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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	26 April 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 234 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the re-use of public sector information (recast)

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Delegations will find attached document COM(2018) 234 final.

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Brussels, 25.4.2018  
COM(2018) 234 final

2018/0111 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the re-use of public sector information (recast)**

{SWD(2018) 127 final} - {SWD(2018) 128 final} - {SWD(2018) 129 final} -  
{SWD(2018) 145 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

The public sector in EU Member States produces vast amounts of data, e.g. meteorological data, digital maps, statistics and legal information. This information is a valuable resource for the digital economy. It is not only used as valuable raw material for the production of data-based services and applications, but also brings greater efficiency to the delivery of private and public services and better informed decision-making. Therefore, the EU has been promoting the re-use of public sector information ('PSI') for several years.

Directive 2003/98/EC of the European Parliament and the Council on the re-use of public sector information ('PSI Directive') was adopted on 17 November 2003. The Directive aimed to facilitate the re-use of PSI throughout the Union by harmonising the basic conditions for re-use and removing major barriers to re-use in the internal market. It introduced provisions on non-discrimination, charging, exclusive arrangements, transparency, licensing and practical tools to facilitate the discovery and re-use of public sector information.

In July 2013 Directive 2003/98/EC was amended by Directive 2013/37/EU, with the aim to encourage Member States to make as much material held by public sector bodies available for re-use as possible. The modifications introduced an obligation to allow the re-use of generally accessible public data, expanded the scope of the Directive to include documents<sup>1</sup> from public libraries, museums and archives, established a default charging rule limited to the marginal cost for reproduction, provision and dissemination of the information, and obliged public sector bodies to be more transparent about the charging rules and conditions they apply. The amending Directive was implemented into national legislation by all 28 EU Member States.

Article 13 of the Directive calls on the European Commission to carry out a review of the application of the Directive and to communicate the results, together with any proposal for amendments, before 18 July 2018. The review was carried out by the Commission and resulted in the publication of an evaluation report<sup>2</sup>. The report found that the Directive continues to contribute to the achievement of its main policy objectives, but there are a number of issues that need to be addressed in order to fully exploit the potential of public sector information for the European economy and society. They include provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, preventing the emergence of new forms of exclusive arrangements, limiting the use of exceptions to the principle of charging the marginal cost and clarifying the relationship between the PSI Directive and certain related legal instruments.

This proposal aims to address the above issues, adapting the Directive to the recent developments in the field of data management and use. The overall objective is to contribute to the strengthening of the EU's data-economy by increasing the amount of public sector data available for re-use, ensuring fair competition and easy access to markets based on public sector information, and enhancing cross-border innovation based on data.

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<sup>1</sup> The terms "document", as defined in Article 2 of the Directive, should be understood broadly, and as such it denotes also such concepts as data and content.

<sup>2</sup> SWD(2018) 145.

At the same time, the review of the PSI Directive is an important part of the initiative on accessibility and re-use of public and publicly funded data announced by the Commission in the Mid-Term Review of the Digital Single Market (DSM) Strategy<sup>3</sup>.

- **Consistency with existing policy provisions in the policy area**

The proposal pursues the objectives set out in the DSM Strategy and is consistent with existing legal instruments.

It is coherent with the data protection legislation in force, namely the General Data Protection Regulation (GDPR)<sup>4</sup> and the revised ePrivacy rules<sup>5</sup>. It is clear that the relationship between data protection law and PSI re-use – in the sense that both the public sector body and the re-user must comply with data protection law in full – is an established part of Union law.

The proposal also seeks to clarify the relationship between the PSI Directive and the *sui generis* right provided for in Article 7 of the Database Directive<sup>6</sup>. The proposal does not alter the protection given by Article 7 to public sector bodies that are makers of databases, nor does it change the legal situation under the current Directive which prevented public sector bodies from exercising the *sui generis* protection right to prohibit or restrict the re-use of data contained in databases.

Finally, the proposal builds on the proposal for a Regulation on the free flow of non-personal data<sup>7</sup>, which, once adopted, will ensure a more competitive and integrated internal market for data storage and other processing services, complementing the provisions of the PSI Directive.

- **Consistency with other Union policies**

By creating the right conditions for improved access to and re-use of public sector data across the Union, this proposal complements other initiatives under the Digital Single Market strategy.

It is consistent with the guidance that the Commission has published on data sharing between businesses and between businesses and the public sector<sup>8</sup>, which is a follow-up to the public consultation launched with the Communication "Building a European Data Economy".<sup>9</sup> The guidance concerns a range of issues around sharing the ever-increasing amount of data, often created in an automated manner by machines or processes based on emerging technologies, such as the Internet of Things (IoT).

Access to and re-use of public sector data is recognised as an important driver in the area of big data analytics and Artificial Intelligence. In this context the proposal complements the

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<sup>3</sup> COM(2017) 228 final.

<sup>4</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council 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>5</sup> Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC, COM(2017) 10 final.

<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.

<sup>7</sup> COM(2017) 495 final.

<sup>8</sup> SWD(2018) 125.

<sup>9</sup> COM(2017) 9 final.

initiative on next generation supercomputers, able to work ten times faster than the fastest computer in existence today, which will be needed to re-combine, correlate and mash up the ever growing amounts of data. The EU aims to take a lead in this domain with an investment of 1 billion EUR of public funding for a Joint Undertaking aimed at setting up a High-Performance-Computing network by 2023.<sup>10</sup>

The PSI Directive is a legal instrument allowing for the implementation of a horizontal policy that aims to facilitate the re-use of public sector information. At the same time it remains consistent with sectoral legislation laying down conditions for access to and reuse of data in specific areas.

For example, access to and re-use of relevant data generated in the transport sector, is ensured by legislation on the provision of EU-wide multimodal travel information services<sup>11</sup>. In the energy sector, a recent proposal for a recast of the Electricity Directive<sup>12</sup> includes provisions giving consumers the possibility to grant third parties access to their consumption data, while in the water sector the Commission has proposed provisions on the sharing of water parameters data in the context of the review of the Directive on the quality of water intended for human consumption<sup>13</sup>. While these rules are driven by sector-specific concerns and focus on selected datasets, the proposal lays down a horizontal framework providing minimum harmonisation of re-use conditions across domains and sectors.

The proposal is also consistent with and builds on the INSPIRE Directive<sup>14</sup>, which establishes a legal and technical interoperability framework for the sharing of spatial data held by public authorities for the purpose of environmental policies and policies and activities having an impact on the environment. Consequently, spatial information is covered by both the PSI Directive and the INSPIRE Directive. However, while the latter focuses technically on data access services, interoperability models and mandatory data-sharing between administrations, the former regulates the re-use of spatial datasets, including the conditions for re-use by third parties. For increased legal certainty, the proposal contains a clarification of the relationship between the two directives.

Finally, the proposal builds on the Commission's initiatives in the area of open access and open science, such as the Recommendation on access to and preservation of scientific information, which was revised<sup>15</sup> at the same time as the PSI Directive. It also complements the actions supporting the development of tools and services underpinning Open Science and promoting a pan-European access channel to the resources in the context of the European Open Science Cloud.

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<sup>10</sup> COM(2018) 8 final.

<sup>11</sup> Commission Delegated Regulation (EU) 2017/1926 of 31 May 2017 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of EU-wide multimodal travel information services.

<sup>12</sup> Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (recast), COM/2016/0864 final/2.

<sup>13</sup> Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast), COM/2017/0753 final.

<sup>14</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).

<sup>15</sup> C(2018) 2375.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The PSI Directive was adopted on the basis of Article 114 TFEU (95 TEC), as its subject matter concerned the proper functioning of the internal market and the free circulation of services. Any amendments to the Directive must therefore have the same legal basis.

- **Subsidiarity (for non-exclusive competence)**

The proposal complies with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). This implies a positive assessment of two aspects: the necessity test and the EU added value test.

The necessity test assesses if the objectives of the proposal can be sufficiently achieved by Member States. The removal of the remaining obstacles to an open re-use of public sector information and simultaneously aligning the legal framework to the evolving digital socio-economic environment cannot be achieved by Member States alone. Diverging national legal solutions would likely compromise the growing tendency towards cross-border re-use, whereas the different levels of 'open data readiness' across EU Member States would persist or deepen, having a negative effect on the homogeneity and competitiveness within the Digital Single Market. The actions proposed are proportionate, since national intervention will not be able to achieve the same results (increase in openly re-useable PSI), whilst at the same time ensuring a competitive and non-discriminatory environment across the entire Single Market. The proposed actions can be seen as the next step towards full availability of PSI for re-use: a policy objective accepted by the Member States already in 2003 and confirmed in 2013. On the other hand, for scientific information, the proposal limits itself to ensuring legal re-usability of research data and only such research data that has already been made openly accessible as a result of obligations under national law or resulting from agreements with research funding bodies. It does not extend one uniform set of rules on how to ensure access to and re-use of all scientific information, but leaves this to Member States to define.

The proposal has also been positively assessed as regards EU added value. This was clearly confirmed during the process of evaluation of the current version of the PSI Directive<sup>16</sup>, which revealed that it is seen as an important instrument that has played a role in encouraging the national authorities to open up more public sector data across the EU and in the creation of an EU-wide market for products and services based on PSI.

- **Proportionality**

The proposal complies with the principle of proportionality as set out in Article 5 TEU, as it contains provisions that do not go beyond what is necessary to solve the identified problems and achieve its objectives.

The proposal puts forward a balanced yet focused policy intervention. By targeting the new requirements at areas where change is necessary, it reduces unnecessary compliance burden in areas where change is not essential but difficult to enact. In addition, the intervention logic tested in the previous revision of the Directive (ensuring a competitive market for PSI re-use as a first step, before the application of an obligation to allow re-use) has proved to be an efficient strategy, ensuring the attainment of objectives for all groups of bodies successively brought within the scope of the Directive, while allowing for an ample adjustment period.

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<sup>16</sup> SWD(2018) 145.

The accompanying impact assessment<sup>17</sup> provides more details on the proportionality and cost effectiveness of the options in this legislative proposal.

- **Choice of the instrument**

This proposal substantially amends Directive 2003/98/EC and adds a number of new provisions. In the interest of clarity, it is proposed to use the recasting method. Given that the instrument being recast is a Directive, for reasons of consistency of legal drafting and to facilitate Member States transposition of the act, this proposal is also for a Directive.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

As part of the Regulatory Fitness and Performance Programme (REFIT), the existing PSI Directive was subject to an evaluation. In line with the Better Regulation guidelines, the evaluation assessed the evaluation criteria of effectiveness, efficiency, coherence, relevance and EU added value of the intervention. It also assessed the economic, social and environmental impacts the intervention. The evaluation aimed to identify opportunities to reduce regulatory costs and to simplify the existing legislation without negatively affecting the achievement of the underlying policy goals.

The evaluation report<sup>18</sup> has confirmed that overall the PSI Directive works well. It continues to contribute to the achievement of its main policy objectives, which are to stimulate the digital content market for PSI-based products and services, to stimulate cross-border exploitation of PSI and to prevent distortions of competition on the EU market. At the same time, it has had a favourable impact on transparency, citizen empowerment, and public sector efficiency.

However, the report also indicates that there are a number of issues that would need to be addressed in order to fully exploit the potential of public sector information for the European economy and society: provision of real-time access to dynamic data via adequate technical means, reducing the restrictions, including financial barriers, on the re-use of high-value public data, acknowledging that relevant data are often generated in the context of the provision of certain services of general economic interest by public undertakings and by publicly funded research rather than by the public sector as such, the existence of new forms of exclusive arrangements, the use of exceptions to the principle of charging the marginal cost and the relationship between the PSI Directive and certain related legal instruments.

- **Stakeholder consultations**

The Commission consulted on the review of the PSI Directive between June 2017 and late January 2018. The aim was to assess the functioning of the Directive, consider the scope of the review and reflect on policy options. During the consultation process the opinions of both PSI holders (public bodies) and re-users (public, private, commercial and non commercial actors) were sought.

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<sup>17</sup> SWD(2018) 127.

<sup>18</sup> SWD(2018) 145.

An Inception Impact Assessment was published on the dedicated Better Regulation webpage and it was available for feedback for 4 weeks (18 September 2017 - 16 October 2017). Seven stakeholders sent replies.

A public online consultation was published on the dedicated Consultations webpage and it was available for feedback for 12 weeks (19 September 2017 - 15 December 2017). All interested parties, including governments, public sector content holders and users, commercial and non-commercial re-users, experts and academics as well as citizens were invited to contribute. The online questionnaire covered both the evaluation of the current Directive implementation and the problems, objectives and possible options for the future. Respondents also had the opportunity to upload a document, such as a position paper. With several targeted actions, the Commission made stakeholders aware of the public online consultation and called on them to participate. Feedback was received from 273 stakeholders. A total of 56 papers received until the end of the consultation process, end of January 2018, were taken into account.

As part of the evaluation and impact assessment process, a number of stakeholder events were also organised to address particular issues and/or target specific stakeholders, including a public hearing held on 19 January 2018, which was open to anyone wishing to contribute to the debate on the future shape of the PSI Directive. Furthermore, several ad hoc meetings have taken place with stakeholders' representatives.

The overall conclusion from the consultation was that although on the whole the PSI Directive works well, there are areas which should be reviewed, such as the availability of dynamic data, charging rules, and the wider availability of high-value PSI, including research data and data generated in the context of the provision of a public task.

- **Collection and use of expertise**

The process of preparing the proposal was supported by a study on the functioning of the PSI Directive (SMART 2017/0061)<sup>19</sup>. The aim of the study was to assist the Commission in evaluating the existing legal and policy framework applicable to data access and re-use (assessing the role which the PSI Directive has played in promoting PSI re-use across Europe), and in checking whether it could be improved to address some of the weaknesses identified and/or new issues which have emerged since the last revision of the Directive (in particular by assessing the expected impacts of a number of policy options/combinations thereof). The study relied on a combination of sources and methods, including strategic interviews, desk research, interviews with stakeholders at the EU and national levels, workshops with public sector practitioners and academics, as well as with PSI re-users and data economy players, online surveys with public authorities, including public cultural institutions, education and research bodies, as well as the re-user community, and analysis of the public online consultation launched by the Commission.

As part of the preparatory work, the Commission has also analysed the latest Open Data Maturity in Europe report<sup>20</sup>, which measures Open Data maturity across Europe through a series of indicators aligned with the provisions of the PSI Directive. This analysis was complemented with information from the available Member States reports, received as part of monitoring compliance with the PSI Directive pursuant to its Article 13(2). Additional input

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<sup>19</sup> The study was led by a consortium consisting of Deloitte, Open Evidence, Wik Consult, Time Lex, Spark, and Lisbon Council.

<sup>20</sup> <https://www.europeandataportal.eu/en/highlights/open-data-maturity-europe-2017>

from Member States was received at a meeting of the Member State Expert Group on PSI on 15 November 2017 and at a meeting of the DSM Strategic Group on 22 February 2018.

- **Impact assessment**

The proposal is based on an impact assessment, which received a positive opinion with reservations from the Commission's Regulatory Scrutiny Board on 16 March 2018<sup>21</sup>. The issues raised by the Regulatory Scrutiny Board were addressed in the revised version of the Impact Assessment Staff Working Document<sup>22</sup>, in which a specific section details the changes made following the Regulatory Scrutiny Board's opinion.

The following options were considered in the impact assessment: a) a baseline scenario (maintaining the current approach without changes); b) discontinuing existing EU action (repeal of the PSI Directive); c) soft law measures only; and d) a packaged solution consisting of both amendments of the PSI Directive and soft law.

While options b) and c) were discarded at an early stage, option a) was retained as the baseline scenario, while option d) was presented as two possible packages, one with all elements of lower legislative intensity, and the other one with all elements of higher legislative intensity. The elements covered in each package were the use of APIs for dynamic data, the review of charging rules, the availability of data resulting from public research funding and data held by both public undertakings and private operators from the transport and utilities sector, as well as the 'data lock-in' effect.

Both packages were subject to a thorough analysis against the baseline. Based on the evidence presented in the impact assessment, a mixed package of lower intensity regulatory intervention combined with an update of existing soft law was chosen as the preferred option, based on the following elements:

*Dynamic data/APIs:* a 'soft' obligation for Member States to make dynamic data available in a timely manner and to introduce APIs. For a limited number of fundamental high-value datasets (to be adopted through a Delegated Act) there will be a hard obligation to do so.

*Charging:* tighten the rules for Member States for invoking the exceptions to the general rule that public sector bodies cannot charge more than marginal costs for dissemination. Create a list of fundamental high-value datasets that should be freely available in all Member States (same datasets as above, to be adopted through a Delegated Act).

*Data in the transport and utilities sector:* only public undertakings will be covered, not private companies. A limited set of obligations will apply: public undertakings can charge above marginal costs for dissemination and are under no obligation to release the data they do not want to release.

*Research data:* Member States will be obliged to develop policies for open access to research data resulting from publicly funded research while keeping flexibility in implementation. The PSI Directive will also cover research data that have already been made accessible as a result of open access mandates, focusing on re-usability aspects.

*Non-exclusivity:* transparency requirements for public-private agreements involving public sector information (ex-ante check, possibly by national competition authorities, and openness of the actual agreement).

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<sup>21</sup> SEC(2018) 206.

<sup>22</sup> SWD(2018) 127.

This is combined with an update of the Recommendation on the access to and preservation of scientific information<sup>23</sup> and a clarification of the interaction between the PSI Directive and the Database and INSPIRE Directives.

The chosen option allows for a targeted and proportional intervention, amounting to an incremental strengthening of the Commission's open data policy. It is believed that it will lead to a significant improvement over the baseline scenario. It is broadly acceptable to stakeholders and can be realistically enacted within a reasonable timeframe due to lack of notable Member State opposition. Although the benefits of the higher intensity regulatory intervention scenario were considered to be substantial, that scenario was also generally characterised by a lower feasibility, higher compliance costs, and higher risks for legal and policy coherence.

- **Regulatory fitness and simplification**

The proposal constitutes an important contribution to the achievement of REFIT objectives. It affects two large sets of stakeholders: re-users and bodies holding documents covered by the Directive, but it only imposes obligations on the latter. When considering these obligations, it should be borne in mind that several requirements of the Directive, notably those related to the practical arrangements for making data available, are part of an overall effort towards digitising the public administration<sup>24</sup> rather than specific PSI Directive-related costs.

Nevertheless, the proposal contains provisions which, in line with the Commission's REFIT programme, aim at further reduction of administrative burden and increased cost savings related to the implementation of the Directive, *inter alia* through charging rules and clarifying the interplay with other EU legal instruments, such as the Database and INSPIRE directives. Additionally, enhanced use of APIs and proactive publishing of dynamic data online will result in a decrease of administrative burden for public sector bodies due to a lower number of re-use requests to process and a lower risk of complaints (including litigation), while discontinued reporting obligation will reduce administrative burden and related costs of public sector bodies on local, regional and national level.

For holders of documents to which the Directive extends as a result of this initiative, the proposal aims at limiting the administrative burden. For documents held by certain public undertakings that are providing a service of general economic interest the proposal limits the impact in three ways. First, obligations under this Directive only apply insofar as the public undertaking in question has taken the decision to make certain documents available for re-use. Second, the procedural obligations to process a request for re-use in a certain manner and within specific time-limits do not apply to this group of data holders. Finally, the obligations to make available documents through certain technical means are subject to exceptions if they are too burdensome on the undertakings. For research data, a specific category of documents produced by scientific researchers, the proposal limits the impact by only applying to such research data for which the researcher has already made all relevant efforts in order to make the data publicly accessible and in particular through web-based repositories that are designed to automate the dissemination process, making any intervention by the researcher in question unnecessary. Such web-based repositories, typically funded by academic institutions, have, however, dedicated helpdesks in order to assist re-users in terms of technical problems with accessing documents they contain.

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<sup>23</sup> C(2018) 2375.

<sup>24</sup> See: Policy action 4 of the Tallinn Declaration, <https://ec.europa.eu/digital-single-market/en/news/ministerial-declaration-egovernment-tallinn-declaration>.

At the same time the proposal makes it considerably easier for commercial entities (mostly SMEs) to benefit from the online availability of high quality data without cost. This will eliminate the need to make individual requests, as well as any transactional costs, thus contributing additionally to the REFIT objectives.

- **Fundamental rights**

The proposal does not pose any specific challenges in terms of compliance with fundamental rights. The proposal is in line with the right to the protection of personal data (Article 8 of the Charter of Fundamental Rights).

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no impact on the European Union budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the impact of the Directive through a regular 'landscaping' exercise performed by the European Data Portal, which feeds the annual Open Data Maturity report.

The review clause has been modified so as to allow for the next evaluation of the impact of the Directive to take place four years after the transposition date of the amending Directive. The evaluation will examine whether the Directive has contributed to the achievement of its overall aim, which is to contribute to the strengthening of the EU's data-economy by enhancing the positive effect of the re-use of public sector data on the economy and society. It will be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and will provide the basis for impact assessments of possible further measures.

As concerns research data, the national points of reference established by the Recommendation on access to and preservation of scientific information of 17 July 2012 as revised on 25 April 2018<sup>25</sup> will report on the follow-up.

- **Explanatory documents**

Considering the scope of the proposal and the fact that it is a recast of an existing directive, which all Member States have transposed in full, it is neither justified nor proportionate to require explanatory documents on the transposition.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I defines the substantive scope of the Directive and the general principle.

With the recast the scope of application of the Directive shall be extended to documents held by public undertakings active in the areas defined in the Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and by public undertakings acting as public service operators under Regulation (EC) No 1370/2007 insofar as they are were produced as part of the provision of services in the general interest, as defined by law or other binding rules in the Member State.

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<sup>25</sup> C(2018) 2375.

The scope shall also be extended to certain research data, a specific category of documents produced as part of scientific research, namely results of the scientific fact-finding process (experiments, surveys and similar) that are at the basis of the scientific process, while publications in scientific journals continue to be excluded from the scope as they pose additional challenges in terms of rights management. Consequently, the previous exemption of documents held by educational and research establishments, including organisations established for the transfer of research results, schools and universities, except university libraries, will be limited.

The general principle that documents falling within the scope of the Directive are re-usable for commercial and non-commercial purposes under the conditions set forth in this Directive (Article 3) is unchanged for documents within the scope of the Directive before the recast. For documents to which the scope of application is extended by the recast, the general principle applies only insofar as the public undertakings in question have made the documents available for re-use (identical to the provisions currently applying to documents in which libraries, including university libraries, museums and archives hold intellectual property rights (Article 3(2) of Directive 2003/98/EC as amended by Directive 2013/13/EU)) or – in the case of research data – where such research data have been made available by the researcher through a web-based research data repository as a result of requirements imposed by research funders on the researcher to allow access to and re-use of such data to a wider public ("Open Access funder mandate").

Article 1(6) clarifies that the so-called *sui generis* right protecting makers of databases provided for in Article 7 of Directive 96/9/EC on the legal protection of databases cannot be invoked by a public sector body which is the rightholder as a ground to prohibit re-use of the content of the database.

Chapter II (Article 4) is amended so as to specify that the procedural requirements shall not apply to public undertakings or with respect to research data in order to minimise the administrative impact for the relevant bodies or organisations.

Chapter III includes a series of adaptations to the conditions and the way in which data are made available for re-use. Article 5 takes account of the growing importance of dynamic ("real-time") data and includes the requirement on public sector bodies to make such data available through an Application Programming Interface (API). Article 6 is amended to specify that documents may also be provided free of charge. Free provision of documents shall in particular apply to research data and to high-value datasets defined in accordance with a delegated act under Article 13. The proposal acknowledges that the costs for anonymising documents containing personal data can be included in cost calculation. Article 10 specifies that Member States shall support the availability of research data by adopting national policies and relevant actions aiming at making all publicly funded research data openly available ('open access policies'). It also provides that data already available in "open access" research data repositories shall be re-usable for commercial and non-commercial purposes according to the provisions of the Directive.

Chapter IV (Article 12) is amended so as to specify that the prohibition of exclusive arrangements shall also extend to such arrangements that do not expressly grant an exclusive right in the re-use of documents, but may lead to a situation where access is limited to one or very few re-users.

A new Chapter V has been added which defines a specific category of high-value datasets. The category of high-value datasets is a subset of documents to which the Directive applies

according to its Article 1 and the re-use of which is associated with important socio-economic benefits. The list of such high-value datasets shall be determined in a delegated act pursuant to Article 290 TFEU. This delegated act shall also specify the modalities of their publication and re-use. In principle, the re-use of such high-value datasets should be free of charge and for dynamic content Application Programming Interfaces (APIs) shall be used as a means of dissemination.

Proposal for a

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty ~~establishing the European Community~~ ☒ on the Functioning of the European Union ☒ , and in particular Article ~~95~~ ☒ 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>26</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>27</sup>  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

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↓ new

- (1) Directive 2003/98/EC of the European Parliament and of the Council<sup>28</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>29</sup>.
- (3) Following the stakeholder consultation and in the light of the Impact Assessment<sup>30</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

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<sup>26</sup> OJ C [...], [...], p. [...].

<sup>27</sup> OJ C [...], [...], p. [...].

<sup>28</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>29</sup> SWD(2018) 145.

<sup>30</sup> SWD(2018) 127.

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>31</sup> and Directive 2007/2/EC of the European Parliament and of the Council<sup>32</sup>.

↓ 2003/98/EC recital 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.

↓ 2013/37/EU recital 1 (adapted)  
⇒ new

- (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 the Member States ☒ executive, legislative or judicial nature ☒ constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy.

↓ 2013/37/EU recitals 2 and 5  
(adapted)

- (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 ~~establishes~~ ☒ 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 ~~was adopted in 2003~~, 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.

<sup>31</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>32</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).

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↓ 2003/98/EC recital 2 (adapted)

- (8) The evolution towards ~~an information and knowledge~~ ☒ data-based ☒ society influences the life of every citizen in the Community, ☒ among other things ☒ ~~inter alia~~, by enabling them to gain new ways of accessing and acquiring knowledge.
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↓ 2003/98/EC recital 3 (adapted)

- (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 SMEs ☒ ~~in small emerging companies~~.
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↓ 2003/98/EC recital 4

~~The public sector 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.~~

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↓ 2003/98/EC recital 5 (adapted)

- (10) One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of ~~Community-wide~~ ☒ 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. Wider 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.
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↓ 2013/37/EU recital 4

- (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.
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↓ 2003/98/EC recital 6 (adapted)

- (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. ~~Traditional practice~~ in public sector bodies in exploiting public sector information ☒ continues to vary among Member States ☒ ~~has developed in very disparate ways~~. 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.

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↓ 2013/37/EU recital 3 (adapted)

- (13) 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. ~~However, this requires a level playing field at Union level in terms of whether or not the re-use of documents is authorised, which cannot be achieved by leaving it subject to the different rules and practices of the Member States or the public sector bodies concerned.~~
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↓ 2003/98/EC recital 7

- (14) Moreover, without minimum harmonisation at Community 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.
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↓ 2013/37/EU recital 6 (adapted)

⇒ new

- (15) ~~At the same time,~~ Member States have ~~now~~ established re-use policies under Directive 2003/98/EC and some of them have been adopting ambitious open data approaches to make re-use of accessible public data easier for citizens and companies beyond the minimum level set by that Directive. To prevent different rules in different Member States acting as a barrier to the cross-border offer of products and services, and to enable comparable public data sets to be re-usable for pan-European applications based on them, 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 regime. ⇒ 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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↓ 2003/98/EC recital 8

- (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.

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↓ 2013/37/EU recital 10 (adapted)

- (17) ~~⊗~~ This ~~⊗~~ Directive ~~2003/98/EC~~ 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.
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↓ 2003/98/EC recital 9 (adapted)  
⇒ new

- (18) ~~This Directive does not contain an obligation to allow re-use of documents. The decision whether or not to authorise re-use will remain with the Member States or the public sector body concerned.~~ 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. ~~The definition of 'document' is not intended to cover computer programmes.~~
- (19) ⇒ The Directive lays down an obligation for Member States to make all 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 ~~Community~~ ~~⊗~~ Union ~~⊗~~ level, Articles 41 (right to good administration) and 42 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.
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↓ new

- (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 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>33</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).
- (22) This Directive should not contain an obligation to allow the re-use of documents produced by public undertakings. The decision whether or not to authorise re-use should remain with the public undertaking concerned. 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 of this Directive, in particular as regards formats, charging, transparency, licences, non-discrimination and prohibition of exclusive arrangements. On the other hand, the public undertaking is not required to comply with the requirements laid down in Chapter II, such as the rules applicable to processing of requests.
- (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 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 its use and re-use. Open access helps enhance 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, data management planning is

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<sup>33</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).

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>34</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, trade secrets, national security, legitimate commercial interests and to intellectual property rights of third parties should be duly taken into account. 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. Other 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.

↓ 2003/98/EC recital 10 (adapted)

- (25) The definitions of ‘public sector body’ and ‘body governed by public law’ are taken from ~~the public procurement Directives Directive 2014/24/EU of the European Parliament and the Council<sup>35</sup> (92/50/EEC<sup>36</sup>, 93/36/EEC<sup>37</sup> and 93/37/EEC<sup>38</sup> and 98/4/EC<sup>39</sup>)~~. ~~Public undertakings are not covered by these definitions.~~

↓ 2003/98/EC recital 11 (adapted)

- (26) This Directive lays down a generic definition of the term ‘document’, ~~in line with developments in the information society~~. 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), ~~held by public sector bodies~~. ☒ The definition of ‘document’ is not intended to cover computer programmes. ☒ ~~A document held by a public sector body is a document where the public sector body has the right to authorise re-use.~~

<sup>34</sup> C(2018)2375

<sup>35</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>36</sup> OJ L 209, 24.7.1992, p. 1. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

<sup>37</sup> OJ L 199, 9.8.1993, p. 1. Directive as last amended by Commission Directive 2001/78/EC.

<sup>38</sup> OJ L 199, 9.8.1993, p. 54. Directive as last amended by Commission Directive 2001/78/EC.

<sup>39</sup> OJ L 101, 1.4.1998, p. 1.

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↓ 2003/98/EC recital 12 (adapted)  
⇒ new

- (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 ~~line~~ ☒ 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. ~~Once a request for re-use has been granted, public sector bodies should make the documents available in a timeframe that allows their full economic potential to be exploited.~~ This is particularly important for dynamic ~~content~~ ☒ data ☒ (☒ including ☒ ~~e.g.~~ traffic data ☒, satellite data, weather 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, 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 documents may be a part of the terms of the licence.
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↓ new

- (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. An API describes the kind of data can be retrieved, how to do this and the format in which the data will be received. It has 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: 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 make this available for re-use immediately after collection by ways of suitable APIs.
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↓ 2003/98/EC recital 13 (adapted)  
⇒ new

- (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 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 ☒ people with disabilities ☒ by providing the information in accessible formats ☒.

↓ 2013/37/EU recital 20  
⇒ new

- (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>40</sup> of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).

↓ new

- (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 open, machine-readable formats.

↓ 2013/37/EU recital 22 (adapted)  
⇒ new

- (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 ☒ ~~made by public sector bodies for the re-use of documents, those charges~~ ☒ they ☒ should in principle be limited to the marginal costs. ☒ In exceptional cases ☒ ~~However,~~ 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 ~~or of the costs relating to the collection, production, reproduction and dissemination of~~

<sup>40</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).

~~certain documents made available for re-use~~ 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 ⇐ ~~of the costs relating to the collection, production, reproduction and dissemination of certain documents,~~ 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.

↓ 2013/37/EU recital 23  
⇒ new

- (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.

↓ 2013/37/EU recital 24

- (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.

↓ 2013/37/EU recital 25

- (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.

↓ 2003/98/EC recital 14 (adapted)

~~Where charges are made, the total income should not exceed the total costs of collecting, producing, reproducing and disseminating documents, together with a reasonable return on~~

~~investment, having due regard to the self-financing requirements of the public sector body concerned, where applicable. Production includes creation and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable return on investment, consistent with applicable accounting principles and the relevant cost calculation method of the public sector body concerned, constitutes an upper limit to the charges, as any excessive prices should be precluded. The upper limit for charges set in this Directive is without prejudice to the right of Member States or public sector bodies to apply lower charges or no charges at all, and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.~~

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↓ 2003/98/EC recital 15 (adapted)  
⇒ new

- (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 ~~Community-wide~~ ☒ 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.
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↓ 2013/37/EU recital 28

- (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 prejudice 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.
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↓ 2003/98/EC recital 16

- (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.

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↓ 2003/98/EC recital 17

- (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.
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↓ 2003/98/EC recital 18

- (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.
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↓ 2003/98/EC recital 19

- (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.
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↓ 2013/37/EU recital 26

- (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.
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↓ 2003/98/EC recital 20

- (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.
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- (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 and should therefore be published at least two months before coming into effect so as to give interested parties an opportunity to request the re-use of the documents covered by the agreement and prevent the risk of restricting the range of potential re-users. Such agreements should also be made public 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.
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- (47) This Directive ☒ is without prejudice and ☒ should be implemented and applied in full compliance with ~~the principles~~ ☒ Union law ☒ relating to the protection of personal data ~~in accordance with Directive 95/46/EC of the European Parliament and~~

~~of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data<sup>41</sup> ☒ including Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>42</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>43</sup> ☒ .~~  
 ⇒ 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. ☐

↓ 2003/98/EC recital 22

- (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 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) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). Public sector bodies should, however, exercise their copyright in a way that facilitates re-use.

↓ 2013/37/EU recital 9 (adapted)

- (49) Taking into account Union law and the international obligations of Member States and of the Union, particularly under the Berne Convention ~~for the Protection of Literary and Artistic Works~~ and the ☒ TRIPS ☒ Agreement ~~on Trade-Related Aspects of Intellectual Property Rights~~, documents for which third parties hold intellectual property rights should be excluded from the scope of ☒ this ☒ Directive ~~2003/98/EC~~. 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.

<sup>41</sup> ~~OJ L 281, 23.11.1995, p. 31.~~

<sup>42</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>43</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).

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↓ 2013/37/EU recital 12 (adapted)

- (50) ~~⊗~~ This ~~⊗~~ Directive ~~2003/98/EC~~ should be without prejudice to the rights, including economic and moral rights that employees of public sector bodies may enjoy under national rules.
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↓ 2013/37/EU recital 13

- (51) Moreover, where any document is made available for re-use, the public sector body concerned should retain the right to exploit the document.
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↓ 2003/98/EC recital 23

- (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.
- 

↓ 2003/98/EC recital 24  
⇒ new

- (53) This Directive is without prejudice to Directive 2001/29/EC of the European Parliament and of the Council ~~of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society~~<sup>44</sup> and Directive 96/9/EC of the European Parliament and of the Council ~~of 11 March 1996 on the legal protection of databases~~<sup>45</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, 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 in order to prevent or restrict the re-use of data contained in databases. ⇐
- 

↓ 2013/37/EU recital 27 (adapted)

- (54) The Commission has supported the development of an online ~~⊗~~ Open Data Maturity Report ~~⊗~~ ~~Public Sector Information scoreboard~~ with relevant performance indicators for the re-use of public sector information in all the Member States. A regular update of this ~~⊗~~ report ~~⊗~~ ~~scoreboard~~ will contribute to the exchange of information between the Member States and the availability of information on policies and practices across the Union.

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<sup>44</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

<sup>45</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).

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↓ 2013/37/EU recital 35

⇒ new

- (55) It is necessary to ensure that the Member States ⇒ monitor ⇐ ~~report to the Commission on~~ the extent of the re-use of public sector information, the conditions under which it is made available and the redress practices.
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↓ 2013/37/EU recital 29

⇒ new

- (56) The Commission ⇒ may ⇐ ~~should~~ 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.
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↓ 2013/37/EU recital 15

⇒ new

- (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. ⇐ ~~Wider possibilities for re-using public cultural material should, inter alia, allow Union companies to exploit its potential and contribute to economic growth and job creation.~~
- 

⇓ new

- (58) In order 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 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adoption of a list of high-value datasets among the documents to which this Directive applies, along with the modalities of their publication and re-use. 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.

- (59) An EU-wide list 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 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.

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↓ 2003/98/EC recital 25 (adapted)

~~Since the objectives of the proposed action, namely to facilitate the creation of Community-wide information products and services based on public sector documents, to enhance an effective cross-border use of public sector documents by private companies for added value information products and services and to limit distortions of competition on the Community market, cannot be sufficiently achieved by the Member States and can therefore, in view of the intrinsic Community scope and impact of the said action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. This Directive should achieve minimum harmonisation, thereby avoiding further disparities between the Member States in dealing with the re-use of public sector documents.~~

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↓ 2013/37/EU recital 33 (adapted)

- (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~~ the ~~Member States and~~ but ~~can~~ rather ~~therefore~~, 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.

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↓ 2013/37/EU recital 34 (adapted)  
⇒ new

- (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), and 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.

↓ new

- (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>46</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,

↓ 2003/98/EC

HAVE ADOPTED THIS DIRECTIVE:

## 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;;

↓ new

(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>47</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>48</sup>, public undertakings acting as air carriers

<sup>46</sup> OJ L123, 12.5. 2016, p1.

<sup>47</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>48</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.

fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council<sup>49</sup>, and public undertakings acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Council Regulation (EEC) No 3577/92<sup>50</sup>.

(c) research data, pursuant to conditions set out in Article 10(1) and (2).

↓ 2003/98/EC

2. This Directive shall not apply to:

↓ 2013/37/EU Art. 1(1)(a)(i)

(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;

↓ new

(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;

↓ 2003/98/EC

(~~cb~~) documents for which third parties hold intellectual property rights;

↓ 2013/37/EU Art. 1(1)(a)(ii)  
(adapted)

(~~de~~) 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 (~~ie~~ ☒ that is to say, ☒ State security), defence, or public security,
- statistical confidentiality,
- commercial confidentiality (~~e.g.~~ ☒ including ☒ business, professional or company secrets);

<sup>49</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>50</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).

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↓ 2013/37/EU Art. 1(1)(a)(iii)

~~(cee)~~ 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;

~~(feb)~~ parts of documents containing only logos, crests and insignia;

~~(gee)~~ 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;

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↓ 2003/98/EC

~~(hd)~~ 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;

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↓ 2013/37/EU Art. 1(1)(a)(v)  
⇒ new

~~(if)~~ documents held by cultural establishments other than libraries, ⇒ university libraries, ⇐ museums and archives;

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↓ 2013/37/EU Art. 1(1)(a)(iv)  
⇒ new

~~(je)~~ documents held by educational ~~and research~~ establishments ⇒ of secondary level and below ⇐ ~~, including organisations established for the transfer of research results, schools and universities, except university libraries and~~ ⇒ , in case of all other educational establishments, documents other than those referred to in Article 1(1)(c); ⇐

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↓ new

(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.

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↓ 2013/37/EU Art. 1(1)(b)

3. This Directive builds on and is without prejudice to access regimes in the Member States.

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↓ 2003/98/EC  
→<sup>1</sup> 2013/37/EU Art. 1(1)(c)

~~4. This Directive 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 →<sup>1</sup> Union ← and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC.~~

~~45.~~ The obligations imposed by 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.

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↓ new

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 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>51</sup> applies.

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↓ 2003/98/EC

## *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
  - (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;

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<sup>51</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).

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↓ new

3. 'public undertaking' means any undertaking 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;

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↓ 2013/37/EU Art. 1(2)

~~49.~~ 'university' means any public sector body that provides post-secondary-school higher education leading to academic degrees;<sub>3</sub>

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↓ 2003/98/EC

~~53.~~ '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;
- 

↓ new

6. 'dynamic data' means documents in an electronic form, subject to frequent or real-time updates;

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;

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↓ 2003/98/EC (adapted)

~~94.~~ 're-use' means the use by persons or legal entities of 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;<sub>3</sub>  
☒ except ☒ ~~exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use;~~

~~5. 'personal data' means data as defined in Article 2(a) of Directive 95/46/EC.~~

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↓ 2013/37/EU Art. 1(2)

~~106.~~ '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;

117. ‘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;

128. ‘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;

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↓ new

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.

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↓ 2013/37/EU Art. 1(3)  
⇒ new

### *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.

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↓ 2003/98/EC

## **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.

↓ 2013/37/EU Art. 1(4)

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 or a national judicial authority, whose decisions are binding upon the public sector body concerned.

↓ 2003/98/EC (adapted)  
⇒ new

5. ☒ The following entities shall not be required to comply with the requirements of this Article: ☒

~~Public sector bodies covered under Article 1(2)(d), (e) and (f) shall not be required to comply with the requirements of this Article.~~

↓ new

(a) public undertakings;

(b) educational establishments, research performing organisations and research funding organisations.

↓ 2003/98/EC

## CHAPTER III

### CONDITIONS FOR RE-USE

↓ 2013/37/EU Art. 1(5) (adapted)  
⇒ new

#### Article 5

#### Available formats

1. ~~☒~~ Without prejudice to Chapter V, ~~☒~~ ~~p~~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 ~~☒~~ ~~should, in so far as ☒~~ 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.

↓ new

4. Public sector bodies and public undertakings shall make dynamic data available for re-use immediately after collection, via suitable Application Programming Interfaces (APIs).

5. Where making available documents immediately after collection would exceed the financial and technical capacities of the public sector body or the public undertaking, documents referred to in paragraph 4 shall be made available in a timeframe that does not unduly impair the exploitation of their economic potential.

↓ 2013/37/EU Art. 1(6) (adapted)  
⇒ new

## Article 6

### Principles governing charging

1. ~~Where charges are made for the R~~re-use of documents, ~~those charges~~ shall be ~~⇒~~ free of charge or ~~⇐~~ limited to the marginal costs incurred for their reproduction, provision and dissemination ~~⇒~~ , and – where applicable – anonymisation of personal data and measures taken to protect commercially confidential information ~~⇐~~ .

2. ~~☒~~ By way of exception, ~~☒~~ ~~p~~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) by way of exception, documents for which the public sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination. Those requirements shall be defined by law or by other binding rules in the Member State. In the absence of such rules, the requirements shall be defined in accordance with common administrative practice in the Member State;~~

~~(be)~~ libraries, including university libraries, museums and archives;<sub>2</sub>

↓ new

(c) public undertakings.

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↓ 2013/37/EU Art. 1(6) (adapted)  
⇒ new

3. In the cases referred to in points (a) and ~~(b)~~ ⇒ (c) ⇐ of paragraph 2, ~~the public sector bodies concerned shall calculate~~ the total charges ⇨ shall be calculated ⇨ according to objective, transparent and verifiable criteria to be laid down by the Member States. The total income ~~of those bodies~~ from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, ⇨ 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 ~~applicable to the public sector bodies involved~~.

4. Where charges are made by the public sector bodies referred to in point ~~(be)~~ 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.

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↓ new

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.

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↓ 2013/37/EU Art. 1(7) (adapted)

## Article 7

### Transparency

1. In the case of standard charges for the re-use of documents ~~held by public sector bodies~~, 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 ~~public sector body in question shall indicate at the outset which~~ factors ⇨ that ⇨ are taken into account in the calculation of those charges ⇨ shall be indicated at the outset ⇨ . Upon request, the ~~public sector body~~ ⇨ 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. The requirements referred to in point (b) of Article 6(2) shall be pre-established. They shall be published by electronic means, where possible and appropriate.~~

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↓ new

3. Member States shall publish a list of public sector bodies referred to in point (a) of Article 6(2).

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↓ 2013/37/EU Art. 1(7)

4. 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.

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↓ 2003/98/EC

#### *Article 8*

#### **Licences**

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↓ 2013/37/EU Art. 1(8) (adapted)

1. ~~Public sector bodies may allow~~ Re-use ☒ of documents may be allowed ☒ without conditions or may impose ☒ with ☒ conditions, where appropriate through a licence. ~~These~~ ☒ Those ☒ conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.

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↓ 2003/98/EC (adapted)

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 ~~all public sector bodies to~~ ☒ the ☒ use ~~the~~ ☒ of such ☒ standard licences.

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↓ 2013/37/EU Art. 1(9)

#### *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.

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↓ new

#### *Article 10*

#### **Availability and re-use of 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 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).

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↓ 2003/98/EC (adapted)  
⇒ new

## CHAPTER IV

### NON-DISCRIMINATION AND FAIR TRADING

#### *Article ~~1140~~*

##### **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 ~~1244~~*

##### **Prohibition of exclusive arrangements**

1. The re-use of documents shall be open to all potential actors in the market, even if one or more market ~~players~~ ☒ 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 at least two months before their coming into effect. The final terms of such arrangements ⇐ shall be transparent and made ☒ publicly available ☒ ~~public~~.

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↓ 2013/37/EU Art. 1(10)(a)

This paragraph shall not apply to digitisation of cultural resources.

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↓ 2013/37/EU Art. 1(10)(b)

~~32a~~. 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.

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↓ new

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 at least two months before their coming into effect. The final terms of such arrangements shall be transparent and made publicly available.

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↓ 2013/37/EU Art. 1(10)(c)  
(adapted)

~~3. Exclusive arrangements existing on 1 July 2005 that do not qualify for the exceptions under paragraph 2 shall be terminated at the end of the contract or in any event not later than 31 December 2008.~~

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↓ 2013/37/EU Art. 1(10)(d)  
(adapted)

~~54. Without prejudice to paragraph 3, Exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions under paragraphs 2 and 3~~2a~~ shall be terminated at the end of the contract or in any event not later than 18 July 2043.~~

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↓ new

## CHAPTER V

### HIGH VALUE DATASETS

#### *Article 13*

##### **List of high value datasets**

1. With a view to achieving the objectives of this Directive, the Commission shall adopt the list of high value datasets among the documents to which this Directive applies, together with the modalities of their publication and re-use.

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 define other applicable modalities, in particular

a. any conditions 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.

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↓ 2003/98/EC

## **CHAPTER ~~VII~~**

### **FINAL PROVISIONS**

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↓ new

#### *Article 14*

##### **Exercise of the delegation**

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.

↓ 2003/98/EC (adapted)

#### *Article ~~15~~<sup>42</sup>*

#### **~~Implementation~~ ☒ Transposition ☒**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ ☒ Articles [...] ☒ by ~~1 July 2005~~ ☒ [...] ☒ . They shall forthwith inform ☒ immediately communicate the text of those measures to ☒ the Commission ~~thereof~~.

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. ☒

↓ 2013/37/EU Art. 1(11)  
(adapted)  
⇒ new

#### *Article ~~16~~<sup>43</sup>*

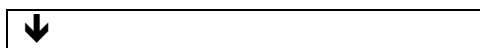
#### **~~Review~~ ☒ Evaluation ☒**

1. ⇒ No sooner than four years after the date of transposition of this Directive, ⇐ ~~the~~ The Commission shall carry out ☒ an evaluation ☒ ~~a review of the application~~ of this Directive before ~~18 July 2018~~ and ~~shall communicate the results of that review, together with any proposals for amendments to this Directive,~~ ☒ present a Report on the main findings ☒ to

the European Parliament, ~~and the Council~~ ⇒ and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines<sup>52</sup>. Member States shall provide the Commission with the information necessary for the preparation of that Report ⇐ .

~~2. Member States shall submit a report every 3 years to the Commission on the availability of public sector information for re-use and the conditions under which it is made available and the redress practices. On the basis of that report, which shall be made public, Member States shall carry out a review of the implementation of Article 6, in particular as regards charging above marginal cost.~~

~~23.~~ The evaluation ~~referred to in paragraph 1~~ 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 ~~content~~ ~~industry~~ ⇒ data economy ⇐ .

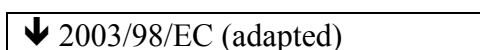


## Article 17

### 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.



## ~~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.

<sup>52</sup> SWD (2017)350

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*