PSI DIRECTIVE AND THE CONCERN ABOUT REDRESS MECHANISMS

Three important questions to bear in mind before starting the discussion:

1º) What X is the thing that should be done to publish or reuse PSI? Redress would obviously ensure reuse of PSI since it would make possible the resolution of conflicts.

2º) Why does X facilitate the publication or reuse of PSI? It represents a mechanism to challenge Public Administration denials for reuse.

3º) How can one achieve X and how can you measure or test it? See Guide Lines Document on Redress mechanisms. It cannot be measured yet.

One of the main aspects to consider about PSI reuse: the convenience of introducing Regulators in the new Directive.

Important questions:

- **Should access be also competence of these new Regulators?**

From a logical point of view or from a logical perspective, there is no doubt it would be extremely convenient and helpful since access is the premise for reuse, but the problem is that access falls out of the EU competence and it would be extremely hard to impose such a solution from European institutions.
Nevertheless it could be suggested or recommended.

- **Is there only one possibility or could other pre-existing Regulators such as Data Protection Agencies or Free Competition Regulators assume that competence?**

This would be a good option attending economic reasons, but in decentralized countries it could be not always viable or feasible depending on their own distribution of competences.
When there were to be several PSI Regulators, coordination among them must be strictly observed as well as coordination among PSI Regulators and other ones (information and advice required).
According to Linda Austere, Reuse is a matter that falls under the scope of Free Competition. From an academic perspective this position could find some arguments against it.

- **Should mediation be mandatory?**

The answer must be clearly negative for many reasons.
Although at first sight it might seem to be a good solution, we find two different types of problems:
a) Making mediation mandatory would only add another step in the resolution of the conflict without any warranty of success;

b) In Continental countries (not UK or Anglo-Saxon countries in general) mediation in the fields of Administrative Law is not common and has different features.
Therefore it is much better to conceive mediation just as a possibility for re-users.

- **What do we exactly mean when we talk about "swift procedure"?**

It is hard to say but we could consider as such one with the following features: clearly states the competent body or authority to solve it; flexible; short terms to solve the conflict; not many administrative steps before reaching Courts…

- **What can be understood as a "binding decision"?**

It is one that can be enforced by different means including possible administrative fines, liability or punishments.
It compels the public body and it is not a mere suggestion or recommendation.
Nevertheless, if this decision is appeled before tribunals of justice by the re-user or by Public Administration its suspension could be ordered until the end of the judicial process.

- **Should cultural institutions be ruled by this Regulator?**

They obviously should, but according to specific substantive legal rules adapted to their peculiarities and to those of the interests involved.