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**NOTE**

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From:	Presidency
To:	Delegations

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Subject:	Proposal for a Directive of the European Parliament and of the Council on the re-use of public sector information (recast) - Presidency compromise text
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**I. INTRODUCTION**

1. Following the presentation of the Impact Assessment on 22 May 2018 by the Commission, the WP TELE held the article-by-article examinations of the proposal on 12 June, 12 July, 4 September and 20 September 2018. The TTE Council held a policy debate on 8 June 2018 on the Directive.
2. Based on the outcome of the policy debate, the discussions in the Working Party and the written comments prepared by the Member States, the Presidency has prepared the third compromise proposal contained in the Annex of this document. The Presidency invites the delegates to discuss the document in the Working Party on 4 October 2018 and provide written comments by 15 October 2018.

3. The Presidency`s intention is to use the present compromise text as the basis for a negotiating mandate, which will be requested from COREPER on 31 October or 7 November.
4. The changes in the document compared with the second Presidency compromise are underlined: additions are marked with **bold**, deletions with ~~striketrough~~. Additions and deletions from the first and second compromise texts are marked with **bold** and ~~striketrough~~ (without underlining).

## II. DETAILED CHANGES

### 1. Definitions

- a) The definition of 'open data' in **Recital 13** has been amended to indicate that free availability should be considered as an intrinsic element of the concept, while acknowledging that there may cases in which open data is not entirely free. Moreover, the use of open formats has been indicated as another characteristic of open data.
- b) The definition of 'open access' in **Recital 23** has been completed to reflect the fact that the possibility to require authorship of research outputs made available under open access cannot be restricted.
- c) The definition of 'public undertakings' in **Article 2(3)** has been refined by adding new text explaining the concept of dominant influence, based on the Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors.
- d) The extension of the definition of 're-use' in **Article 2(9)** takes into account the extension of scope towards public undertakings.

2. Relationship with other EU legal acts

- a) Changes in **Recital 15** have been made to clarify the relationship of the PSI Directive with general and sectoral Union legislation regulating access or re-use of public sector data, confirming that the PSI Directive provides a minimum level of harmonisation and any sectoral provisions exceeding these minimum requirements will continue to apply.
- b) The changes in **Article 1(3a)** and in the corresponding **Recital 47** concerning the relationship of the PSI Directive with personal data protection legislation do not have an impact on the substance, but ensure that the text is more in line with a more modern and standard way of expressing the relationship between different pieces of legislation.

3. High value datasets

- a) The changes introduced in **Recital 58** aim to confirm that the implementing acts listing specific types of high value datasets will not lay down new requirements as regards standards and metadata in cases where this has already been done in relevant sectoral legislation.
- b) **Recital 60** has been updated to clarify that the free availability of high value datasets should not prevent public sector bodies from charging for services that are based on such datasets, provided as part of their public tasks, such as confirming the authenticity of documents.
- c) **Article 13(1)** has been modified to provide that investments made by Member States into open data approaches are duly taken into consideration when drawing up a list of high value datasets and defining the corresponding modalities of making them available for re-use.

- d) The new text in **Article 13(2)** contains a new provision according to which public sector bodies that are required to generate revenue in order to cover a substantial part of their costs relating to the performance of their public tasks may, in certain cases, be exempted by Member States from the obligation to make their high value datasets available for free, for a period not exceeding 2 years.

#### 4. Charging

- a) A new **paragraph 5a** has been added in **Article 6** in order to make it clear that certain types of high value datasets will not have to be made available for free (datasets the release of which may have an impact on the competitive environment in a given sector and datasets from cultural institutions).

#### 5. Dynamic data and APIs

- a) Additions in **Recital 27** clarify that dynamic data also includes data that is manually updated and that in cases justified by public interest reasons, essential verification of dynamic data can take place before the data in question is released, without affecting the frequency of the updates.
- b) The modification in **Article 5(5)** has been introduced to indicate that in circumstances referred to therein the requirement to use an API for dynamic data may be met partially (with some technical restrictions) for a limited period of time.

#### 6. Scope (research data)

- a) The description of the practice of data management planning and the concept of FAIR principles (findable, accessible, interoperable and re-usable) in **Recital 23** has been updated to indicate that their implementation is still at an early stage.

- b) The additions in **Recital 24** aim to make the link between the obligations related to research data stemming from the Directive and the principle of making research data ‘as open as possible, as closed as necessary’. Moreover, the new text clarifies that the obligations will not lead to extra costs for the retrieval of datasets or require additional curation of data. The possibility for Member States to include outlets other than subject-based repositories (i.e. open access publications) that would trigger the obligations has also been indicated.

7. Other changes

- a) For consistency, clarification that Member States are not obliged to modify the format of the requested information has been moved from **Recital 32** to **Recital 29**.
- b) The additions in **Article 1(3)** aim to clarify that the Directive also builds on access regimes enshrined in EU law (e.g. in the Directive on access to environmental information).
- c) Provisions on exclusive arrangements in **Article 12(5)** have been adapted to reflect the fact that the Directive also applies to public undertakings.

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2018/0111 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****on Open Data and the re-use of public sector information (recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union , and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

- (1) Directive 2003/98/EC of the European Parliament and of the Council<sup>3</sup> has been substantially amended. Since further amendments are to be made, that Directive should be recast in the interests of clarity.
- (2) Pursuant to Article 13 of Directive 2003/98/EC and five years after the adoption of the amending Directive 2013/37/EU, the Commission has, after consulting the relevant stakeholders, undertaken an evaluation and review of the functioning of the Directive in the framework of a Regulatory Fitness and Performance Programme<sup>4</sup>.
- (3) Following the stakeholder consultation and in the light of the Impact Assessment<sup>5</sup> results, the Commission considered that action at Union level was necessary in order to address the remaining and emerging barriers to a wide re-use of public sector and publicly-funded information across the Union and to bring the legislative framework up to date with the advances in digital technologies, such as Artificial Intelligence and the Internet of Things.
- (4) The substantive changes introduced to the legal text so as to fully exploit the potential of public sector information for the European economy and society focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, including from public undertakings, research performing organisations and research funding organisations, tackling the emergence of new forms of exclusive arrangements, the use of exceptions to the principle of charging the marginal cost and the relationship between this Directive and certain related legal instruments, including Directive 96/9/EC<sup>6</sup> and Directive 2007/2/EC of the European Parliament and of the Council<sup>7</sup>.

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<sup>3</sup> Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90).

<sup>4</sup> SWD(2018) 145.

<sup>5</sup> SWD(2018) 127.

<sup>6</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

<sup>7</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p.1).

- (5) The Treaty provides for the establishment of an internal market and of a system ensuring that competition in the internal market is not distorted. Harmonisation of the rules and practices in the Member States relating to the exploitation of public sector information contributes to the achievement of these objectives.
- (6) The public sector in the Member States collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy.
- (7) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information established a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the Member States, including executive, legislative and judicial bodies. Since the adoption of the first set of rules on re-use of public sector information, the amount of data in the world, including public data, has increased exponentially and new types of data are being generated and collected. In parallel, we are witnessing a continuous evolution in technologies for analysis, exploitation and processing of data. This rapid technological evolution makes it possible to create new services and new applications, which are built upon the use, aggregation or combination of data. The rules originally adopted in 2003 and later amended in 2013 no longer keep pace with these rapid changes and as a result the economic and social opportunities offered by re-use of public data risk being missed.
- (8) The evolution towards a data-based society influences the life of every citizen in the ~~Community~~ **Union**, among other things, by enabling them to gain new ways of accessing and acquiring knowledge.
- (9) Digital content plays an important role in this evolution. Content production has given rise to rapid job creation in recent years and continues to do so. Most of these jobs are created by innovative start-ups and **small- and medium sized enterprises** (SMEs).



- (10) One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of Union-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. Broad cross-border geographical coverage will also be essential in this context. Wide possibilities of re-using public sector information should inter alia allow European companies to exploit its potential and contribute to economic growth and job creation.
- (11) Allowing re-use of documents held by a public sector body adds value for the re-users, for the end users and for society in general and in many cases for the public body itself, by promoting transparency and accountability and providing feedback from re-users and end users which allows the public sector body concerned to improve the quality of the information collected.
- (12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Practice in public sector bodies in exploiting public sector information continues to vary among Member States. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the ~~Community~~ **Union**.
- (13) Open data **as a general concept refers to data in open formats that can ideally be freely used, re-used, modified and shared by anyone for any purpose.** Open data policies which encourage the wide availability and re-use of public sector information for private or commercial purposes, with minimal or no legal, technical or financial constraints, and which promote the circulation of information not only for economic operators but also for the public, can play an important role in kick-starting the development of new services based on novel ways to combine and make use of such information, stimulate economic growth and promote social engagement.

- (14) Moreover, without minimum harmonisation at Community Union level, legislative activities at national level, which have already been initiated in a number of Member States in order to respond to the technological challenges, might result in even more significant differences. The impact of such legislative differences and uncertainties will become more significant with the further development of the information society, which has already greatly increased cross-border exploitation of information.
- (15) Member States have 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. ~~To prevent different~~ **Diverging** rules in different Member States ~~may acting~~ as a barrier to the cross-border offer of products and services, and ~~to enable~~ **prevent** comparable public data sets ~~to~~ **from being** re-usable for pan-European applications based on them. **Hence**, a minimum harmonisation is required to determine what public data are available for re-use in the internal information market, consistent with the relevant access regimes, **both general and sectoral, such as the one defined by Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information**<sup>8</sup>. The provisions of Union and national law that go beyond these minimum requirements, notably in cases of sectoral legislation, should continue to apply. Examples of provisions that exceed the minimum harmonisation level of this Directive include lower thresholds for permissible charges for re-use than the thresholds foreseen in Article 6 or less restrictive licensing terms than those referred to in Article 8. Notably, this Directive should be without prejudice to provisions that exceed the minimum harmonisation level of this Directive as laid down in Commission delegated regulations adopted under Directive 2010/40/EU of the European Parliament and of the Council on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport.

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<sup>8</sup> **Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26–32).**

- (16) A general framework for the conditions governing re-use of public sector documents is needed in order to ensure fair, proportionate and non-discriminatory conditions for the re-use of such information. Public sector bodies collect, produce, reproduce and disseminate documents to fulfil their public tasks. Use of such documents for other reasons constitutes a re-use. Member States' policies can go beyond the minimum standards established in this Directive, thus allowing for more extensive re-use. **In their national legislation transposing this Directive, Member States can use other terms than 'documents', as long as the full scope of what is covered by the definition of the term 'document' in article 2 is maintained.**
- (17) This Directive should apply to documents the supply of which forms part of the public tasks of the public sector bodies concerned, as defined by law or by other binding rules in the Member States. In the absence of such rules 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.
- (18) This Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell, disseminate, exchange or give out information. To avoid cross-subsidies, re-use should include further use of documents within the organisation itself for activities falling outside the scope of its public tasks. Activities falling outside the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market.

(19) The Directive lays down an obligation for Member States to make all **existing** documents re-usable unless access is restricted or excluded under national rules on access to documents and subject to the other exceptions laid down in this Directive. The Directive builds on the existing access regimes in the Member States and does not change the national rules for access to documents. It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Union level, Articles 41 (**R**ight to good administration) and 42 (**R**ight of access to **documents**) of the Charter of Fundamental Rights of the European Union recognise the right of any citizen of the Union and any natural or legal person residing or having its registered office in a Member State to have access to European Parliament, Council and Commission documents. Public sector bodies should be encouraged to make available for re-use any documents held by them. Public sector bodies should promote and encourage re-use of documents, including official texts of a legislative and administrative nature in those cases where the public sector body has the right to authorise their re-use.

- (20) The Member States often entrust the provision of services in the general interest with entities outside of the public sector while maintaining a high degree of control over such entities. At the same time, the provisions of the Directive 2003/98/EC apply only to documents held by public sector bodies, while excluding public undertakings from its scope. This leads to a poor availability for re-use of documents produced in the performance of services in the general interest in a number of areas, notably in the utility sectors. It also greatly reduces the potential for the creation of cross-border services based on documents held by public undertakings that provide services in the general interest.
- (21) Directive 2003/98/EC should therefore be amended in order to ensure that its provisions can be applied to the re-use of **existing** documents produced in the performance of services in the general interest by public undertakings pursuing one of the activities referred to in Articles 8 to 14 of Directive 2014/25/EU of the European Parliament and of the Council<sup>9</sup>, as well as by public undertakings acting as public service operators pursuant to Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and the Council on public passenger transport services by rail and by road, public undertakings acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, and public undertakings acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

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<sup>9</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

- (22) This Directive should not contain an **general** obligation to allow the re-use of documents produced by public undertakings ~~and should be without prejudice, in that respect, to national law~~. The decision whether or not to authorise re-use should remain with the public undertaking concerned, **except where otherwise required by in accordance with this Directive, Union or national law**. Only after the public undertaking has ~~chosen to make~~ a document available for re-use, should it observe the relevant obligations laid down in Chapters III, ~~and IV and V~~ of this Directive, in particular as regards formats, charging, transparency, licences, non-discrimination and prohibition of exclusive arrangements. On the other hand, ~~the public undertakings are~~ not required to comply with the requirements laid down in Chapter II, such as the rules applicable to processing of requests. **When allowing the re-use of documents, particular attention should be given to the protection of critical infrastructure defined in accordance with Directive 2008/114<sup>10</sup> and of essential services defined in accordance with Directive 2016/1148<sup>11</sup>.**
- (23) The volume of research data generated is growing exponentially and has potential for re-use beyond the scientific community. In order to be able to address mounting societal challenges efficiently and in a holistic manner, it has become crucial and urgent to be able to access, blend and re-use data from different sources, as well as across sectors and disciplines. Research data includes statistics, results of experiments, measurements, observations resulting from fieldwork, survey results, interview recordings and images. It also includes meta-data, specifications and other digital objects. Research data is different from scientific articles reporting and commenting on findings resulting from their scientific research. For many years, the open availability and re-usability of scientific research results stemming from public funding has been subject to specific policy initiatives. Open access **is understood as the practice of providing online access to research outputs free of charge for the end user and without restrictions on use and re-use beyond the possibility to require authorship to be acknowledged**. Open access policies aim in particular to provide researchers and the public at large with access to research data as early as possible in the dissemination process and to ~~enable~~ **facilitate** its use and re-use. Open access helps enhance

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<sup>10</sup> **Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (OJ L 345, 23.12.2008, p. 75).**

<sup>11</sup> **Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (the NIS Directive).**

quality, reduce the need for unnecessary duplication of research, speed up scientific progress, combat scientific fraud, and it can overall favour economic growth and innovation. Beside open access, **efforts are currently being made to ensure that data management planning becomes a standard scientific practice and to support the dissemination of research data that are findable, accessible, interoperable and re-usable (FAIR principles).** ~~data management planning is swiftly becoming a standard scientific practice for ensuring data that is findable, accessible, interoperable and re-usable (FAIR principles).~~

(24) For the reasons explained above, it is appropriate to set an obligation on Member States to adopt open access policies with respect to publicly-funded research results and ensure that such policies are implemented by all research performing organisations and research funding organisations. Open access policies typically allow for a range of exceptions from making scientific research results openly available. On 17 July 2012, the Commission adopted a Recommendation on access to and preservation of scientific information, updated on 25 April 2018<sup>12</sup>, and describing, among other things, relevant elements of open access policies. Additionally, the conditions, under which certain research results can be re-used, should be improved. For this reason, certain obligations stemming from this Directive should be extended to research data resulting from scientific research activities subsidised by public funding or co-funded by public and private-sector entities. However, in this context, concerns in relation to privacy, protection of personal data, ~~confidentiality, trade secrets,~~ national security, legitimate commercial interests, **such as trade secrets**, and to intellectual property rights of third parties should be duly taken into account, **according to the principle ‘as open as possible, as closed as necessary’**. In order to avoid any administrative burden, such obligations should only apply to such research data that have already been made publicly available **by researchers, research performing organisations or research funding organisations through an institutional or subject-based repository** ~~by researchers through an institutional or subject-based repository,~~ **and should not impose extra costs for the retrieval of the datasets or require additional curation of data.** **Member States may extend the application of the Directive to research data made publicly available through open access publications, as an attached file to an article, a data paper or a paper in a data journal.** ~~Documents Other than research data types of documents held by research performing organisations and research funding organisations~~ should continue to be exempt from the scope of application of this Directive.

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<sup>12</sup> C(2018)2375.



- (25) The definitions of ‘public sector body’ and ‘body governed by public law’ are taken from Directive 2014/24/EU of the European Parliament and the Council<sup>13</sup>. **The definition of ‘public undertaking’ is taken from Directive 2014/25/EU of the European Parliament and the Council<sup>14</sup>.**
- (26) This Directive lays down a generic definition of the term ‘document’. It covers 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 audiovisual recording). The definition of ‘document’ is not intended to cover computer programmes. **Member States may extend the application of this Directive to computer programmes.**
- (27) Public sector bodies are increasingly making their documents available for re-use in a proactive manner, by ensuring online discoverability and actual availability of both metadata and the underlying content. Documents should also be made available for re-use following a request lodged by a re-user. In those cases, the time limit for replying to requests for re-use should be reasonable and in accordance with the equivalent time for requests to access the document under the relevant access regimes. Public undertakings, educational establishments, research performing organisations and research funding organisations should however be exempt from this requirement. Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. This is particularly important for dynamic data (including traffic data, satellite data, weather data, **sensor generated data**), the economic value of which depends on the immediate availability of the information and of regular updates. Dynamic data should therefore be made available immediately after collection, **or in case of a manual update immediately after the modification of the dataset**, via an Application Programming Interface so as to facilitate the development of internet, mobile and cloud applications based on such data. Whenever this is not possible due to technical or financial constraints, public sector bodies should make the documents available in a timeframe that allows their full economic potential to be exploited. Should a licence be used, the timely availability of

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<sup>13</sup> Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement (OJ L 94, 28.3.2014, p. 65).

<sup>14</sup> **Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).**

documents may be a part of the terms of the licence. **Where data verification is essential in the light of justified public interest reasons, notably for public health and safety, dynamic data should be made available immediately after verification. Such essential verification should not affect the frequency of the updates.**

- (28) In order to get access to the data opened for re-use by this Directive, the use of suitable and well-designed Application Programming Interfaces (APIs) is ~~needed~~ **useful**. An API means a set of functions, procedures, definitions and protocols for machine-to-machine communication and the seamless exchange of ~~dynamic~~ data. APIs ~~are normally~~ **should be supported by clear technical documentation that is complete and available online. Where possible, open APIs should be used. European or internationally recognised standard protocols should be applied and international standards for datasets should be used where applicable.** ~~describes the kind of data can be retrieved, how to do this and the format in which the data will be received. APIs can have different levels of complexity and can mean a simple link to a database to retrieve specific datasets, a web interface, or more complex set-ups.~~ There is general value in re-using and sharing data via a suitable use of APIs as this will help developers and start-ups to create new services and products. It is also a crucial ingredient of creating valuable ecosystems around data assets that are often unused. The set-up and use of API needs to be based on several principles: **availability**, stability, maintenance over lifecycle, uniformity of use and standards, user-friendliness as well as security. For dynamic data, meaning frequently updated data, often in real time, public sector bodies and public undertakings ~~shall~~ **should** make this available for re-use immediately after collection by ways of suitable APIs **and, where relevant, as a bulk download of the complete dataset, save for cases where this would impose a disproportionate effort. Assessment of the proportionality of the effort should take into account the size and operating budget of the public sector body or the public undertaking in question. European or internationally recognised standard protocols should be applied.**

- (29) The possibilities for re-use can be improved by limiting the need to digitise paper-based documents or to process digital files to make them mutually compatible. Therefore, public sector bodies should make documents available in any pre-existing format or language, through electronic means where possible and appropriate. Public sector bodies should view requests for extracts from existing documents favourably when to grant such a request would involve only a simple operation. Public sector bodies should not, however, be obliged to provide an extract from a document **or to modify the format of the requested information** where this involves disproportionate effort. To facilitate re-use, public sector bodies should make their own documents available in a format which, as far as possible and appropriate, is not dependent on the use of specific software. Where possible and appropriate, public sector bodies should take into account the possibilities for the re-use of documents by and for persons with disabilities by providing the information in accessible formats **in accordance with the requirements of the Web Accessibility Directive**<sup>15</sup>.
- (30) To facilitate re-use, public sector bodies should, where possible and appropriate, make documents, including those published on websites, available through open and machine-readable formats and together with their metadata, at the best level of precision and granularity, in a format that ensures interoperability, e.g. by processing them in a way consistent with the principles governing the compatibility and usability requirements for spatial information under Directive 2007/2/EC of the European Parliament and of the Council.<sup>16</sup>

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<sup>15</sup> **Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).**

<sup>16</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p.1).

- (31) A document should be considered to be in a machine-readable format if it is in a file format that is structured in such a way that software applications can easily identify, recognise and extract specific data from it. Data encoded in files that are structured in a machine-readable format should be considered to be machine-readable data. Machine-readable formats can be open or proprietary; they can be formal standards or not. Documents encoded in a file format that limits automatic processing, because the data cannot, or cannot easily, be extracted from them, should not be considered to be in a machine-readable format. Member States should where possible and appropriate encourage the use of **European or internationally recognised** open, machine-readable formats. **The European Interoperability Solutions Framework should be taken into account when designing technical solutions for the re-use of documents.**
- (32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for re-use without charges and, where charges are necessary they should in principle be limited to the marginal costs, **which Marginal costs may cover the costs associated with a particularly extensive search for the provision of the requested information** ~~or extremely costly modifications of the format of requested information~~. In exceptional cases, the necessity of not hindering the normal running of public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged. In such cases, public sector bodies and public undertakings should therefore be able to charge above marginal costs. Those charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. The requirement to generate revenue to cover a substantial part of the public sector bodies' costs relating to the performance of their public tasks or the scope of the services of general interest entrusted with public undertakings does not have to be a legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.

- (33) Libraries, museums and archives should also be able to charge above marginal costs in order not to hinder their normal running. In the case of such public sector bodies the total income from supplying and allowing re-use of documents over the appropriate accounting period should not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. For the purpose of libraries, museums and archives and bearing in mind their particularities, the prices charged by the private sector for the re-use of identical or similar documents could be considered when calculating a reasonable return on investment.
- (34) The upper limits for charges set in this Directive are without prejudice to the right of Member States to apply lower charges or no charges at all.
- (35) Member States should lay down the criteria for charging above marginal costs. In this respect, Member States, for example, may lay down such criteria in national rules or may designate the appropriate body or appropriate bodies, other than the public sector body itself, competent to lay down such criteria. That body should be organised in accordance with the constitutional and legal systems of the Member States. It could be an existing body with budgetary executive powers and under political responsibility.
- (36) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide information market. Therefore all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use. Applicants for re-use of documents held by entities other than public undertakings, educational establishments, research performing organisations and research funding organisations should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.

- (37) The means of redress should include the possibility of review by an impartial review body. That body could be an already existing national authority, such as the national competition authority, the national access to documents authority or a national judicial authority. That body should be organised in accordance with the constitutional and legal systems of Member States and should not prejudge any means of redress otherwise available to applicants for re-use. It should however be distinct from the Member State mechanism laying down the criteria for charging above marginal costs. The means of redress should include the possibility of review of negative decisions but also of decisions which, although permitting re-use, could still affect applicants on other grounds, notably by the charging rules applied. The review process should be swift, in accordance with the needs of a rapidly changing market.
- (38) Making public all generally available documents held by the public sector — concerning not only the political process but also the legal and administrative process — is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. This objective is applicable to institutions at every level, be it local, national or international.
- (39) In some cases the re-use of documents will take place without a licence being agreed. In other cases a licence will be issued imposing conditions on the re-use by the licensee dealing with issues such as liability, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source. If public sector bodies license documents for re-use, the licence conditions should be fair and transparent. Standard licences that are available online may also play an important role in this respect. Therefore Member States should provide for the availability of standard licences.
- (40) If the competent authority decides to no longer make available certain documents for re-use, or to cease updating these documents, it should make these decisions publicly known, at the earliest opportunity, via electronic means whenever possible.
- (41) Conditions for re-use should be non-discriminatory for comparable categories of re-use. This should, for example, not prevent the exchange of information between public sector bodies free of charge for the exercise of public tasks, whilst other parties are charged for the re-use of the same documents. Neither should it prevent the adoption of a differentiated charging policy for commercial and non-commercial re-use.

- (42) In relation to any re-use that is made of the document, public sector bodies may impose conditions, where appropriate through a licence, such as acknowledgment of source and acknowledgment of whether the document has been modified by the re-user in any way. Any licences for the re-use of public sector information should in any event place as few restrictions on re-use as possible, for example limiting them to an indication of source. Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, should play an important role in this respect. Therefore, Member States should encourage the use of open licences that should eventually become common practice across the Union.
- (43) Public sector bodies should respect competition rules when establishing the principles for re-use of documents avoiding as far as possible exclusive agreements between themselves and private partners. However, in order to provide a service of general economic interest, an exclusive right to re-use specific public sector documents may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.
- (44) There are numerous cooperation arrangements between libraries, including university libraries, museums, archives and private partners which involve digitisation of cultural resources granting exclusive rights to private partners. Practice has shown that such public-private partnerships can facilitate worthwhile use of cultural collections and at the same time accelerate access to the cultural heritage for members of the public. It is therefore appropriate to take into account current divergences in the Member States with regard to digitisation of cultural resources, by a specific set of rules pertaining to agreements on digitisation of such resources. Where an exclusive right relates to digitisation of cultural resources, a certain period of exclusivity might be necessary in order to give the private partner the possibility to recoup its investment. That period should, however, be limited in time and as short as possible, in order to respect the principle that public domain material should stay in the public domain once it is digitised. The period of an exclusive right to digitise cultural resources should in general not exceed 10 years. Any period of exclusivity longer than 10 years should be subject to review, taking into account technological, financial and administrative changes in the environment since the arrangement was entered into. In addition, any public private partnership for the digitisation of cultural resources should grant the partner cultural institution full rights with respect to the post-termination use of digitised cultural resources.

- (45) Arrangements between data holders and data re-users which do not expressly grant exclusive rights but which can reasonably be expected to restrict the availability of documents for re-use should be subject to additional public scrutiny. **Therefore, the essential aspects of such arrangements** and should therefore be published **online** at least two months before coming into effect, **i.e. two months before the agreed date on which the performance of the obligations of the parties is set to begin. The publication should so as to** give interested parties an opportunity to request the re-use of the documents covered by the **arrangement agreement** and prevent the risk of restricting the range of potential re-users. **In any event, the essential aspects of such arrangements in their final form agreed by the parties** Such agreements should also be made public **online without undue delay** following their conclusion, ~~in the final form agreed by the parties.~~
- (46) This Directive aims at minimising the risk of excessive first-mover advantage that could limit the number of potential re-users of the data. Where contractual arrangements may, in addition to the Member State's obligations under this Directive to grant documents, entail a transfer of Member State's resources within the meaning of Article 107(1) TFEU, this Directive should be without prejudice to the application of the State aid and other competition rules laid down in Articles 101 to 109 of the Treaty. It follows from the State aid rules laid down in Articles 107 to 109 of the Treaty that the State must verify *ex ante* whether State aid may be involved in the relevant contractual arrangement and ensure that they comply with State aid rules.



- (47) This Directive ~~is without prejudice and~~ should **not affect the level of** ~~be implemented and applied in full compliance with Union law relating to the~~ protection of **individuals with regard to the processing of** personal data **under the provisions of Union and national law, particularly** under ~~including~~ Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>17</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>18</sup>. **The national law should be understood as including any supplementing and reconciling provisions of law enacted by the Member States within the flexibility allowed by the regulation.** Anonymisation is a means to reconcile the interests in making public sector information as re-usable as possible with the obligations under data protection legislation, but comes at a cost. It is appropriate to consider this cost as one of the cost items to be considered as part of the marginal cost of dissemination as defined in Article 6 of this Directive.
- (48) The intellectual property rights of third parties are not affected by this Directive. For the avoidance of doubt, the term ‘intellectual property rights’ refers to copyright and related rights only (including *sui generis* forms of protection). This Directive does not apply to documents covered by industrial property rights, such as patents, registered designs and trademarks. The Directive does not affect the existence or ownership of intellectual property rights of public sector bodies, nor does it limit the exercise of these rights in any way beyond the boundaries set by this Directive. The obligations imposed ~~by~~ **in accordance with** this Directive should apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) **and the WIPO Copyright Treaty (WCT)**. Public sector bodies should, however, exercise their copyright in a way that facilitates re-use.

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<sup>17</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [...].

<sup>18</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201 , 31/07/2002 p. 37).

- (49) Taking into account Union law and the international obligations of Member States and of the Union, particularly under the Berne Convention and the TRIPS Agreement, documents for which third parties hold intellectual property rights should be excluded from the scope of this Directive. If a third party was the initial owner of the intellectual property rights for a document held by libraries, including university libraries, museums and archives and the term of protection of those rights has not expired, that document should, for the purpose of this Directive, be considered as a document for which third parties hold intellectual property rights.
- (50) This Directive should be without prejudice to the rights, including economic and moral rights that employees of public sector bodies may enjoy under national rules.
- (51) Moreover, where any document is made available for re-use, the public sector body concerned should retain the right to exploit the document.
- (52) Tools that help potential re-users to find documents available for re-use and the conditions for re-use can facilitate considerably the cross-border use of public sector documents. Member States should therefore ensure that practical arrangements are in place that help re-users in their search for documents available for re-use. Assets lists, accessible preferably online, of main documents (documents that are extensively re-used or that have the potential to be extensively re-used), and portal sites that are linked to decentralised assets lists are examples of such practical arrangements.
- (53) This Directive is without prejudice to Directive 2001/29/EC of the European Parliament and of the Council and ~~Directive 96/9/EC of the European Parliament and of the Council~~<sup>19</sup>. It spells out the conditions within which public sector bodies can exercise their intellectual property rights in the internal information market when allowing re-use of documents. ~~In particular, w~~Where public sector bodies are holders of the right provided for in Article 7(1) of Directive 96/9/EC, they should not exercise ~~it~~ **that right** in order to prevent **re-use** or **to restrict the re-use of data contained in databases existing documents beyond the limits set regulated by this Directive.**

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<sup>19</sup> ~~Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).~~

- (54) The Commission has supported the development of an online Open Data Maturity Report with relevant performance indicators for the re-use of public sector information in all the Member States. A regular update of this report will contribute to the exchange of information between the Member States and the availability of information on policies and practices across the Union.
- (55) It is necessary to ensure that the Member States monitor the extent of the re-use of public sector information, the conditions under which it is made available and the redress practices.
- (56) The Commission may assist the Member States in implementing this Directive in a consistent way by issuing and updating existing guidelines, particularly on recommended standard licences, datasets and charging for the re-use of documents, after consulting interested parties.
- (57) One of the principal aims of the establishment of the internal market is the creation of conditions conducive to the development of Union-wide services. Libraries, museums and archives hold a significant amount of valuable public sector information resources, in particular since digitisation projects have multiplied the amount of digital public domain material. These cultural heritage collections and related metadata are a potential base for digital content products and services and have a huge potential for innovative re-use in sectors such as learning and tourism. Other types of cultural establishments (such as orchestras, operas, ballets and theatres), including the archives that are part of those establishments, should remain outside the scope because of their ‘performing arts’ specificity and the fact that almost all of their material is subject to third-party intellectual property rights and would therefore remain outside the scope of that Directive.

(58) An EU-wide list of **types of** datasets with a particular potential to generate socio-economic benefits together with harmonised re-use conditions constitutes an important enabler of cross-border data applications and services. In order to **ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to set in place conditions supporting the re-use of documents which is associated with important socio-economic benefits having a particular high value for economy and society, the power to adopt acts in accordance with Article 290/291 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the** by adopting ~~on~~ of a list of **specific types of** high-value datasets among the ~~documents~~ to which **specific requirements of** this Directive applies, along with the modalities of their publication and re-use. The list should take into account sectoral legislation that already regulates the publication of datasets, as well as the categories indicated in the Technical Annex of the G8 Open Data Charter and in the Commission's Notice 2014 /C 240/01. In preparing the list, the Commission should carry out appropriate consultations, including at expert level. **Moreover, when deciding on the inclusion in the list of data held by public undertakings or on their free availability, the effects on competition in the respective markets should be taken into account. The implementing acts should take into account sectoral Union legislation, such as Directive 2007/2/EC<sup>20</sup> and Directive 2010/40/EU<sup>21</sup>, to ensure that datasets are made available under corresponding standards and sets of metadata.**

~~It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

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<sup>20</sup> **Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p.1).**

<sup>21</sup> **Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (OJ L 207, 6.8.2010, p. 1).**

**Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.**

- ~~(59) In the process leading to the establishment of the list, the Commission should carry out appropriate consultations, including at expert level. The list should take into account sectoral legislation that already regulates the publication of datasets, as well as the categories indicated in the Technical Annex of the G8 Open Data Charter and in the Commission's Notice 2014/C 240/01.~~
- (60) In view of ensuring their maximum impact and to facilitate re-use, the high-value datasets should be made available for re-use with minimal legal restrictions and at no cost. They should also be published via Application Programming Interfaces, ~~whenever the dataset in question contains dynamic data.~~ **However, this does not preclude public sector bodies from charging for services that they provide in relation to the high value datasets in their exercise of public authority, in particular certifying the authenticity or veracity of documents.**
- (61) Since the objectives of this Directive, namely to facilitate the creation of Union-wide information products and services based on public sector documents, to ensure the effective cross-border use of public sector documents on the one hand by private companies, particularly by small and medium-sized enterprises, for added-value information products and services, and on the other hand by citizens to facilitate the free circulation of information and communication, cannot be sufficiently achieved by the Member States but can rather, by reasons of the pan-European scope of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principles of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (62) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to privacy (Article 7), the protection of personal data (Article 8) the right to property (Article 17) and the integration of persons with disabilities (Article 26). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- (63) The Commission should carry out an evaluation of this Directive. Pursuant to paragraph 22 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016<sup>22</sup>, that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures.
- (64) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (65) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>22</sup> OJ L123, 12.5. 2016, p1.

# CHAPTER I

## GENERAL PROVISIONS

### *Article 1*

#### **Subject matter and scope**

1. This Directive establishes a minimum set of rules governing the re-use and the practical means of facilitating re-use of:
  - (a) existing documents held by public sector bodies of the Member States;
  - (b) existing documents held by public undertakings active in the areas defined in Directive 2014/25/EU of the European Parliament and of the Council<sup>23</sup> and by public undertakings acting as public service operators pursuant to Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council<sup>24</sup>, public undertakings acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council<sup>25</sup>, and public undertakings acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Council Regulation (EEC) No 3577/92<sup>26</sup>.
  - (c) research data, pursuant to conditions set out in Article 10(1) and (2).

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<sup>23</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

<sup>24</sup> Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.

<sup>25</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance) (OJ L 293, 31.10.2008, p. 3–20).

<sup>26</sup> Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7–10).

2. This Directive shall not apply to:
- (a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules, as defined in line with common administrative practice in the Member State in question, provided that the scope of the public tasks is transparent and subject to review;
  - (b) documents held by public undertakings, produced outside the scope of the provision of services in the general interest as defined by law or other binding rules in the Member State;
  - (c) documents for which third parties hold intellectual property rights;
  - (d) documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of:
    - the protection of national security (that is to say, State security), defence, or public security,
    - statistical confidentiality,
    - commercial confidentiality (including business, professional or company secrets);
  - (e) documents access to which is restricted by virtue of the access regimes in the Member States, including cases whereby citizens or companies have to prove a particular interest to obtain access to documents;
  - (f) parts of documents containing only logos, crests and insignia;
  - (g) documents access to which is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data;
  - (h) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;
  - (i) documents held by cultural establishments other than libraries, university libraries, museums and archives;



- (j) documents held by educational establishments of secondary level and below and, in case of all other educational establishments, documents other than those referred to in Article 1(1)(c);
- (k) documents other than those referred to in Article 1(1)(c) held by research performing organisations and research funding organisations, including organisations established for the transfer of research results.
3. This Directive builds on and is without prejudice to **national and Union** access regimes ~~in the Member States~~.
- 3a. **This Directive is without prejudice to leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Union and national law, and on the protection of personal data, in particular does not alter the obligations and rights set out in those of the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council and Directive 2002/58/EC of the European Parliament and of the Council, and corresponding provisions of the Member States.**
4. The obligations imposed ~~by~~ **in accordance with** this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention, ~~and~~ the TRIPS Agreement **and the WIPO Copyright Treaty (WCT)**.
5. The right for the maker of a database provided for in Article 7(1) of Directive 96/9/EC shall not be exercised by public sector bodies in order to prevent ~~or restrict~~ the re-use of documents **or to restrict re-use beyond the limits set by pursuant to** this Directive.

6. This Directive governs the re-use of existing documents held by public sector bodies of the Member States, including documents to which Directive 2007/2/EC of the European Parliament and of the Council<sup>27</sup> applies.

## *Article 2*

### **Definitions**

For the purpose of this Directive the following definitions shall apply:

1. 'public sector body' means 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. 'body governed by public law' means any body:
  - (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
  - (b) having legal personality; and

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<sup>27</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

- (c) financed, for the most part by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;
3. 'public undertaking' means any undertaking **active in the areas set out in Article 1 (1) (b)** over which the public sector bodies may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;

**A dominant influence on the part of the public sector bodies shall be presumed in any of the following cases in which those bodies, directly or indirectly:**

**(a) hold the majority of the undertaking's subscribed capital;**

**(b) control the majority of the votes attaching to shares issued by the undertaking,**

**(c) can appoint more than half of the undertaking's administrative, management or supervisory body.**

4. 'university' means any public sector body that provides post-secondary-school higher education leading to academic degrees;
5. 'document' means:
- (a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording);
- (b) any part of such content;
6. 'dynamic data' means documents in an electronic form, subject to frequent or real-time updates, **in particular because of their volatility or rapid obsolescence; data generated by sensors are typically considered as dynamic data;**

7. 'research data' means documents in a digital form, other than scientific publications, which are collected or produced in the course of scientific research activities and are used as evidence in the research process, or are commonly accepted in the research community as necessary to validate research findings and results;
8. 'high value datasets' means documents the re-use of which is associated with important socio-economic benefits, notably because of their suitability for the creation of value-added services and applications, and the number of potential beneficiaries of the value-added services and applications based on these datasets;
9. 're-use' means the use by persons or legal entities of:
  - (a) documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced, except exchange of documents between public sector bodies purely in pursuit of their public tasks;
  - (b) **documents held by public undertakings, for commercial or non-commercial purposes other than the initial purpose of providing services in the general interest for which the documents were produced, except exchange of documents between public undertakings and public sector bodies purely in pursuit of the public tasks of public sector bodies.**
10. 'machine-readable format' means a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure;
11. 'open format' means a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents;
12. 'formal open standard' means a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;

13. 'reasonable return on investment' means a percentage of the overall charge, in addition to that needed to recover the eligible costs, not exceeding 5 percentage points above the fixed interest rate of the European Central Bank;
14. 'third party' means any natural or legal person other than a public sector body or a public undertaking that holds the data.

### *Article 3*

#### **General principle**

1. Subject to paragraph 2 Member States shall ensure that documents to which this Directive applies in accordance with Article 1 shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.
2. For documents in which libraries, including university libraries, museums and archives hold intellectual property rights and for documents held by public undertakings, Member States shall ensure that, where the re-use of such documents is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.

## CHAPTER II

### REQUESTS FOR RE-USE

#### *Article 4*

#### **Requirements applicable to the processing of requests for re-use**

1. Public sector bodies shall, through electronic means where possible and appropriate, process requests for re-use and shall make the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a reasonable time that is consistent with the time-frames laid down for the processing of requests for access to documents.
2. Where no time limits or other rules regulating the timely provision of documents have been established, public sector bodies shall process the request and shall deliver the documents for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a timeframe of not more than 20 working days after its receipt. This timeframe may be extended by another 20 working days for extensive or complex requests. In such cases the applicant shall be notified within three weeks after the initial request that more time is needed to process it.
3. In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the basis of the relevant provisions of the access regime in that Member State or of the national provisions adopted pursuant to this Directive, in particular points (a) to (g) of Article 1(2) or Article 3. Where a negative decision is based on point (c) of Article 1(2), the public sector body shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material. Libraries, including university libraries, museums and archives shall not be required to include such a reference.

4. Any decision on re-use shall contain a reference to the means of redress in case the applicant wishes to appeal the decision. The means of redress shall include the possibility of review by an impartial review body with the appropriate expertise, such as the national competition authority, the national access to documents authority, **a Supervisory Authority set up in accordance with Regulation (EU) 2016/679**, or a national judicial authority, whose decisions are binding upon the public sector body concerned.
  
5. The following entities shall not be required to comply with the requirements of this Article:
  - (a) public undertakings;
  - (b) educational establishments, research performing organisations and research funding organisations.

## CHAPTER III

### CONDITIONS FOR RE-USE

#### *Article 5*

#### **Available formats**

1. Without prejudice to Chapter V, public sector bodies ~~and public undertakings~~ shall make their documents available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata shall where possible, comply with formal open standards.
  2. Paragraph 1 shall not imply an obligation for public sector bodies ~~or public undertakings~~ to create or adapt documents or provide extracts in order to comply with that paragraph where this would involve disproportionate effort, going beyond a simple operation.
  3. On the basis of this Directive, public sector bodies ~~and public undertakings~~ cannot be required to continue the production and storage of a certain type of documents with a view to the re-use of such documents by a private or public sector organisation.
  4. Public sector bodies ~~and public undertakings~~ shall make dynamic data available for re-use immediately after collection, via suitable Application Programming Interfaces (APIs) **and, where relevant, as a bulk download of the complete dataset.**
  5. Where making available documents immediately after collection would exceed the financial and technical capacities of the public sector body ~~or the public undertaking~~, **thereby imposing a disproportionate ~~burden~~ effort**, documents referred to in paragraph 4 shall be made available **for re-use** in a timeframe **or with temporary technical restrictions** that does not unduly impair the exploitation of their economic potential.
- 5a. Paragraphs 1 to 5 shall apply to existing documents of public undertakings which are available for re-use.**



- 5b. High value datasets, the list of which shall be defined in accordance with Article 13, shall be made available for re-use in machine-readable form, via suitable Application Programming Interfaces (APIs) and, where relevant, as a bulk download.**

*Article 6*

**Principles governing charging**

1. Re-use of documents shall be free of charge.

~~or limited to~~ **However, Member States may provide that** the marginal costs incurred for their reproduction, provision, **and dissemination of documents, and as well as for** ~~—where applicable—~~ anonymisation of personal data and measures taken to protect commercially confidential information, **may be recovered.**

2. By way of exception, paragraph 1 shall not apply to the following:

- (a) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks;
- (b) libraries, including university libraries, museums and archives;
- (c) public undertakings.

- 2a. Member States shall publish online a list of public sector bodies referred to in point (a) of paragraph (2).**

3. In the cases referred to in points (a) and (c) of paragraph 2, the total charges shall be calculated according to objective, transparent and verifiable criteria to be laid down by the Member States. The total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of **their** collection, production, reproduction and dissemination, **together with a reasonable return on investment**, and – where applicable – anonymisation of personal data and measures taken to protect commercially confidential information, ~~together with a reasonable return on investment~~. Charges shall be calculated in line with the applicable accounting principles.

4. Where charges are made by the public sector bodies referred to in point (b) of paragraph 2, the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance and – where applicable – anonymisation of personal data and measures taken to protect commercially confidential information, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.
  5. The re-use of high value datasets, the list of which shall be defined in accordance with Article 13, and of research data referred to in point (c) of Article 1(1) shall be free of charge for the user.
- 5a. Paragraph 5 shall not apply to specific types of high-value datasets defined as exceptions in accordance with points (a) and (b) of Article 13(2).**

#### *Article 7*

#### **Transparency**

1. In the case of standard charges for the re-use of documents, any applicable conditions and the actual amount of those charges, including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate.
2. In the case of charges for the re-use other than those referred to in paragraph 1, the factors that are taken into account in the calculation of those charges shall be indicated at the outset. Upon request, the holder of documents in question shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.
- ~~3. Member States shall publish a list of public sector bodies referred to in point (a) of Article 6(2).~~
43. Public sector bodies shall ensure that applicants for re-use of documents are informed of available means of redress relating to decisions or practices affecting them.

## *Article 8*

### **Standard Licences**

1. Re-use of documents may be allowed without or with conditions, where appropriate through a licence. Those conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.
2. In Member States where licences are used, Member States shall ensure that standard licences for the re-use of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage the use of such standard licences.

## *Article 9*

### **Practical arrangements**

Member States shall make practical arrangements facilitating the search for documents available for re-use, such as asset lists of main documents with relevant metadata, accessible where possible and appropriate online and in machine-readable format, and portal sites that are linked to the asset lists. Where possible Member States shall facilitate the cross-linguistic search for documents.

## *Article 10*

### **~~Availability and re-use of r~~Research data**

1. Member States shall support the availability of research data by adopting national policies and relevant actions aiming at making publicly funded research data openly available ('open access policies'). These open access policies shall be addressed to research performing organisations and research funding organisations.
2. Research data shall be re-usable for commercial or non-commercial purposes under the conditions set out in Chapters III and IV, insofar as they are publicly funded and ~~whenever~~ access to such data is provided **by researchers, research performing organisations or research funding organisations** through an institutional or subject-based repository. In this context, legitimate commercial interests and pre-existing intellectual property rights shall be taken into account. This provision shall be without prejudice to point (c) of Article 1(2).

## CHAPTER IV

### NON-DISCRIMINATION AND FAIR TRADING

#### *Article 11*

##### **Non-discrimination**

1. Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use, including for cross-border re-use.
2. If documents are re-used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

#### *Article 12*

##### **~~Prohibition of e~~Exclusive arrangements**

1. The re-use of documents shall be open to all potential actors in the market, even if one or more market actors already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies or public undertakings holding the documents and third parties shall not grant exclusive rights.
2. However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be made publicly available **online** at least two months before their coming into effect. The final terms of such arrangements shall be transparent and made publicly available **online**.  
This paragraph shall not apply to digitisation of cultural resources.

3. Notwithstanding paragraph 1, where an exclusive right relates to digitisation of cultural resources, the period of exclusivity shall in general not exceed 10 years. In case where that period exceeds 10 years, its duration shall be subject to review during the 11th year and, if applicable, every seven years thereafter.

The arrangements granting exclusive rights referred to in the first subparagraph shall be transparent and made public.

In the case of an exclusive right referred to in the first subparagraph, the public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. That copy shall be available for re-use at the end of the period of exclusivity.

4. Legal or practical arrangements that, without expressly granting an exclusive right, aim at or could reasonably be expected to lead to a restricted availability for re-use of documents by entities other than the third party participating in the arrangement, shall be made publicly available **online** at least two months before their coming into effect. The final terms of such arrangements shall be transparent and made publicly available **online**.

5. Exclusive arrangements **entered into by public sector bodies** existing on 17 July 2013 **or by public undertakings existing on the entry into force of this Directive** that do not qualify for the exceptions under paragraphs 2 and 3 shall be terminated at the end of the contract or in any event not later than 18 July 2043~~;~~ **in the case of public sector bodies, or 30 years after the entry into force of this Directive in the case of public undertakings.**

## CHAPTER V

### HIGH VALUE DATASETS

#### *Article 13*

#### **List of high value datasets and modalities of publication and re-use**

1. ~~With a view to achieving the objectives of this Directive,~~ **The Commission shall adopt implementing acts laying down the a list of specific types of high value datasets of held by public sector bodies and public undertakings among the documents to which this Directive applies, among the documents to which this Directive applies, together with which shall be available for free, machine-readable, provided accessible via APIs and, where relevant, downloadable in their entirety as a bulk download.**

**The implementing acts may also specify the modalities of the publication and re-use of types of high value datasets which shall be compatible with digital open standard licences. They may include terms applicable to re-use, formats of data and metadata and technical modalities of dissemination. Investments made by the Member States in open data approaches, such as investments into the development and roll-out of certain standards, shall be taken into account and weighed up against the potential benefits from inclusion in the list.**

**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).**

2. The identification of specific types of high value datasets pursuant to paragraph (1) shall be based on the assessment of their potential to generate important socio-economic benefits, the high number of users, the revenues they may help generate, and their potential for being combined with other datasets. The Commission shall to that end carry out appropriate consultations, including at expert level, conduct an impact assessment ~~including a cost-benefit analysis~~ and ensure complementarity with existing legal acts, such as Directive 2010/40/EU of the European Parliament and of the Council, with respect to the re-use of documents. The impact assessment shall include a cost-benefit analysis and an analysis of whether providing a high value dataset free of charge by public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks would lead to a substantial impact on the budget of the public sector body involved.

By way of exception, the implementing acts referred to in paragraph (1) shall provide that:

- a) the availability of types of high value datasets for free shall not apply to specific types of high-value datasets of public undertakings if making those datasets available for free would lead to a considerable distortion of competition in the respective markets;
- b) the availability of types of high value datasets for free shall not apply to libraries, including university libraries, museums and archives; and
- c) where making high value datasets available for free by public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks would lead to a substantial impact on the budget of the public sector body involved, Member State may exempt those public sector bodies from the free availability of high value datasets for a duration that shall not exceed 2 years following the entry into force of the implementing act.

- ~~2.— These datasets shall be available for free, machine readable and accessible via APIs. The conditions for re-use shall be compatible with open standard licences.~~
- ~~3. By way of exception, the free availability referred to in paragraph 2 shall not apply to high-value datasets of public undertakings if the impact assessment referred to in Article 13(7) shows that making the datasets available for free will lead to a considerable distortion of competition in the respective markets.~~
- ~~4.— In addition to the conditions set out in paragraph 2, the Commission may, where appropriate, define other applicable modalities for specific types of high value datasets, in particular
  - ~~a.— any conditions terms applicable for re-use;~~
  - ~~b.— formats of data and metadata and technical modalities of their publication and dissemination.~~~~
- ~~5.— The selection of datasets for the list referred to in paragraph 1 shall be based on the assessment of their potential to generate socio-economic benefits, the number of users and the revenues they may help generate, and their potential for being combined with other datasets.~~
- ~~6.— The measures referred to in this Article shall be adopted by the Commission by means of a delegated act in accordance with Article 290 of the TFEU and subject to the procedure laid down in Article 14.~~
- ~~7.— The Commission shall conduct an impact assessment including a cost benefit analysis prior to the adoption of the delegated act and ensure that the act is complementary to the existing sector based legal instruments with respect to the re-use of documents that belong to the scope of application of this Directive. Where high value datasets held by public undertakings are concerned, the impact assessment shall give special consideration to the role of public undertakings in a competitive economic environment.~~



## CHAPTER VI

### FINAL PROVISIONS

#### *Article 14*

#### **Exercise of the ~~delegation~~ Committee procedure**

- 1. The Commission shall be assisted by the Committee [on Open Data and the Re-Use of Public Sector Information]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**
  - ~~1.—The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~
  - ~~2.—The power to adopt delegated acts referred to in Article 13 shall be conferred on the Commission for a period of five years from [date of entry into force of the Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.~~
  - ~~3.—The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~
  - ~~4.—Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making.~~

~~5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~

~~6. A delegated act adopted pursuant to Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.~~

### *Article 15*

#### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~Articles~~ **this Directive** [...] by **[2 years] from entry into force** [...]. They shall ~~forthwith inform~~ immediately communicate the text of those measures to the Commission.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

## Article 16

### **Evaluation**

1. No sooner than four years after the date of transposition of this Directive, the Commission shall carry out an evaluation of this Directive and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. ~~The evaluation shall be conducted according to the Commission's better regulation Guidelines<sup>28</sup>.~~ Member States shall provide the Commission with the information necessary for the preparation of that Report.
2. The evaluation shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents to which this Directive applies, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, the re-use of documents held by other entities than public sector bodies, the interaction between data protection rules and re-use possibilities, as well as further possibilities of improving the proper functioning of the internal market and the development of the European data economy.

## Article 17

### **Repeal**

Directive 2003/98/EC, as amended by the Directive listed in Annex I, Part A, is repealed with effect from [day after the date in the first subparagraph of Article 15(1)], without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the date of application of the Directives set out in Annex I, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

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<sup>28</sup> ~~SWD (2017)350~~

*Article 18*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 19*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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