework on open data, in reality another process proved to be decisive for a glimpse of open date with real-life effects: the Open Government Partnership.

Romania expressed their interest to sign the Open Government Declaration[9] from the Open Government Partnership in September 2011, but by the end of the year 2011 only a few things happened. It was the Romanian civil society that saw the real opportunity of signing the OGP to bring the subject of Open Data (together with other subjects related to an open government) on the public authorities table and tried to collaborate in their work.

[9] http://www.opengovpartnership.org/about/open-government-declaration (accessed 27.11.2013)

Once the dossier regarding the OGP Action Plan went to the Ministry of Justice (MoJ) and was assigned to the team that worked on the National Anti-corruption Strategy (SNA), things started to move by the initiation a real process of consultation with civil society regarding the **Romanian Action Plan**[10]. Signing the OGP declaration was included in the **SNA 2012-2015**[11] in the Specific Objective 2, which deals with institutional transparency by increasing the level of availability of public open data made available by public authorities.

Several meetings took place between civil society and MoJ representatives with other public institutions by April 2012, when the Romanian Action Plan was adopted by the Romanian Government. Following the debates the Action Plan was focusing on opening up the data from the public sector that was highly demanded by the civil society, but also for developing some new services of electronic government.

The plan foreseen the measures that need to be implemented in 2012, 2013 and 2014 to fulfil the assumed commitments, without specifying though the responsible institution, allocated budget or detailed deadline for each activity. The public endorsement of the OGP Declaration by Romania was made at the OGP meeting in Brazil in April 2012, also when the Action Plan was publicly presented.

Thus the Romanian Government committed to "facilitating access to the information produced by the public sector and to regularly release high-value data sets" with the following activities to take place by the end of 2012:

1. Designating a person responsible for publishing open data in each public institution;
2. Identifying regulatory needs in order to make data open, as well as the logistical and technical solutions for their publishing;
3. Making an inventory of the available data sets able to be delivered in an open format and identifying those that reflect that most relevant information for the activity of each institution (high-value data sets). This will also include data sets collections;
4. Priority publishing on the web page of each institution of the following: data sets identified according to the above paragraph; data sets that are subject to compulsory disclosure according to **Law no. 544/2001(Freedom of Access to Information Law).**

But in reality nothing major happened by the end of 2012, also due to an unstable political situation that made it unclear who would actually be the institution that would coordinate this process. An independent report1 from the NGO Soros Romania that took part of the OGP consultation process, released in 17 December 2012 underlines the limitations:

- Implementing the OGP Action Plan is still on a very basic stage;

[10] http://www.opengovpartnership.org/country/romania/action-plan (accessed 27.11.2013)
[11] http://sna.just.ro/sna/sna20122015.aspx (accessed 27.11.2013)

- Dissemination of information - as the first step in implementing the OGP Plan - is still in the beginning;
- The public authorities questioned about the subject showed a disinterest and seldom it was a confusion between open data and public interest data;
- The efforts for offering open data to citizens are fortuitous.

The road from words to action towards availability of open data quickly shortened after a newly formed department, called Department for Online Services and Design (DSOD) in the Chancellery of the Prime Minister was formed in December 2012. With new staff dedicated mainly for the implementation of OGP Action Plan and Open Data commitments, the activities on having a real open data in place have started in 2013. Even though a lot of them took longer than expected, due to inertia, bureaucracy and the need to explain to relevant people in almost all public institutions what are open data and why opening up the data is really something to work for, at least it looks that now the Romanian Government is on the right track.

With the launch of the official open data portal at the end of October 2013, a lot of interim, but necessary, steps have been made, including having responsible persons for open data in all the Ministries or awareness and dissemination activities taking place in different public institutions, sometimes in common meetings with the civil society.

Looking back at the whole process regarding the open data policies and its implementation so far, such a quick development seems it would have been impossible without some activities that proved to be instrumental - at least until the current stage:

- Signing the OGP Declaration and commitment to create an Action Plan to include open data;
- Involvement of key public sector actors from MoJ, SNA and then from DSOD willing to take the lead in the public sector on open data policies;
- Close partnership with civil society during the whole stages of the activities.

Summing up, the OGP process has been much more efficient in making real steps towards an implementation of the open data principles than any legislation from the PSI sector.

3. SECONDARY LEGISLATION

In this chapter we will analyse the secondary legislation regarding the organisation and administration of the institutions listed below, but also their practical activities in relation to access to information, PSI re-use or open data:

- National Agency for Cadastre and Land Registration
- National Institute of Hydrology and Water Management
- The National Agency for Environment Protection
- National Meteorological Administration
- Forest Research and Management Institute
- Romanian Geological Institute
- National Institute of Statistics

3.1 The National Agency for Cadastre and Land Registration (Agenția Națională de Cadastru și Publicitate Imobiliară - ANCPI)

The activity of the National Agency for Cadastre and Land Registration is regulated by **Law no. 7/1996 on cadastre and land registration**. The Agency is organised as a public institution with legal personality, under the subordination of the Government and the coordination of the Prime Minister, through a state counsellor.

The Agency is financed from the state budget and all its revenues resulting from the provided services, tariffs, renting etc. are part of the state budget.

The Agency's responsibilities are detailed in the law and they include, among others:

- Coordination and control of the execution of cadastre works and land registration;
- Organisation and administration of the geodesy and cartography national fund and of the data base of the cadastre and land registry integrated system;
- Execution, modernisation and maintenance of the national geodesic network;
- Elaboration and update of official maps;
- Elaboration, update and administration of the national electronic registry of street names.

The Agency is also responsible for the execution and maintenance of the Romanian INSPIRE portal - INIS and its compatibility with the European INSPIRE portal.

Regarding the availability of the information managed by the Agency, there are several legal provisions worthwhile mentioning.

While the Agency is the administrator of the national electronic registry of street names, the only obligation provided by law with regard to granting access to the information included in the registry is related to the fact that the Agency grants open and free of charge access for public institutions and authorities and for public notaries. There is no reference to the Agency granting public access to such information.

The information registered in the integrated cadastre system can be rendered and archived as "registrations on supports which are accessible to automatic data processing equipment". Requests for information can be made in electronic form also and answers can be communicated in electronic form, according to the request.

The cadastre services provided by the Agency are subject to tariffs established through order of the minister for internal affairs. As such, according to **Order no.39/2009 on the approval of tariffs for services provided by the National Agency of Cadastre and Land Registration** (issued by the minister of internal affairs), the provision of cadastral, geodesic and cartography data (such as digital cadastral and topographic maps and plans, digital plot plans, GNSS registrations) is **subject to certain tariffs**.

The Regulation on the organisation and operation of the Agency was approved through the **Government Decree no.1288/2012**. The Regulation contains more detailed provisions regarding the functions and attributions of the Agency, as well as its structure.

According to this Regulation, there are several databases and electronic registries managed by the Agency: the database of the cadastre and land registration integrated system, the electronic registry of street names and the electronic registry of the administrative units limits. However, the Regulation contains no provision regarding the public availability of the information included in these resources.

Taking into account the provisions in the above mentioned legal acts, it can be concluded that the Agency does not have a clear legal basis requesting it to provide cadastral information to the public free of charge and in conditions (formats, licences) which allow for the re-use of such information for non-commercial purposes.

As, according to its governing **Law no.7/1996**, the Agency is a public institution, it is subject to the provisions of **Law no.544/2001** on free access to information of public interest and the information it administers fits under the category of "information of public interest", as defined in this law.

Although this law is not mentioned on the Agency's website as part of the general legislation under which the institutions functions, the law is listed under the public information tab[1], where a visitor may find a list of "types of documents produced and/or managed by the Agency which represent

information of public interest"[12]. This list includes items such as: legal acts regulating the activity of the Agency, regulation on the organisation and operation of the Agency, organisational structure, department attributions, working hours, contact information, the Agency's budget, programmes and strategies, list of vacancies, list of outsourced projects under way. The agency also publishes an updated annual informative report on law implementation.

There is, however, no reference in this list to the geographical datasets administered by the Agency, although such data would fit within the scope of the "information of public interest", as defined in **Law no.544/2001**.

As a public institution, the National Agency for Cadastre and Land Registration is also subject to **Law no.109/2007** on the re-use of public sector information. Although the information administered by the Agency according to **Law no.7/1996** does not seem to fall within the legal exceptions, the website does not contain any reference to the fact that the legal framework under which the Agency functions includes this law.

Probably a clearer and practical example for the ANCPI view on re-using public information came in 2012, when approximately 200 GI (Geospatial Information) professionals have signed an open letter[13] written by the geo-spatial.org Association addressed to the General Manager and President of the ANCPI to demand, in accordance to the public sector information re-use laws, free access to the boundaries of the Romanian municipalities. The dataset was requested in compliance with the general specifications for an open data model (i.e. usable raw format - vector, metadata, open license) in order to publish it on geo-spatial.org platform, under a free license, as a downloadable file or through OGC network standards. The official answer[14] come three months later, when the law states it shouldn't take more than 30 days. It firmly stated that the dataset requested was available only under a specific fee, which, calculated for the entire Romanian territory, reached an outrageous amount of 800.000 €. There were no legal arguments for the rejections or how the level of pricing was calculated.

3.2 The National Institute of Hydrology and Water Management (Institutul Național de Hidrologie și Gospodărire a Apelor -INHGA)

According to the **Government Emergency Ordinance no.107/2002 on the establishment of the National Administration "Romanian Waters",** the National Institute of Hydrology and Water Management functions as a unit in the subordination of the National Administration "Romanian Waters".

[12] http://www.ancpi.ro/pages/wiki.php?action=show%E2%8C%A9=en&pnu=publicInformation (accessed 27.11.2013)
[13] http://earth.unibuc.ro/articole/scrisoare-ancpi-uat (accessed 05.11.2013)
[14] http://earth.unibuc.ro/file_download/27854/2012-03-26+%282%29.pdf (accessed 05.11.2013)

According to the **Regulation on the organisation and operation of the Institute**[15], approved through a decision of the Institute's director, the aim of the Institute is to undertake research and provide services in the following areas: hydrology, hydro-geology and management of water resources.

One of the Institute's areas of activity is the administration and development of hydrological and hydro-geological databases, with GIS applications. The responsibility for this activity is entrusted to the Laboratory for Data Bases and GIS, whose aim includes the "provision, with maximum efficiency, of correct and complete information, in electronic form, which are indispensable for the hydrological activity". With this aim, the Laboratory:

- Administers and develops the system for the management of historical hydrological data bases and GIS;
- Ensures the maintenance of the hydrological and geospatial data bases;
- Creates applications for the processing of the administered data;
- Ensures the GIS support for the development of hydrological applications;
- Elaborates digital thematic maps.

The Regulation contains no provision regarding public access to the information administered by the Institute.

According to the information published on its website[16], the Institute administers an important volume of hydrological and hydro-geological data, constituted in a data base which is an integral part of the National Fund of Hydrological, Hydro-geological and Water Management Data. It is also mentioned that a geospatial database will be created in the upcoming years for all hydro-graphical basins in the country.

Given the lack of legal provisions regulating the Institute's responsibilities in terms of granting public access to the administered hydrological information, it would be self-explanatory just to list how the Institute's website describes the conditions under which it can (not) be used[17]:

> *"General terms for end-users:*
>
> - *All information (data, texts, graphical elements, etc.) that constitutes the object of this site represents* ***the exclusive intellectual property of NIHWM****.*
> - *NIHWM cannot be made responsible, directly or indirectly, for any damage or loss caused or presumably caused by the interpretation and/or by use of the presented information.*

[15] http://www.inhga.ro/images/66/ro/download11.pdf (accessed 27.11.2013)
[16] http://www.hidro.ro/viewCategory.php?categoryId=34 (accessed 27.11.2013)
[17] http://www.inhga.ro/viewCategory.php?categoryId=62 (accessed 27.11.2013)

- *NIHWM is not responsible for the prejudices that would result due to the impossibility of accessing this site.*

It is forbidden:

- *To partially or integrally copy and reproduce, archive or store, by any means, including electronic or magnetic, the information on this site without the written approval of the owner – NIHWM.*
- ***To use the information on this site for commercial purposes**, as well as the repeated and systematic extraction of elements, even unprotected, thus causing prejudices to the NIHWM.*
- *To erase or modify by any means the published information*
- *To attempt to intervene, by any means, in the content of this site.*

The violation of any of these terms implies civil or penal responsibility, on a case by case basis. NIHWM will monitor all the facts that imply such violations, being entitled to cooperate with legal authorities in order to monitor the users involved in such activities.

The NIHWM has the right to modify and cease at any moment, temporarily or permanently, partially or totally, the information offered through this site, with or without preliminary notice.

The NIHWM may change at any moment the terms of use for this site. The new terms become valid at the moment when they are made public through this site and do not have a retroactive character.

By subscribing to the newsletter, it is considered that the user agrees receiving from the NIHWM periodical emails with various information.

The NIHWM will not use or supply to third parties any information in reference to the users of this site."

Given that it is organised as a unit subordinated to the National Administration "Romanian Waters", the Institute is subject to **Law no.544/2001** on open access to information of public interest and the geo-information resulting from its activity is considered information of public interest. At the same time, the Institute is also subject to the provisions of **Law no.109/2007** on the re-use of public sector information, with regard to the information created as part of its public activity.

However, on the Institute's official website, there is absolutely no indication of these laws and of any other law, decree or decision regulating its activity[18]. Therefore, in our search for the legal

[18] http://www.inhga.ro/viewCategory.php?categoryId=29 (accessed 05.11.2013)

framework of the Institute, we have searched the website of the National Administration "Romanian Waters" (Romanian: Administrația Națională Apele Române - ANAR), to which the Institute is subordinated. ANAR is a national authority that manages goods in the public sector and which has as stated purposes the acknowledgement, the protection, the evaluation and the sustainable use of the water resources, the management of the national network of hydrological and hydrogeological measurements and of the quality of water resources belonging to the public sector, as well as the management of the infrastructure for the national system of water management.

According to the Administration's official website[19], the laws that regulate its activity are the following:

- **Law 544/2001** on open access to information of public interest[20] ;
- **Order no. 1012/2005** stating the approval of the procedure regarding the mechanism for accessing information of public interest with regard to water management[21];
- **Article 19 in the Order no. 662/2006** regarding the application of the procedure of issuance of the permits and authorisations for waters management (which stipulates that the data and information included in the technical documentation submitted for obtaining of permits and authorisations are confidential if the requester asks for this)[22]..

Regarding the provision of the Law no. 544/2001, the document states that there is a series of information to which the public is granted free access, except for the information to which, according to the law, the public may not be granted access (e.g. data that concern the national safety).

According to **Order of the Minister for environment and water management no.1012/2005 on the approval of the Procedure regarding the mechanism for accessing information of public interest with regard to water management**, natural or legal persons have access to information of public interest regarding water management. Information of public interest regarding water management is defined as "any information available in written, visual, audio, electronic or any other material format, regarding water regime and the negative effects of waters, which can affect people's life and goods, environment characteristics and socio-economic objectives. This includes information such as hydrological forecasts and warnings, water quality status, flooding areas, sources of water pollution, general characteristics of river basins development works. Natural and legal persons can request such information through completing a form, which will describe the requested information and whether the information should be provided in hard copies or in electronic form. At the same time,

[19] http://www.rowater.ro/default.aspx (accessed 05.11.2013)
[20] http://www.rowater.ro/Comunicate%20de%20pres/Forms/AllItems.aspx?RootFolder=%2fComunicate%20de%20pres%2fRapoarte&FolderCTID=&View=%7b372D978F-E90F-4256-896C-2C7CDB45DF50%7d (accessed 05.11.2013)
[21] http://www.rowater.ro/Lists/Legislatie%20specifica/DispForm.aspx?ID=10&Source=http%3A%2F%2Fwww%2Erowater%2Ero%2FLists%2FLegislatie%2520specifica%2FAllitemsg%2Easpx (accessed 05.11.2013)
[22] http://www.rowater.ro/Lists/Legislatie%20specifica/Attachments/13/Ordin%20662_2006.pdf (accessed 05.11.2013)

the Order states that the authorities that have jurisdiction as per the water management need to publish the fees to be paid in order to be granted access to certain data. Moreover, the order does not state the situations in which certain types of data to which public access may not be granted.

On the other hand, ANAR, which is one of the institutions having responsibilities in the area of waters management, developed a website on which information is divided into two categories: the ones to which free public access is granted and the ones to which such access may not be granted. Nevertheless, there is no specification as to why the second category may not be of free public access. Moreover, the website does not specify whether the fact that the second category of information are not public because such information may not be paid for and obtained or otherwise and, also, the website does not state a fees list, as per Article 12, paragraph 3 of **the Order no. 1012/2005**.

3.3 The National Agency for Environment Protection (Agenția Națională pentru Protecția Mediului - ANPM)

The **Government Emergency Ordinance no.195/2005 on environment protection** provides that the National Agency for Environment Protection is the public body responsible for the implementation of the legislation and policies in the area of environment protection. The Agency is organised as a public institution, financed from the state budget, and is subordinated to the ministry responsible for environment protection policies.

According to the ordinance, the state recognises the right of every person to a healthy and ecologically balanced environment, thus **guaranteeing access to environmental information**, with the condition that the confidentiality conditions provided in legislation are respected. Environmental information is defined as any information in written, visual, audio, electronic or other material form regarding:

- The state of environmental elements such as air and atmosphere, water, soil, terrestrial surface, landscape and natural areas, biological diversity and its components;
- Factors such as substances, energy, noise, radiations or waste, emissions which affect or may affect environmental elements;
- Measures, including administrative, which affect or may affect the elements and factors mentioned above, as well as the measures or activities designed to protect environmental elements;
- Reports on the implementation of the environment-related legislation;
- Cost-benefit analysis or other economic analysis and forecasts used within the measures and activities mentioned above;

- The state of human health and safety, including the contamination of the food chain, human life conditions, archaeological sites, historical monuments and any constructions provided that these are or may be affected by the state of the environmental elements.

Law no.86/2000 ratifies the **Aarhus Convention**[23] on access to information, public participation in decision-making and access to justice in environmental matters. According to the provisions of the Convention, public authorities are requested to make environmental information available to the public as soon as possible (but not later than one month) after a request has been submitted by an interested party. They are also required to make the environmental information effectively accessible, inter alia, by establishing and maintaining public accessible lists, registers or files and providing access to them free of charge. It is also stipulated that environmental information should become progressively available in electronic databases, which are easily accessible to the public through public telecommunications networks.

Government Decree no.878/2005 on public access to environmental information was adopted with the aim of transposing the **European Directive no.2003/4/CE** on public access to environmental information (which represents an implementation of the same Aarhus Convention at European level). The Decree lays down the terms, conditions and modalities for accessing environmental information held by or for public authorities. According to this Decree, public authorities are required to make available to any petitioner, at his/her request, the environmental information held by or for them, without the need for the petitioner to justify the purpose or his/her request. This information is made available as soon as possible, but not later than one month after the receipt of the request. In case of large volume of information or of complex information, the request is answered in two months following its receipt, and the petitioner is informed about this delay.

Regarding the format of the requested information, the Decree provide that, if the petitioner requests that the information is made available into a certain form or format, the public authority provides the information in the requested form or format, except that:

- The information is made available to the public in another form or format which is easily accessible to the petitioner;
- It is convenient for the public authority to make the information available in another form or format; in this case, the authority justifies the provision of the information in the available form or format.

In the light of these provisions, the public authorities are also required to store the environmental information in forms or format, which are **"easily reproducible and accessible through the use of computerised telecommunications or other electronic means"** (Directive 2003/4 Art. 3).

[23] Accessible at http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf (28.11.2013)

In addition, public authorities are requested to make available to the public the registries or lists containing the environmental information held by them or to create information points where the public can find precise information on the places where the environmental information can be found.

The Decree also established the conditions under which public authorities can refuse a request for public information:

- If the requested information is not held by or for the public authority to which the request was submitted;
- The request is obviously unreasonable;
- The request in formulated too generally;
- The request concerns documents under completion or not finalised;
- The request concerns the internal communications system.

Request for public information can also be refused if the disclosure of the requested information affects:

- The confidentiality of the procedures undertaken by public authorities;
- International relations, public security or national defence;
- The course of justice, the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- The confidentiality of commercial or industrial information, where such confidentiality is provided by national or EU law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy; intellectual property rights;
- The confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or EU law;
- The interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;
- The protection of the environment to which such information relates, such as the location of rare species.

Regarding the dissemination of environmental information, public authorities are required to organise the information with the aim of its active and systematic public dissemination, especially through using “computerised telecommunications and/or electronic technology” (Directive 2003/3/CE Art. 3 par. 4). They have the obligation to ensure the progressive organisation of

environmental information in databases, which are easily accessible to the public by means of public telecommunication networks. There is one exception according to which public authorities may choose not to publish through computerised telecommunications and/or electronic technology means the environmental information collected prior to 14 February 2003.

According to the Decree, access to public lists or registries containing the environmental information held by them, as well that the on-site examination of the requested information, are free of charge.

It is worthwhile mentioning that there are some opinions[24] according to which the Aarhus Convention may not be applied in Romania. Thus, it is argued that **Law no.86/2000** ratifying the Convention is not applicable. The opinion states that as the **Government Decree no.878/2005**, as a legal document with an inferior power than a law, does not contain provisions regarding the procedures for implementing the Convention or the European Directive it transposes, then the Decree is not applicable.

We do not share these opinions, as there is a specific law that has clearly ratified the Aarhus Convention and there is no obligation to implement a EU Directive via a law and not a Government Decision. Moreover, there are several court decisions[25] in cases involving access to environmental information in which the court pointed out as a basis of their decisions to both **Law no.86/2000** and of the **Government Decree no.878/2005**, which would mean that they are applicable as legal acts.

Regarding the structure and functions of the Agency, they are established through the **Government Decree no.1000/2012 on the reorganization and operation of the National Agency for Environment Protection and the subordinated public institutions**. According to this Decree, some of the main attributions of the Agency include:

- Ensuring the technical support for the establishment of the conditions, methods and means used for the monitoring of environment factors;
- Administration, at national level, of the European Pollutant Release and Transfer Register, as well as the National registry of manufacturers and importers of electric and electronic equipments and the National Registry of producers of batteries and accumulators;
- Ensuring the annual execution of the National Inventory of Emissions of Greenhouse Gases and other inventories of industrial emissions. The decision also regulates the organisation, functioning and attributes of the institutions subordinated to the Agency;
- Ensuring the national execution of industrial emissions inventories;

[24] http://www.juridice.ro/147262/accesul-la-informatii-si-proiectul-rosia-montana.html (accessed 28.11.2013)
[25] Tribunalul Arges, dosar 1000/1259/2009 , Sentinta civila 245/CAF , Curtea de Apel Timisoara Dosar 1358/108/2009 Decizie civila 118 din 29 Ianuarie 2010 available at http://www.crj.ro/download.php?fileID=phpeRiS8r.pdf and others

- Elaboration of national inventories of emissions of pollutants into the atmosphere;

The Decree also provides that the Agency **ensures public access to environmental information,** as well as the participation of the public in environment related decision-making processes.

The Regulation on the organisation and operation of the Agency[26] was approved through a decision of the President of the Agency - **Decision no.713/1013**[27]**.** The Regulation provides more details regarding the responsibilities of the Agency, as well as an in-depth description of its structure and the responsibilities of its various departments.

The Regulation mentions again the fact that the Agency shall ensure public access to environment-related information and also provides that the Public Relations Department is responsible for ensuring the dissemination of "environment information and information of public interest" through paper and electronic materials and for answering the request for information of public interest. Also, a mention is made with regard to the obligation of one of the Agency's structure to grant public access to the information included in the European and National Pollutant Release and Transfer Register.

As a public institution, financed from the state budget, and subordinated to the ministry responsible for environment protection policies, the Agency would fit under the categories of "public authority or institution" and "public institution" to which the provisions of **Law no.544/2001** on open access to information of public interest and **Law no.109/2007** on the re-use of public sector information are applicable. The environmental information administered by the Agency according to Government **Decree no.1000/2012** would also fall within the scope of the two laws, as information of public interest (**Law no.544/2001**) and documents created within the activity of the Agency (**Law no.109/2007**).

3.4 The Forest Research and Management Institute (Institutul de Cercetări şi Amenajări Silvice - ICAS)

The legal status of the Forest Research and Management Institute is rather unclear at this moment, due to several conflicting legal documents and reasons:

- According to the Forest Code, approved through **Law no.46/2008**, the Forest Research and Management Institute[28] is reorganised, through Government Decision, in the Forest Research and Management Institute "Marin Drăcea", as public entity under the coordination of the central public authority responsible for forest related policies (i.e. ministry for forests).

[26] Tribunalul Arges, dosar 1000/1259/2009 , Sentinta civila 245/CAF , Curtea de Apel Timisoara Dosar 1358/108/2009 Decizie civila 118 din 29 Ianuarie 2010. Available at http://www.crj.ro/download.php?fileID=phpeRiS8r.pdf, and others
[27] http://www.anpm.ro/upload/114017_ROF%20ANPM%202013.pdf (accessed 27.11.2013)
[28] http://www.icas.ro/Acasa (accessed 27.11.2013)

On the Institute's website it is mentioned that the Institute is functioning under the coordination of the Ministry for Environment and Forests (the actual Ministry of Environment and Climate Change) ;

- According to the **Government Decree no.229/2009** on the reorganization of the National Administration for Forests "Romsilva" and the approval of the regulation regarding its organisation and operation, the Institute is a unit with legal personality under the structure of Romsilva. This status is confirmed on the website of Romsilva[29]. It is also provided in the Decree that the Romsilva Management Board approves the functional and organizational structures of the Institute. According to this Decree, Romsilva is subordinated to the Ministry of Environment and Forests;
- **Government Emergency Ordinance no.96/2012** on the establishment of reorganisation measures within the central public administration and the modification of certain legislative acts and **Government Decree no.185/2013** on the organization and functioning of the Ministry of National Education provide that the Institute moves under the coordination of the Ministry of National Education. According to the same Decree, the regulation on the organisation and operation of the Institute is to be approved within 180 days following the entry into force of the Decree.

The case of the Institute raises more complicate legal questions than the previous ones. The only mention on the Institute's website regarding the legislation regulating its activity is **Law no.46/2008** mentioned above. There are no further details regarding the legal framework establishing the organisation and operation of the institute, the information it manages or the public availability of such information. One single line on the website shows that the Institute "provides various data and information on the forests sector"[30]. Furthermore, there is no kind of specification on the official site regarding the data collected or created, fees or way to obtain them.

If we were to consider the higher authority, we would search for information under the Ministry of Environment and Climatic Change[31], but to no significant availability. Under the public information section, we find specified that **Law no.544/2001**[32] is applied, but analysing the list of available public information, we can find no kind of datasets relevant for the Institute's field of expertise. Moreover, there is no reference to the Institute, whatsoever.

We can then conclude, that for the Forest Research and Management Institute there is no official information available for citizens regarding the laws under which the institution runs and no official

[29] http://www.rosilva.ro/rnp/unitati__p_60.htm (accessed 27.11.2013)
[30] http://www.icas.ro/Servicii (accessed 27.11.2013)
[31] http://www.mmediu.ro/beta/ (accessed 05.11.2013)
[32] http://www.mmediu.ro/beta/informare-publica/documente-produse-sisau-gestionate-potrivit-legii-5442001/ (accessed 05.11.2013)

recognition of **Law no.544/2001** or **Law no.109/2007**, regarding access and re-use of public sector information.

Given that the Institute is a public entity, it falls within the scope of **Law no.544/2001** on open access to information of public interest and the geo-information created as part of its activity fits under the category of „information of public interest". Regarding **Law no.109/2007** on the re-use of public sector information, although the Institute would fit under the category of „public institutions" as defined by the law, the information it creates seems to be excepted from the provisions of the law, according to art.3 e), which states that „the law is not applicable to [...] documents held by education and **research institutes** [...] in so far as intellectual property rights are affected".

3.5 The Romanian Geological Institute (Institutul Geologic al României - IGR)

The activity of the Romanian Geological Institute is regulated by the **Government Decree no.1399/2005 on the approval of the Regulation on the organisation and operation of the National Institute for Research-Development in Geology, Geophysics, Geochemistry and Remote Sensing – I.G.R. Bucharest**. According to this regulation, the Institute is a legal person under the coordination of the National Authority for Scientific Research and its main aim consists in undertaking technological development and scientific research activities in the areas of geology, geophysics, geochemistry and remote sensing. Some of these activities include:

- Undertaking research in areas such as: mineralogy, palaeontology, geochemistry, regional geology, hydro-geology, mineral resources, geo-electricity, remote sensing;
- Elaboration of geological, hydrological and geophysics maps;
- Elaboration of geological studies and technical-economic documentations;
- Provision of services pertaining to its field of activity.

The Regulation also defines the structure of the Institute and the specific responsibilities of its managing bodies, as well as provisions regarding the Institutes' budget.

According to **Government Emergency Ordinance no.96/2012** and **Government Decree no.185/2013** mentioned above, the Institute moves under the coordination of the Ministry of National Education and a new regulation on its organisation and operation is to be approved within 180 days following the entry into force of the Decree.

There is no legal provision regarding the public availability of the information administered by the Institute, and, therefore, no details regarding the conditions under which such information can be made available to the public (charges, formats, licences, etc.). Such information is not available on

the Institute's website[33] either, although the Institute offers access to a portal with geological maps[34] and portal of geophysics data[35].

Although there are several on-going national projects listed on the website, it is unclear if the "national" term stands for geographical coverage of the analysed area or if it refers to national funding, as there is no statement on the legal or financial aspects of the projects presented[36]. We have identified a project, with possible similar theme as the GEOIDEA project, namely "GIS database applied to geological information covering the Romanian territory " (Baza de date GIS aplicată la informațille geologice cu privire la teritoriul României). The main objective is to develop a relevant geospatial database, but there is no information regarding the access to this database, may it be free or not.

It must be reminded though that the Institute has taken a first step towards opening up data, through a written agreement with the University of Bucharest, Faculty of Geography, allowing free access to the Geological Map of Romania, scale 1:200000 for personal, educational and research purposes. The map is available as downloadable geo-referenced GeoTIFF files or through web mapping services (WMS)[37].

The Institute's website contains no specification of the legal framework that defines public sector information related to its work. Nevertheless, considering the legitimating **Decree 1399/2005**, we may safely state that, although it has financial autonomy (Decree 1399/2005, art.1, par.(2)), the datasets created and collected through projects financed from public funds belong to the Institute, as well as to the main sponsor (Ordonatorul principal de credite) (Decree 1399/2005, art.6). Considering the public funding, we consider this information public, falling under the provisions of Law no.544/2001 on open access to information of public interest.

Regarding Law no.109/2007, although the Institute would fit under the category of „public institutions" as defined by the law, the information it creates seems to be excepted from the provisions of the law, according to art.3 e), which states that „the law is not applicable to [...] documents held by education and **research institutes** [...] in so far as intellectual property rights are affected".

3.6 National Institute of Statistics (Institutul Național de Statistică – INS)

According to **Law no.226/2009 on the organisation and operation of official statistics in Romania,** the National Institute of Statistics is the main producer of official statistical data and the coordinator

[33] http://www.igr.ro/ (accessed 05.11.2013)
[34] http://37.128.225.60/testgeo2/ (accessed 27.11.2013)
[35] http://37.128.225.60/geofizica-v1/ (accessed 27.11.2013)
[36] http://igr.ro/index.php?optiune=52 (accessed 05.11.2013)
[37] http://earth.unibuc.ro/download/harta-geologica-a-romaniei-scara-1-200-000 (accessed 05.11.2013)

of the National Statistics System (composed of "producers of official statistics reunited into a coherent and unitary structure, which participate in the elaboration of official statistics"). The Institute is organised as central public administration specialised body, with legal personality, under the subordination of the Government and under the coordination of the Government's Secretary General.

The law establishes the main attributions of the Institute, which include:

- Elaboration of statistical indicators, working methodologies, classifications and implementing technologies and techniques for obtaining and processing data;
- Collection of statistical data; production and dissemination of official statistics;
- Elaboration of methodologies, statistical analysis and interpretations of official statistics;
- Organisation and administration of statistical registries and data bases;
- Collaboration with ministries and other central public administration bodies, as well as with public services, with the aim of ensuring the compatibility between the official statistics system and other informational systems.

The law empowers the Institute to establish its own methodologies on the collection, processing, analyse, publication and creation of statistical data series in its area of competence. The Institute is also required by law to elaborate, in collaboration with other producers of official statistics, the National Statistics System Strategy, which establishes the objectives and actions necessary for the operation and development of the National Statistics System. One of the aims of this Strategy is to ensure the existence of updated and relevant statistical data which are necessary for the justification, evaluation and monitoring of the national development policies. The Institute also elaborates multiannual and annual statistical programmes, on the basis of the Strategy. The annual statistical programme represents the instrument on the basis of which the Institute is authorised to collect, process, store, analyse and publish official statistical data.

The Institute is authorised to create, update and maintain statistical registries, on the basis of data sources obtained from censuses and other statistical research, as well as from administrative sources. The areas in which such registries are created, as well as the methods for organising, updating and maintaining such registries are established by order of the president of the Institute.

The Institute is authorised by law collect statistical data from any available source. The requested data can be provided in paper format, on magnetic support or through other procedure necessary for automatic data processing.

The law establishes the conditions for the **dissemination of statistical data**. According to the legal provisions, the official statistical data produced by the Institute represent a national good of public

interest and **are available to all users,** on an equal basis with regard to the data volume and quality and the simultaneity of their dissemination. The statistical data are disseminated within the deadlines established through the annual statistical programme.

With regard to the **conditions for the use of statistical data** made available by the Institute, the law provides that the users of statistical data can publish them, on paper format or in electronic form, only with an indication of the source.

The **individual data** (personal data related to an identified or identifiable person or data related to an economic operator with or without legal personality) collected by the Institute are collected only for statistical purposes and can only be made available in aggregated forms.

The dissemination of individual data is allowed only for research purposes and only in certain conditions: with the written agreement of the concerned individual; if the data have been collected from public sources; if the data are disseminated in a form which does not allow for the direct or indirect identification of the data providers.

The law also contains provisions on data confidentiality; statistical data are considered confidential if they refer to a single natural or legal person or if they allow for the direct or indirect identification of the respective natural or legal person. However, the following data referring to legal persons are not considered confidential: name, address, activity profile, social capital, turnover, and number of employees. Statistical data resulted from the processing of individual data can be disseminated if, "following the aggregation process, the results refer to at least 3 units of reporting and none of them have a weight above 80%".

According to the Institute's website[38], access to microdata (anonymised confidential data regarding individual statistical units) is possible only for scientific research projects undertaken by universities, research institutes, national statistics institutes, central banks in the European Unions and the European Central Bank. Natural persons are not granted access to such data. It is also mentioned that it is forbidden to make copies of the microdata sets provided by the Institute. In addition, the party being granted access to such data must take all measures necessary to ensure that the microdata are not distributed to third parties and no attempt is made to identify a statistical individual unit; it is also forbidden to correlate the microdata sets with other data sets from other sources without the Institute's written agreement. It is not possible for the user to grant access to the microdata set to a person from another institution, even if this person is involved in the same research project. The user requested to provide the Institute with a copy of all reports (including the unpublished ones) produced on the basis of the requested microdata.

[38] http://www.insse.ro/cms/en/content/nis-microdata-scientific-purposes (accessed 27.11.2013)

Regarding the format in which statistical data are made available, the law only provides that the Institute elaborates and disseminates statistical publications on paper format or in electronic form. These publications can be disseminated, free of charge, to public authorities, national or university libraries, mass media and other categories of users, with the approval of the president of the Institute. However, the phrase "other categories of users" is rather vague and it is not clear whether the general public can have access to such publications on a free of charge basis. In addition, there are no legal provisions regarding the format of the data made available in electronic form.

The Institute's website provides access to a database with statistical metadata, which describe the statistical data and the processes and tools used for the production and use of the statistical data. It is mentioned that these metadata can be listed by the users or can be exported in PDF format[39]. Similarly, the website also provides access to statistical classifications, which give the users the possibility to download the data in „available formats" – usually .zip and .rar files.

Further details regarding the operation of the Institute are provided in the **Government Decree no.957/2005 on the organisation and functioning of the National Institute of Statistics.** The Decree stipulates that the Institute's role is to organise and coordinate the official statistics in Romania. A detailed description of the attribution of the Institute is included; in addition to the attributions provided in the law, the Decree also mentions:

- Organisation and leading of statistical research regarding socio-economic processes and phenomena;
- Collection, processing and storage of data and information, with the aim of creating and distribute statistical data series;
- Coordinating the elaboration of the unitary classifications of national interest pertaining to its area of activity;
- Development, execution and exploitation of the statistical information system.

All legal persons are required by law to provide the Institute, free of charge, with all the statistical data and information, within the deadline and in the format required by the Institute in accordance with its instructions. Natural persons are required to provide personal data and data related to their households and economic activities, for statistical investigations and censuses. The decree also contains provisions regarding the structure and the management of the Institute.

Given that the Institute is a central public administration specialised body, it is also required to apply the Law no.544/2001 on open access to information of public interest. This law is specifically mentioned on the Institute's website, and a form for requesting statistical information on the basis of this law is available to the public. On the same ground, the Institute is also subject to the provisions

[39] http://colectaredate.insse.ro/metadata/public.htm?locale=en (accessed 27.11.2013)

of Law no.109/2007 on the re-use of public sector information, with regard to the "documents it has created as part of its own public activity".

3.7 National Meteorology Administration (Administrația Națională de Meteorologie – ANM)

Law **no. 139/200 on the meteorological activity** establishes the attributions of the National Meteorology Administration and those include:

- Elaboration of weather forecasts of general public interest;
- Administration, exploitation, maintenance and development of the national meteorological supervising network;
- Creation of the National Fund of Meteorological Data and administration of the National Bank of Meteorological Data;
- Internal transfer and international exchange of meteorological data;
- Meteorological services for the protection of road traffic, river and maritime navigation and nuclear installations;
- Provision of specialised services for various beneficiaries.

It is provided in the law that the Administration undertakes activities of public interest and, as such, **it provides, free of charge,** on the basis of a convention**, information pertaining to its area of activity, including general forecasts or warnings to various public institutions and to radio and television public stations**. For all other categories of users, the Administration is entitled to conclude contracts with various users or to associate itself with economic operators for the provision of the services, which are part of its attributions. These provisions make it unclear whether the information administered by the Administration can be made available directly to the public.

The law also regulates the National Fund of Meteorological Data, which is comprised of all quantitative and qualitative information collected on the Romanian territory through observations and measurements of the parameters, which define the meteorological regime. The Fund is of strategic importance and it forms the National Bank of Meteorological Data.

It is provided that the Administration is the official source of meteorological data and information on the Romanian territory. The access of legal and natural persons to meteorological data and information is subject to the provisions of the law. The public dissemination of meteorological data or information, without the agreement of the Administration, is prohibited. There is another provision in the law according to which the use of meteorological data and information dedicated to the meteorological protection of life and goods for purposes other that those of public interest is

allowed only with the agreement of the holders of such data. It is not clear, however, what constitutes public interest and who is entitled to assess whether the purposes in which the data are used represent the public interest or not.

Regarding the costs for accessing meteorological data, it is only provided that the use of meteorological data and information for commercial purposes in allowed on the basis of a charge. The only exception is represented by the accredited universities, for which the Administration provides free of charge meteorological data and information, in limited volumes, necessary for the elaboration of graduation papers. However, this lead to confusion, as the use of data in such context can hardly be interpreted as commercial purpose, and, therefore, it is difficult to assess, under these circumstances, what constitutes commercial purpose in the meaning of this law.

With respect to the conditions under which meteorological data can be made public by third parties, the law stipulates that radio and television stations, web sites, newspapers, magazines and other publications, institutions and undertakings with or without legal personality and natural persons which make public meteorological information, warnings and forecasts are bound to mention the source of such information.

Law no.216/2004 on the establishment of the National Meteorological Administration provides more details regarding the activity of the Administration. The Administration is a legal person of national public interest, whose main aim is to ensure the meteorological protection of life and goods. The entity is organised as an administration with financial autonomy, under the authority of the Ministry of Environment. The Administration is entitled to:

- Make observations and measurements regarding weather status and evolution;
- Ensure and control the internal circulation of meteorological data;
- Elaborate methodologies for the measurement and processing of data and create meteorological products;
- Elaborate weather forecasts and warnings;
- Create, update and administer the National Fund of Meteorological Data.

The law does not contain provisions regarding the public availability of the meteorological data administered by the Administration.

The **Regulation on the organisation and operation of the Administration was approved through Government Decree no.1405/2004** and it reinforces the provisions in the above-mentioned laws regarding the attributions of the Administration, while also containing detailed provisions on the structure and management of the entity. It is, therefore, reinforced that the Administration is the

official source of meteorological data and information on the Romanian territory and, as such, it collects, validates, registers and archives meteorological data.

In addition to the above mentioned provisions regarding the fact that the Administration provides meteorological data free of charge to certain public institutions, it is also mentioned that the Administration also provides, free of charge:

- Meteorological data in the World Meteorological Supervising System;
- Meteorological data, in a limited volume, to state education entities, for education purposes, for the elaboration of graduation and dissertation thesis;
- Meteorological warnings regarding dangerous atmospheric phenomena to all mass media, for a rapid public information and protection of those affected.

It is further mentioned that access to meteorological data is allowed for all categories of users, within the conditions established in the Regulation on the administration of the National Fund of Meteorological Data (which is to be approved by the Administration's Management Board) and provided that the granted right of use is not breached. While this Regulation **has not been approved so far**, its draft version contains provisions regarding access to meteorological data included in the Fund.

According to these draft provisions, access to such data, which constitute the intellectual property of the Administration, is guaranteed, in the sense that no natural or legal person can be denied access, under the condition of respecting the legislation in the field of meteorology. It is also provided that access to complete meteorological data sets for any station in the national meteorological network is restricted as such:

- Maximum 10 years for sub-hourly data;
- Maximum 15 years for hourly data;
- Maximum 20 years for daily data; and
- Maximum 50 years for monthly data and annual data.

The complete meteorological data sets with sub-hourly, hourly and daily frequency larger than 20 years are considered confidential information and protected according to the applicable legislation.

An exception is made for "essential data sets". The provision of sequences of meteorological data sets from the National Fund of Meteorological Data is free of charge only in the following cases:

- For the substantiation of the national strategy in various sectors (derivate meteorological data sets can be provided to the central public administration);

- For scientific research and cooperation (at international level, meteorological data can be provided in accordance with the international obligations assumed by Romania; at national level, meteorological data can be provided in limited volumes, as part of the collaborations with research institutes and bodies, universities etc.);
- For educational purposes (meteorological data can be provided in limited volumes, on the basis of collaboration conventions agreed with accredited universities).

Taking into account the fact that ANM is organised as an administration under the authority of the Ministry of Environment and it is a beneficiary of public funds, thus falling under the category of public institutions as defined in **Law no. 544/2001** on open access to information of public interest, it is subject to this law with regard to the information resulting from its activity. This is also confirmed on the Administration's website, which mentions that the entity ensures the access of all natural and legal persons to the public information related to its activity, in accordance with the law. Such information is provided at request, either directly, either via telephone, fax, mail or electronic mail[40].

It is also mentioned that the access to the data included in the National Fund of Meteorological Data is granted in accordance with the existing legal provisions regarding meteorology and with the internal regulations of the Administration (although these are not published on the website).

The provision of such data is made free of charge or at a cost, on the basis of existing regulations. It is further underlined that the historical meteorological data constitute the intellectual property of the Administration and that such data acquired of the basis of conventions and protocols are to be used for the purposes for which they have been acquired, their re-commercialisation and distribution as such, without the agreement of the Administration, being prohibited[41]. According to the Terms of use[42] , the partial or integral copying or reproduction, archiving or preservation by any means, including electronic or magnetic means, of the information available on the Administration's website without the written agreement of the copyright holder is prohibited. The use of this information for commercial purposes is also prohibited. According to the same rules, all information, texts and graphic elements on the website, as well as their assembling and presentation constitute the intellectual property of the Administration.

Given the legal status of the Administration and the fact that it is a beneficiary of public funds, as well as its responsibilities regarding data collection, production and administration, it can also be concluded that the Administration falls within the scope of **Law no.107/2007** on the re-use of public sector information, with respect to the information created as part of its public activity.

[40] http://www.meteoromania.ro/anm/?page_id=1091 (accessed 27.11.2013)
[41] http://www.meteoromania.ro/anm/?page_id=2195 (accessed 27.11.2013)
[42] http://www.meteoromania.ro/anm/?page_id=49 (accessed 27.11.2013)

4. CONCLUSIONS

As a general note, we have to highlight that the access to public information in Romania (even though we have the law from 2001) is not very well established. Therefore, even with a sound national law of the revised PSI Directive in place, the results for re-use of public information is modest since access regimes to information are not very well developed or deployed.

The practical examples from the six institutions analysed in Chapter 3 underlines that even if all of them should have clear rules for access to information or the re-use of public sector information, in reality there is not an interest for these subjects. Moreover, even the secondary legislation that should in fact detail how the access or re-use needs to take place, are lacking in this area or, even worst, are prohibiting access and re-us, thus contradicting the principles of the laws 544/2001 and 109/2007. The few practical examples of asking the data or the geodata shows us that after a classical negative answer in providing the data, the regular user has no other method of redress than a cumbersome, time-consuming court administrative procedure, that deters any average or even highly informed user that does not have a clear commercial interest at stake.

A real change in this respect – with a relevant impact on access to public data in general – would need a comprehensive approach, including the political will, the necessary legal framework, institutional design, training of relevant staff from public sector and awareness campaigns for the general public. All these are pieces of the puzzle that the need to be seen together, as the legislation alone can never bridge this gap.

This being said, we believe that there is an opportunity in the current period, due to the need to implement the modifications of the PSI directive, to try to fix at least one of the puzzle pieces. Therefore we would use this report in order to suggest *de lege ferenda* several improvements (detailed in the report above) of the current legal system around the PSI law 109/2007 and other legislation in order to:

- Correctly implement a definition of Public Sector Tasks that would not limit the re-use of PSI;
- Include provisions related to the interoperability of data (and especially of spatial data sets) in order to facilitate the re-use of geodata and geo-spatial data;
- Include the principle of anonymisation of personal data in PSI re-use;
- Adopt measures to make illegal any practice for public institutions in charging above the marginal costs;

- Clarify and adopt an open licence at the national or European level for legal clarity in this respect. We would suggest the Creative Commons 4.0[43] as a potential unique licence for open data at the European level. This would also ensure the legal certainty regarding also the licenses under which the spatial data sets and the related metadata are made available to the public;
- Appoint an impartial public body which has the competence to review possible requests, to issue recommendations and to enhance the application of the laws for re-use;
- Limit the exclusive agreements between public sector bodies and private partners;
- Change the details of the request to a public body, so that a motivation is not mandatory;
- Include legal clarity that would not allow secondary legislation for different bodies to establish contradictory rules for re-use of public information.

[43] This license is also supported by other project, such as Open AIRE – see http://www.openaire.eu/en/component/content/article/9-news-events/502-launch-of-creative-commons-40-license (accessed 05.12.2013)

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