REPORT

on the proposal for a directive of the European Parliament and of the Council on the re-use of public sector information (recast)

Committee on Industry, Research and Energy

Rapporteur: Neoklis Sylikiotis

Rapporteurs for the opinion (*):

Julia Reda, Committee on the Internal Market and Consumer Protection

(*) Associated committees – Rule 54 of the Rules of Procedure

(Recast – Rule 104 of the Rules of Procedure)
Symbols for procedures

* Consultation procedure
*** Consent procedure
****I Ordinary legislative procedure (first reading)
****II Ordinary legislative procedure (second reading)
****III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in **bold italics** in the left-hand column. Replacements are indicated in **bold italics** in both columns. New text is indicated in **bold italics** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in **bold italics**. Deletions are indicated using either the symbol or strikeout. Replacements are indicated by highlighting the new text in **bold italics** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on the re-use of public sector information (recast)

(Ordinary legislative procedure – recast)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2018)0234),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0169/2018),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,

– having regard to the letter of 29 November 2018 sent by the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 104(3) of its Rules of Procedure,

– having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure, the undertaking given by the Commission to take over Parliament’s position, and the undertaking given by the Council representative by letter of 29 November 2018 to approve that position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rules 104 and 59 of its Rules of Procedure,

– having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education and the Committee on Civil Liberties, Justice and Home Affairs (A8-0438/2018),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the

European Parliament, the Council and the Commission;

1. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal at first reading

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DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Open Data and the re-use of public sector information (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by strikeout.
(1) Directive 2003/98/EC of the European Parliament and of the Council 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.

(3) Following the stakeholder consultation and in the light of the Impact Assessment 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, and further stimulate digital innovation, especially in artificial intelligence.

(4) The substantive changes introduced to the legal text so as to fully exploit the potential of public sector information for the European economy and society focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, including from public undertakings as well as from private undertakings when produced in the performance of a service of general economic interest falling within the scope of this Directive, 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, Directive 2003/4/EC, Directive 2007/2/EC of the European Parliament and of the Council and Regulation (EU) 2016/679.

(4a) Access to information is a fundamental right. The Charter of Fundamental Rights of the European Union (the ‘Charter’) provides that everyone has the right to freedom of expression, including the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(4b) Article 8 of the Charter of Fundamental Rights of the European Union guarantees the right to the protection of personal data and states that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law and under the control by an independent authority.

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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.

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, political, economic, legal, geographical, environmental, weather, seismicity, tourist, business, patent and education. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit society. Providing this information in a commonly-used electronic format allows citizens and businesses to find new ways to use them and create new, innovative products and services. Member States and public sector bodies should be able to benefit and receive adequate financial support from the Digital Europe Programme or relevant Union funds and programmes aimed at digitizing Europe, a wide use of digital technologies or the digital transformation of public administration and public services, in their efforts to make data easily available for re-use.

Public sector information represent an extraordinary source of data that can contribute to improving the single market and to the development of new applications for consumers and businesses. Intelligent data usage, including their processing through artificial intelligence applications, can have a transformation effect on all sectors of the economy.

Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information established a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the Member States, including executive, legislative and judicial bodies. Since the adoption of the first set of rules on re-use of public sector information, the amount of data in the world, including public data, has increased exponentially and new types of data are being generated and collected. In parallel, there is a continuous evolution in technologies for analysis, exploitation and processing of data, such as machine learning, artificial intelligence and the internet of things. 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.

The evolution towards a data-based society, using data from different domains and activities, influences the life of every citizen in the Community, among other things, by enabling them to gain new ways of accessing and acquiring knowledge.

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.

One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of some services and products inside...
Member States and Union-wide. Public sector information or information collected, produced, reproduced, and disseminated within the exercise of a public task or a service of general interest, is an important primary material for digital content products and services and will become an even more important content resource with the development of advanced digital technologies, such as artificial intelligence, distributed ledger technologies and the internet of things. Intelligent data usage, including their processing through artificial intelligence applications, can have a transformational effect on all sectors of the economy. Broad cross-border geographical coverage will also be essential in this context. Wide possibilities of re-using such information should inter alia allow all European companies including microenterprises and SMEs, as well as civil society, to exploit its potential and contribute to economic development and quality job creation and protection, especially to the benefit of local communities, and to important societal goals such as accountability and transparency.

(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 as well as the pursuit of its public tasks. With the development of new technologies, the dissemination of data collected and distributed within the exercise of a public task can contribute to ensuring users’ authentic information.

(12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Practice in public sector bodies in exploiting public sector information continues to vary among Member States. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Community.

(13) Member States should ensure the creation of data based on the principle of "open by design and by default", with regard to all documents falling in the scope of this Directive, while ensuring a consistent level of protection of public interest objectives, such as public security, including where sensitive information related to critical infrastructures are concerned; and while ensuring the protection of personal data, including where information in an individual data set may not present a risk of identifying or singling out a natural person, but when combined with other available information, could entail such risk. Open data policies ensuring the findability, accessibility, interoperability and re-usability (FAIR principles), and encouraging 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 primarily for the public, can play an important role in transparency and democratic accountability, promote social engagement, and kick-start and promote the development of new services based on novel ways to combine and make use of such
In order to maximise those benefits, access to sources and evolving data should be ensured. Interoperability, open standards and open data should therefore be implemented at the level of each Member State’s administration. At the same time, the Commission should facilitate the cooperation among Member States and support the design, testing, implementation and deployment of interoperable electronic interfaces that will enable more efficient and secure public services.

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.

Member States have established re-use policies under Directive 2003/98/EC and some of them have been adopting ambitious open data approaches to make re-use of accessible public data easier for citizens and companies beyond the minimum level set by that Directive. To prevent different 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.

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.

This Directive should apply to documents the supply of which forms part of the public tasks of the public sector bodies concerned, as defined by law or by other binding rules in the Member States. In the absence of such rules the public tasks should be defined in accordance with common administrative practice in the Member States, provided that the scope of the public tasks is transparent and subject to review. The public tasks could be defined generally or on a case-by-case basis for individual public sector bodies.

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.
avoid cross-subsidies, re-use should include further use of documents within the organisation itself for activities falling outside the scope of its public tasks. Activities falling outside the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market.

(19) The Directive should not in any way restrict or impair the performance of the statutory tasks of public authorities and other public bodies. Neither does it establish access. This decision remains at the discretion of the Member States. The Directive lays down an obligation for Member States to make all documents re-useable without prejudice to the exceptions laid down in this Directive, such as the protection of personal data, allowing Member States to restrict or exclude certain documents from access. The Directive builds on the existing access regimes in the Member States and does not change the national rules for access to documents. It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Union level, Articles 41 (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.

(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. Re-use of data can play an important role in stimulating economic growth and promoting public engagement.

(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 and private undertakings falling within the scope of this Directive, 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, as well as by public, and private, undertakings falling within the scope of this Directive, 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, and private, undertakings falling within the scope of this Directive, acting as air carriers fulfilling public service obligations pursuant to Article 16 of

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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, and private, undertakings falling within the scope of this Directive, 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 sevices to maritime transport within Member States (maritime cabotage).

(21a) This Directive should not apply to documents related to the provision of services in the general interest; to the re-use by direct competitors of public undertakings of documents produced in the scope of the activities directly exposed to competition and exempted from procurement rules under article 34 of Directive 2014/25/EU, for as long as they fulfil the conditions therein.

(21b) Due to the critical nature of their activities and to security and notification requirements, neither should the Directive apply to documents access to which is excluded or restricted on the grounds of the protection of the security of network and information systems within the meaning of Directive 2016/1148/EU or according to rules governing operators of critical infrastructures including operators of essential services within the meaning of Directive 2008/114/EC.

(22) This Directive should not contain an obligation to allow the re-use of documents produced by public or, when falling within the scope of this Directive, private undertakings. The decision whether or not to authorise re-use of any or all documents, within the scope of this Directive, should remain with the public or, where relevant, private undertaking concerned. Only after the public or, where relevant, private 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 or, where relevant, private 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 swiftly becoming a standard scientific practice for ensuring data that is findable,
accessible, interoperable and re-usable (FAIR principles), as is the consistent provision of data management plans, which must be further encouraged.

(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\(^1\), 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. As a result, publicly-funded research data should be made open as the default option. 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 accordance with the principle "as open as possible, as closed as necessary" in order to focus on encouraging data management as an essential part of research. Where access is restricted, reasons for this restriction on re-use should be communicated to the public. 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.


(26) This Directive lays down a generic definition of the term ‘document’. It covers any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (written on paper, or stored in electronic form or as a sound, visual or audiovisual recording). The definition of ‘document’ is not intended to cover computer programmes.

(27) Public sector bodies are increasingly making their documents available for re-use in a proactive manner, through open formats that can be machine-readable and in a format that ensures interoperability, re-use and accessibility. Documents should also be made available for re-use following a request lodged by a re-user. Member States should guarantee that practical arrangements are defined for ensuring that the re-use of public-sector information can be exercised effectively, with clear indications of where such documents can be found. The time limit for replying to requests for re-use should be reasonable and in accordance with the equivalent time for requests to access the document under the relevant access regimes. Educational establishments,
research performing organisations and research funding organisations should however be exempt from this requirement. Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. This is particularly important for dynamic data (including environmental data, 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, without delay 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. Specific measures should be taken in order to lift relevant technical and financial constraints. Should a licence be used, the timely availability of documents may be a part of the terms of the licence.

(28) In order to get access to the data opened for re-use by this Directive, it is useful to ensure access to dynamic data through well-designed Application Programming Interfaces (APIs). An API describes the kind of data can be retrieved, how to do this and the format in which the data will be received. APIs should be supported by clear technical documentation that is complete and available online. European or internationally recognised standards or other commonly-used protocols should be applied and international standards for datasets should be used where applicable. APIs can have different levels of complexity and can mean a simple link to a database to retrieve specific datasets, a structured 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 whose potential remains largely unused by the data owners. The set-up and use of API needs to be based on several principles: stability, reliability, availability, efficiency, 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 way of suitable APIs which need to be compatible with the FAIR principles. Public sector bodies may receive efficient support in order to develop an adequate level of competence in their services.

(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, public sector bodies should take into account the possibilities for the re-use of documents by and for persons with disabilities by providing the information in accessible formats.
(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 Council1.

(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, in a technologically neutral manner, 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. Solutions developed by the ISA² programme should be taken into account in designing technical methods for re-use of data.

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for re-use without charges and, where charges are necessary, they should in principle be limited to the marginal costs. In exceptional cases, the necessity of not hindering the normal running of public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged. In such cases, public sector bodies and public undertakings should therefore be able to charge above marginal costs. Those charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction, dissemination and maintenance, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. The requirement to generate revenue to cover a substantial part of the public sector bodies’ costs relating to the performance of their public tasks or the scope of the services of general interest entrusted with public undertakings does not have to be a legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.

(32a) The return on investment can be understood as a percentage, in addition to marginal costs, allowing for the recovery of the cost of capital and the inclusion of a real rate of return. As the cost of capital is closely linked to credit institutions’ interest rates, themselves based on the ECB’s fixed rate on main refinancing

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operations, the reasonable return on investment should not be expected to be more than 5% above the ECB’s fixed interest rate.

(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, maintenance, 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. Such charges above marginal costs should be set according to transparent, traceable and verifiable criteria.

(34) The upper limits for charges set in this Directive are without prejudice to the right of Member States to apply lower charges or no charges at all.

(35) Member States should lay down the criteria for charging above marginal costs. In this respect, Member States, for example, may lay down such criteria in national rules or may designate the appropriate body or appropriate bodies, other than the public sector body itself, competent to lay down such criteria. That body should be organised in accordance with the constitutional and legal systems of the Member States. It could be an existing body with budgetary executive powers and under political responsibility.

(36) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide information market. Therefore all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use. Applicants for re-use of documents held by entities other than 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 and start-ups which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.

(37) The means of redress should include the possibility of review by an impartial review body. That body could be an already existing national authority, such as the national competition authority, the national supervisory authority set up pursuant to Regulation (EU) 2016/679, the national access to documents authority or a national judicial authority. That body should be organised in accordance with the constitutional and legal systems of Member States and should not prejudge any means of redress otherwise available to applicants for access to and re-use. It should however be

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distinct from the Member State mechanism laying down the criteria for charging above marginal costs. The means of redress should include the possibility of review of negative decisions but also of decisions which, although permitting re-use, could still affect applicants on other grounds, notably by the charging rules applied. The review process should be swift, in accordance with the needs of a rapidly changing market.

(38) Making public all generally available documents held by the public sector — concerning not only the political process but also the legal and administrative process — is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. This objective is applicable to institutions at every level, be it local, national or international.

(39) In some cases the re-use of documents will take place without a licence being agreed. In other cases a licence will be issued imposing conditions on the re-use by the licensee dealing with issues such as liability, the protection of personal data, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source. If public sector bodies license documents for re-use, the licence conditions should be fair and transparent. Standard licences that are available online may also play an important role in this respect. Therefore Member States should provide for the availability of standard licences.

(40) If the competent authority decides to no longer make available certain documents for re-use, or to cease updating these documents, it should make these decisions publicly known, at the earliest opportunity, via electronic means whenever possible.

(41) Conditions for re-use should be non-discriminatory for comparable categories of re-use. Member States should guarantee fair competition between public sector bodies and public undertakings on the one hand, and other users on the other, in cases where documents are re-used by those public sector bodies or public undertakings as input for their commercial activities. Member States should in particular ensure that re-use of documents of public undertakings does not lead to market distortion and that fair competition is not undermined. 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, and the adoption of a differentiated licensing and charging policy when an economic player wishes to re-use documents in specific commercial conditions.

(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.
Public sector bodies should respect competition rules when establishing the principles for re-use of documents avoiding as far as possible exclusive agreements or any preferential use of the data 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.

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 recover induced costs. 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.

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.

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.

This Directive is without prejudice and should be implemented and applied in full compliance with Union law relating to the protection of personal data including
All obligations arising from this Directive should be fulfilled guaranteeing the protection of privacy and personal data in respect with the Union data protection legislation, including in cross-border data reuse, by ensuring the anonymisation of the personal data. Anonymisation is fundamental to ensuring the re-use of public sector information within the rules and obligations to protect personal data under data protection legislation, even if it 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.

(47a) Anonymous information should mean any information that cannot be related, directly or indirectly, alone or in combination with associated data, to a natural person or personal data rendered anonymous in such a manner that a data subject is no longer identifiable. Moreover, when taking decisions on the scope and conditions for the re-use of public sector documents containing personal data, the organisations subject to this Directive should perform data protection impact assessments before making the document public. This should be done in particular for specific sectors routinely dealing with special categories of personal data, such as health sector, or other personal data referred to in Article 9 of Regulation (EU) 2016/679. In order to properly address the concerns related to the necessary protection of personal data such data protection impact assessment should be conducted in accordance with Article 35 of Regulation (EU) 2016/679.

(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.

(49) Taking into account Union law and the international obligations of Member States and of the Union, particularly under the Berne Convention and the TRIPS Agreement, documents for which third parties hold intellectual property rights should be excluded from the scope of this Directive. If a third party was the initial owner of the intellectual property rights for a document held by libraries, including university

1 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) […]

libraries, museums and archives and the term of protection of those rights has not expired, that document should, for the purpose of this Directive, be considered as a document for which third parties hold intellectual property rights.

(50) This Directive should be without prejudice to the rights, including economic and moral rights that employees of public sector bodies may enjoy under national rules.

(51) Moreover, where any document is made available for re-use, the public sector body concerned should retain the right to exploit the document.


(52) Tools that help potential re-users to find documents available for re-use and the conditions for re-use can facilitate considerably the cross-border use of public sector documents. Member States should therefore ensure that practical arrangements are in place that help re-users in their search for documents available for re-use. Assets lists, accessible preferably online, of main documents (documents that are extensively re-used or that have the potential to be extensively re-used), and portal sites that are linked to decentralised assets lists are examples of such practical arrangements.

(52a) The Commission and the Member States should further simplify the access to datasets, in particular by providing a single point of access and progressively make available suitable datasets from public sector bodies with regard to all documents to which this Directive applies as well as to data from Union institutions.

(53) This Directive is without prejudice to Directive 2001/29/EC of the European Parliament and of the Council and Directive 96/9/EC of the European Parliament and of the Council. 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. The right provided for in Article 7(1) of Directive 96/9/EC should not be exercised to prevent or restrict re-use of existing documents beyond the limits set by this Directive.

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

(55) It is necessary to ensure that the Member States monitor the extent of the re-use of public sector information, the conditions under which it is made available and the redress practices.


(56) The Commission may assist the Member States in implementing this Directive in a consistent way by issuing and updating existing guidelines, particularly on recommended standard licences, datasets and charging for the re-use of documents, after consulting interested parties.

(57) One of the principal aims of the establishment of the internal market is the creation of conditions conducive to the development of Union-wide services, to which all citizens should have access. Libraries, museums and archives hold a significant amount of valuable public sector information resources. The re-use of documents held by such institutions possesses substantial social and economic potential for cultural and creative industries, as well as for society, in particular since digitisation projects have multiplied the amount of digital public domain material, which is accessible on platforms such as Europeana. 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 not only for the cultural and creative sectors, but also in other sectors such as learning and tourism. Other types of cultural establishments (such as orchestras, operas, ballets and theatres), including the archives that are part of those establishments, should remain outside the scope because of their ‘performing arts’ specificity and the fact that almost all of their material is subject to third-party intellectual property rights and would therefore remain outside the scope of that Directive.

(58) 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, a list of categories of high value datasets is included in Annex IIa. 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 order to supplement the list of categories for high value datasets in Annex IIa by adding new categories and their respective datasets to the 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. Annex IIa provides a list of categories of high value datasets which could be supplemented by a delegated act. The additional categories and their respective datasets for the list should take into account sectoral legislation that already regulates the publication of datasets, as well as the categories indicated in the Technical Annex of the G8 Open Data Charter and in the Commission's Notice 2014/C 240/01. In the process leading to the identification of additional categories for the list, the Commission should carry out an impact assessment and appropriate public consultations, including at expert level. For the
purposes of the impact assessment, the Commission should carry out public consultations with all interested parties, including public sector bodies, undertakings, data users and re-users, research organisations, civil society groups and representative organisations. All interested parties should be given the possibility to submit suggestions to the Commission for additional categories of high value datasets or concrete datasets. The Commission should take these into account or provide the interested party concerned with reasons for not adopting the suggestion.

(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.

(60a) Given the high risk of current technological formats for storing and giving access to public sector information becoming obsolete, public authorities – in particular in the case of high-value datasets – should implement effective long-term preservation policies to ensure the usage possibilities into the future.

(61) Since the objectives of this Directive, namely to facilitate the creation of Union-wide information products and services based on public sector documents, to ensure the effective cross-border use of public sector documents on the one hand by private companies, particularly by small and medium-sized enterprises, for added-value information products and services, and on the other hand by citizens to facilitate the free circulation of information and communication, cannot be sufficiently achieved by the Member States but can rather, by reasons of the pan-European scope of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(62) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to privacy (Article 7), the protection of personal data (Article 8), the right to property (Article 17) and the integration of persons with disabilities (Article 26). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(62a) The European Data Protection Supervisor delivered an Opinion 5/2018 on 10 July 2018 pursuant to Article 41(2) of Regulation (EC) 45/2001.1

(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 20162, that evaluation should be based on the five criteria of

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efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures.

(64) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(65) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directives set out in Annex I, Part B.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

This Directive aims at establishing a regulatory framework governing the re-use of public sector information in order to promote the use of open data and stimulate innovation in products and services.

1. This Directive establishes a minimum set of rules governing the re-use and the practical means of facilitating re-use of:

(a) existing documents held by public sector bodies of the Member States;

(b) existing documents access to which is not excluded or restricted under Article 1(2), held by public undertakings active in the areas defined in Directive 2014/25/EU of the European Parliament and of the Council¹ 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 Council², 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\(^1\), and public undertakings acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Council Regulation (EEC) No 3577/92\(^2\).

\(\textit{(ba)}\) existing documents held by private undertakings produced in the performance of a service of general economic interest in the areas referred to in point (b).

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

2. This Directive shall not apply to:

\(\textit{(a)}\) 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;

\(\textit{(b)}\) 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;

– related to the activities directly exposed to competition and, pursuant to Article 34 of Directive 2014/25/EU, not subject to procurement rules;

– access to which is excluded or restricted in order to ensure the security of the network and information systems pursuant to Directive (EU) 2016/1148;

\(\textit{(c)}\) documents for which third parties hold intellectual property rights;

\(\textit{(d)}\) documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of:

the protection of national security (that is to say, State security), defence, or public security,

statistical confidentiality,

commercial confidentiality (including business, professional or company secrets);

\(\textit{(da)}\) documents access to which is excluded or restricted on the grounds of protection of sensitive critical infrastructure information as defined in point (d) of Article 2 of Directive 2008/114/EC.


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;

parts of documents containing only logos, crests and insignia;

documents or parts of documents access to which is excluded or restricted by access regimes on the grounds of protection of personal data, or which contain personal data the re-use of which could undermine the protection of privacy and integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data;

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;

documents held by cultural establishments other than libraries, university libraries, museums and archives;

documents held by educational establishments of secondary level and below and, in case of all other educational establishments, documents other than those referred to in Article 1(1)(c);

documents other than those referred to in Article 1(1)(c) held by research performing organisations and research funding organisations, including organisations established for the transfer of research results.

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

3a. This Directive is without prejudice to Regulation (EU) 2016/679 and does not affect the level of protection of natural persons with regard to the processing of personal data under that regulation and other Union law.

4. 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.

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 beyond the limits of 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\(^1\) applies.

Article 2

Definitions

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

1. ‘public sector body’ means the State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several such bodies governed by public law;

2. ‘body governed by public law’ means any body:
   
   (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
   
   (b) having legal personality; and
   
   (c) financed, for the most part by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;

3. 'public undertaking' means any undertaking over which the public sector bodies may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it;

   A dominant influence on the part of the public sector bodies shall be presumed when such public sector bodies, directly or indirectly in relation to an undertaking:

   (i) hold the majority of the undertaking’s subscribed capital;
   
   (ii) control the majority of the votes attached to shares issued by the undertakings; or
   
   (iii) can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;

4. ‘university’ means any public sector body that provides post-secondary-school higher education leading to academic degrees;

4a. ‘open license’ means any standardised public license that allows data and content to be freely accessed, used, modified, and shared by anyone for any purpose, subject, at most, to requirements that preserve provenance and openness;

5. ‘document’ means:
   
   (a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording);
   
   (b) any part of such content;
5b. ‘anonymous information’ or ‘anonymised information’ means information which does not relate to an identified or identifiable natural person or personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable;

6. 'dynamic data' means documents in an electronic form, that change often or on a regular basis;

6a. ‘application programming interface’ (API) means a well-documented set of functions, procedures, definitions and protocols for the structured retrieval of information online;

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 benefits for society, the environment and the economy, notably because of their suitability for the creation of value-added services, applications and new, quality and decent work, and the number of potential beneficiaries of the value-added services and applications based on these datasets;

9. ‘re-use’ means the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced, except exchange of documents between public sector bodies purely in pursuit of their public tasks;

9a. ‘personal data’ means data as defined in point (a) of Article 4 of Regulation (EU) 2016/679;

10. ‘machine-readable format’ means a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure;

11. ‘open format’ means a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents;

12. ‘formal open standard’ means a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;

13. 'reasonable return on investment' means a percentage of the overall charge, in addition to that needed to recover the eligible costs, not exceeding 5 percentage points above the fixed interest rate of the European Central Bank;

14. ‘third party’ means any natural or legal person other than a public sector body, a public undertaking or a private undertaking as referred to in point (ba) of Article 1(1) that holds the data.
Article 3

General principle

1. 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 by the public undertaking or private undertaking as referred to in point (ba) of Article 1(1) which produced them, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.

2a. Member States shall ensure that documents falling within the scope of this Directive are produced and made available for re-use according to the principle of "open by design and by default".

2b. Member States shall provide that, when taking decisions on the scope and conditions for the re-use of documents, the organisations subject to this Directive, shall perform data protection impact assessments, in particular for specific sectors routinely dealing with special categories of personal data, such as health sector, or other personal data referred to in Article 9 of Regulation (EU) 2016/679. Such data protection impact assessment shall be carried out in accordance with Article 35 of Regulation (EU) 2016/679.
CHAPTER II

REQUESTS FOR RE-USE

Article 4

Requirements applicable to the processing of requests for re-use

1. Public sector bodies, public undertakings and private undertakings as referred to in point (ba) of Article 1(1) 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.

1a. The decision whether or not to authorise re-use of any or all documents under this Directive shall remain with the public undertaking or private undertaking as referred to in point (ba) of Article 1(1) concerned. After the undertaking has chosen to make a document available for re-use, it shall observe the relevant obligations laid down in Chapters III and IV, in particular as regards format, charging, transparency, licences, non-discrimination and the prohibition of exclusive arrangements.

2. Where no time limits or other rules regulating the timely provision of documents have been established, public sector bodies, public undertakings and private undertakings as referred to in point (ba) of Article 1(1) 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 as soon as possible or, at the latest, 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 as soon as possible, and in any case within three weeks after the initial request that more time is needed to process it and of the reasons for it.

3. In the event of a negative decision, the public sector bodies, public undertakings or private undertakings as referred to in point (ba) of Article 1(1) 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, public undertaking or private undertaking as referred to in point (ba) of Article 1(1) 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 supervisory authority set up in accordance with Article 51 of Regulation (EU) 2016/679, the national access to documents authority or a national judicial authority, whose decisions are binding upon the public sector body concerned.

4a. For the purposes of this Article, Member States shall ensure that:

(a) support is granted in seeking access to documents;

(b) lists of public sector bodies, public undertakings and private undertakings as referred to in point (ba) of Article 1(1) are publicly accessible;

(c) practical arrangements are defined for ensuring that the re-use of public-sector information can be exercised effectively;

(d) public sector bodies public undertakings and private undertakings as referred to in point (ba) of Article 1(1) inform the public adequately of the rights they enjoy on the basis of this Directive and as a result of existing access to information rules, laid down at national or at Union level, and to an appropriate extent provide information, guidance and advice to this end.

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

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

CHAPTER III

CONDITIONS FOR RE-USE

Article 5

Available formats

1. Without prejudice to Chapter V, public sector bodies, public undertakings, and private undertakings as referred to in point (ba) of Article 1(1), shall make their documents available in forms or formats that are accessible, readily findable and re-usable by electronic means, in any pre-existing language, and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata shall, where possible, comply with formal open standards.

2. As long as the re-users have any possibility to re-use the requested documents, paragraph 1 shall not imply an obligation for public sector bodies, private undertakings as
referred to in point (ba) of Article 1(1), 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, private undertakings as referred to in point (ba) of Article 1(1), and public undertakings cannot be required to continue the production and storage of a certain type of documents with a view to the re-use of such documents by a private or public sector organisation.

4. Public sector bodies, public undertakings and private undertakings as referred to in point (ba) of Article 1(1), shall make dynamic data available for re-use immediately after collection via suitable Application Programming Interfaces (APIs). To ensure the sustained supply of dynamic data, public sector bodies may receive support under relevant Union programmes.

5. Where making available documents immediately after collection and without delay would exceed the financial and technical capacities of the public sector body, the private undertaking as referred to in point (ba) of Article 1(1), 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 and social potential.

5a. Public sector bodies, public undertakings and private undertakings as referred to in point (ba) of Article 1(1) shall ensure that access to and re-use of public sector information comply with the Union data protection legislation.

Article 6

Principles governing charging

1. Re-use of documents 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, 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;
   (aa) 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;
   (b) libraries, including university libraries, museums and archives;
   (c) public undertakings;
   (ca) private undertakings as referred to in point (ba) of Article 1(1).

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

4. Where charges are made by the public sector bodies referred to in point (b) of paragraph 2, the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, data storage, 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 applicable accounting principles applicable to the public sector bodies involved.

5. The re-use of high value datasets, the list of which shall be defined in accordance with Article 13 and Annex IIa, and of research data referred to in point (c) of Article 1(1) shall be free of charge for the user.

Article 7

Transparency

1a. Member States may disclose the costs to be incurred for the reproduction, dissemination and data storage of documents, as well as, where applicable, costs for the anonymisation of personal data and costs for measures to protect confidentiality as referred to in point (d) of Article 1(2).

1. In the case of standard charges for the re-use of documents or parts of documents, any applicable conditions and the actual amount of those charges, including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate.

2. In the case of charges for the re-use other than those referred to in paragraph 1, the factors that are taken into account in the calculation of those charges shall be indicated at the outset. Upon request, the holder of documents in question shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.

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

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.
Article 8
Licences

1. **Member States shall not make the re-use of documents subject to conditions, or a licence, unless the need for such conditions or licence is non-discriminatory, justified by a public interest objective and proportionate.**

2. In Member States where licences are used, Member States shall ensure that standard licences for the re-use of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage the use of such standard licences.

2a. **Without prejudice to liability requirements, laid down in Union law, where a public body, a public undertaking or a private undertaking as referred to in point (ba) of Article 1(1) makes documents available for re-use without any conditions and restrictions, that public body, public undertaking or a private undertaking as referred to in point (ba) of Article 1(1) shall be allowed to waive all liability with regards to the documents made available for re-use.**

Article 9
Practical arrangements

1. 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.

1a. **Member States shall ensure that public sector bodies, public undertakings and private undertakings as referred to in point (ba) of Article 1(1) provide the Commission with necessary access to all data they make available for re-use to allow for an aggregation of datasets at Union level, in particular to provide full coverage datasets for the Union for a particular category of data as set out in Annex IIa. The Commission shall make practical arrangements to make available datasets at Union level through a single point of access.**

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') and compatible with the FAIR principles. All publicly-funded research data should be made open by default. In this context, concerns relating to IPR, personal data protection and confidentiality, security and legitimate commercial interests, shall be taken into account in accordance with the principle “as open as possible, as closed as necessary”. These open access policies shall be addressed to research performing organisations and research funding organisations. **Research funding schemes financed from...**
the Union budget shall oblige all beneficiaries to make their research data openly available for re-use in line with the Horizon Europe.

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 institutional or subject-based repositories or any local, national or international data infrastructure. In this context, legitimate commercial interests, knowledge transfer activities and pre-existing intellectual property rights shall be taken into account. This provision shall be without prejudice to point (c) of Article 1(2).

CHAPTER IV

NON-DISCRIMINATION AND FAIR TRADING

Article 11

Non-discrimination

1. Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use, including for cross-border re-use.

2. Member States shall guarantee fair competition between public sector bodies, public undertakings and private undertakings as referred to in point (ba) of Article 1(1), and other users, in cases where documents are re-used by those public sector bodies, public undertakings or private undertakings as referred to in point (ba) of Article 1(1) as input for their commercial activities which fall outside the scope of their public tasks, by ensuring that the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

2a. Member States shall ensure in the same way that re-use of documents and information of public undertakings or private undertaking as referred to in point (ba) of Article 1(1) does not lead to distortion of fair competition.

Article 12

Prohibition of exclusive arrangements

1. To ensure fairness, the re-use of documents shall be open to all potential users in the market, even if one or more users already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies, private undertakings as referred to in point (ba) of Article 1(1), or public undertakings holding the documents and third parties shall not grant exclusive rights, or allow any preferential use of the data. Public service excluded from the scope of Directive 2014/24/EU pursuant to Article 11 of that Directive and innovation partnerships as referred to in Article 31 of Directive 2014/24/EU shall be taken into account.
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.

This paragraph shall not apply to digitisation of cultural resources.

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

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

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

4. Legal or practical arrangements that, without expressly granting an exclusive right, aim at or could reasonably be expected to lead to a restricted availability for re-use of documents by entities other than the third party participating in the arrangement, shall be made publicly available at least two months before their coming into effect. Those legal or practical arrangements shall be subject to regular reviews and shall, in any event, be reviewed every three years. The final terms of such arrangements shall be transparent and made publicly available, with due consideration to competition.

5. Exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions under paragraphs 2 and 3 shall be terminated at the end of the contract or in any event not later than 18 July 2043.

Article 12 a (new)

Preservation of Public Sector Information

Member States shall ensure the implementation of meaningful preservation policies for public sector information in any format which offers the best possible guarantees of long-term access.
CHAPTER V

HIGH VALUE DATASETS

Article 13

List of high value datasets

1. With a view to achieving the objectives of this Directive, a list of categories and high value datasets is set out in Annex II a. The Commission shall be empowered to adopt delegated acts in accordance with Article 14 in order to supplement the list by adding new categories and their respective datasets to 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 for download, and where appropriate, 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 distortion of competition in the respective markets.

5. The list of categories and their respective high value datasets referred to in paragraph 1 is based on the assessment of their potential to generate significant social, economic, or environmental benefits, innovative services, the number of users, in particular SMEs, the revenues they may help generate, their potential for being combined with other datasets and the expected impact on the competitive situation of public undertakings.

6. The list in Annex IIa may, where appropriate, be supplemented by means of a delegated act; The Commission may supplement the list in Annex IIa by adding new categories and their respective high value datasets 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 a 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 categories of high value datasets might concern public undertakings, the impact assessment shall give special consideration to possible distortions in competition and to the role of public undertakings, SMEs and start-ups in a competitive economic environment.

7a. For the purpose of paragraphs 1, 2 and 7, the Commission shall carry out public
consultations with all interested parties including competent bodies holding public sector information, social partners, users and re-users, applicants for the use and re-use, and civil society groups. All interested parties shall be given the possibility to submit suggestions to the Commission for additional categories of high-value datasets or concrete datasets. The Commission shall take those suggestions into account, or provide the interested party with reasons for not adopting the suggestion.

*For the purposes of paragraph 2, the Commission shall take into account potential effects on competition where public undertakings operate in competitive markets.*

**CHAPTER VI**

**FINAL PROVISIONS**

**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 three 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 three
months at the initiative of the European Parliament or of the Council.

Article 15

Transposition

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

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

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

Article 16

Evaluation

1. No sooner than four years after the date of transposition of this Directive, the Commission shall carry out an evaluation of this Directive and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines\(^1\). Member States shall provide the Commission with the information necessary for the preparation of that Report.

2. The evaluation shall in particular address the scope and the social and economic impact of this Directive, including the extent of the increase in re-use of public sector documents to which this Directive applies, especially by SMEs, the impact of the high-value datasets, 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 availability and the use of APIs, the interaction between data protection rules and re-use possibilities, as well as further possibilities of improving the proper functioning of the internal market, supporting economic and labour market development.

\(^1\) SWD (2017)350
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.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
ANNEX I

Part A

Repealed Directive
with the amendment thereto
(referred to in Article 15)


Part B

Time-limits for transposition into national law and date of application
(referred to in Article 15)

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# ANNEX II

## Correlation Table

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Article 4(5), introductory wording
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Article 6(1)
Article 6(2), introductory wording
Article 6(2)(a)

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ANNEX IIa

List of categories and high-value datasets:

1. Geospatial Data
   - Postcodes, national and local maps (cadastral, topographic, marine, administrative boundaries).

2. Earth observation and environment
   - Space and situ data (monitoring of the weather and of the quality of land and water, seismicity, energy consumption, the energy performance of buildings and emission levels).

3. Meteorological data
   - Weather forecasts, rain, wind and atmospheric pressure.

4. Statistics
   - National, regional and local statistical data with main demographic and economic indicators (gross domestic product, age, unemployment, income, education).

5. Companies
   - Company and business registers (list of registered companies, ownership and management data, registration identifiers).

6. Transport data
   - Public transport timetables of all modes of transport, information on public works and the state of the transport network including traffic information.
ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

D(2018)33866

Mr Jerzy BUZEK
Chair, Committee on Industry, Research and Energy
PHS 08B046
Brussels


Dear Chair,

The Committee on Legal Affairs has examined the proposal referred to above, pursuant to Rule 104 on Recasting, as introduced into the Parliament’s Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

“If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible for the subject matter thereof.

In such a case, over and above the conditions laid down in Rules 169 and 170, amendments shall be admissible within the committee responsible for the subject-matter only if they concern those parts of the proposal which contain changes.

However, amendments to parts of the proposal which remain unchanged may, by way of exception and on a case-by-case basis, be accepted by the Chair of the committee responsible for the subject matter if he or she considers that this is necessary for pressing reasons relating to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments. Such reasons must be stated in a written justification to the amendments.”

Following the opinion of the Consultative Working Party of the legal services of the Parliament, the Council and the Commission, which has examined the recast proposal, and in keeping with the recommendations of the rapporteur, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.
In conclusion, at its meeting of 3 September 2018, the Committee on Legal Affairs, unanimously¹, recommends that the Committee on Industry, Research and Energy, as the committee responsible, can proceed to examine the above proposal in accordance with Rule 104.

Yours sincerely,

Pavel Svoboda


¹ The following Members were present: Marie Christine Boutonnet, Jean Marie Cavada, Mady Delvaux, Pascal Durand, Angel Dzhambazki, Rosa Estaràs Ferragut, Laura Ferrara, Jytte Guteland, Gilles Lebreton, Jiří Maštálka, Angelika Niebler, Răzvan Popa, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Francis Zammit Dimech, Tadeusz Zwiefka, Luis de Grandes Pascual.

CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES

Brussels, 12 July 2018

OPINION

FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION


Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 23 and 31 May 2018 for the purpose of examining the aforementioned proposal submitted by the Commission.


1. The following should have been marked with the grey-shaded type generally used for identifying substantive changes:
   - in recital 7, the adding of the words ‘and later amended in 2013’;
   - in recital 8, the replacement of the words ‘data-based society’ with ‘information and knowledge society’;
   - in recital 12, the deletion of the word ‘traditional’;
   - in recital 13, the deletion of the last sentence;
   - in recital 26, the deletion of the words ‘in line with developments in the information society’;
   - in recital 27, the adding of the words ‘satellite data, weather data’;
   - the deletion of the entire text of current recital 14 of Directive 2003/98/EC;

¹ The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.
- in recital 54, the replacement of the words ‘online Public Sector Information scoreboard’ with the words ‘online Open Data Maturity Report’;
- the replacement of the current wording of Article 4(5) of Directive 2003/98/EC with a new wording;
- in Article 5(1), the adding of the initial words 'Without prejudice to Chapter V';
- in Article 7(1), the deletion of the words 'held by public sector bodies';
- in Article 7(2), the deletion of the words 'public sector body in question shall indicate at the outset which' and the replacement of the words 'public sector body' with the words 'holder of documents'.

2. In recitals 8, 12 and 14, the word 'Community' should be replaced by 'Union'.

3. In the reference box preceding recital 56, the indication ‘2013/37/EU recital 29’ should have read ‘2013/37/EU recital 36’.

4. In Article 15(1), first subparagraph, the words ‘forthwith inform’ (replaced by the words ‘immediately communicate the text of those measures to’) should have been marked with ‘double strikethrough’.

5. The current wording of Article 13(1) of Directive 2003/98/EC should have been entirely marked with ‘double strikethrough’. The proposed wording for Article 16(1) should have been entirely marked with the grey-shaded type generally used for identifying substantive changes.

6. The proposal submitted by the Commission should have comprised two annexes on recast, referred to as ‘Annex I’ and ‘Annex II’ in recital 65 and in Article 17.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

F. DREXLER
Jurisconsult

H. LEGAL
Jurisconsult

L. ROMERO REQUENA
Director General
19.10.2018

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council on the re-use of public sector information (recast)

Rapporteur for opinion: Julia Reda

SHORT JUSTIFICATION

I. Background

Over the last decade and a half, Open Data has evolved and matured to become a concept that is observed at the heart of modern administration. Governments and authorities have embraced the principle that where data can be made available for re-use, they must be made available.

Following the fundamental right to access to information, the right to access and re-use of public sector data enables citizens to actively participate in their communities. Numerous individuals and initiatives make use of data to create benefits for society. Rather than through rumours or sporadic evidence, they make use of reliable data as a source of information.

In the Commission’s evaluation accompanying the recast proposal, the data economy in the European Union was estimated to be worth 300 billion EUR in 2016. In the same year, around 134.000 data businesses existed in the EU.1

Next to citizens and businesses, administrations themselves benefit from Open Data. While allowing governments and authorities to fulfil their democratic obligations to making their policy and decision processes transparent, embracing Open Data also creates incentives for departments to cooperate more. Data becomes accessible to internal users where they would not have had access before. According to the Commission evaluation, the benefits of making data open from the start by far outweigh any cost for public administration, at a rate of

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“roughly 26:1 today”\textsuperscript{1}.

\textit{II. The Rapporteur’s position}

\textbf{A. Open by Design and by Default}

The access to information is a fundamental right, guaranteed by the Charter of Fundamental Rights of the European Union, in particular Article 11. That is why Member States should make all reasonable efforts to design policies governing the creation of data so that their publication is already foreseen.

Making public sector information accessible and re-usable creates cost for public administration. Already today, the benefits outweigh the costs. By giving thought to the subsequent possibility of publication at the stage of data production, costs could be further reduced, and publication streamlined.

The principle should be called open by design and by default.

\textbf{B. High Value Datasets}

The Commission has identified High Value Datasets to be particularly valuable for economy and society. Opening up High Value Datasets for access is therefore essential to the aim of the recast.

Therefore, building on experiences in MS, the Directive is amended with a list of categories of high value data and exemplary datasets from areas identified as high-value by the Open Knowledge Foundation\textsuperscript{2} and in the G8 Open Data Charter’s Technical Annex\textsuperscript{3}. The Commission is given delegated powers to update this list and enhance it with concrete datasets that it identifies through public consultations, and by encouraging the public to submit suggestions.

\textbf{C. Charging}

Governments and public administration can charge for data they have commissioned to be produced, produced themselves, or licensed.

The cautious approach in the recast fails to correct the status quo, where large multi-national corporations benefit from public data, while civic initiatives lose out. For example, Google reportedly made a licensing deal for mapping data with the German Federal Agency for Cartography and Geodesy\textsuperscript{4} that involves a low six-figure yearly fee. Where Google can afford such a fee, the data remain inaccessible and unaffordable for SMEs or competing community-
based civil society alternatives like OpenStreetMap\(^1\) that created detailed maps of the world largely at the hand of volunteers.

As a result, public sector information ends up strengthening the already dominant market position of large multinational companies, while limiting the ability for the development of alternatives.

The possibility for the public sector to charge for data must therefore be further limited. The re-use of data should be free of charge, unless under very narrowly defined circumstances.

D. Open Data Directive

The Directive should not get in the way of MS that already embrace Open Data and release their information in open formats, and under permissive, open licences. It should help those MS that are not yet committed and guide them with steps and methods to be adopted.

It should underscore the European dimension of Open Data, promote the pan-European aggregation of data, and the collaboration across borders.

At the time of the adoption of Directive 2003/98/EC, the term Open Data was not widely known. Today, the situation is different. Open Data as a term is broadly established and used by the Commission and MS. Therefore, the best term to describe what the Directive wants to achieve is Open Data.

The Directive’s name should showcase what it can achieve and consequently be renamed the “Open Data Directive”.

**AMENDMENTS**

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

**Amendment 1**

**Proposal for a directive**

**Title 1**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>Proposal for a DIRECTIVE OF THE EUROPEAN</td>
<td>Proposal for a DIRECTIVE OF THE EUROPEAN</td>
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\(^1\) OpenStreetMap https://www.openstreetmap.org/
Amendment 2

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) Directive 2003/98/EC of the European Parliament and of the Council\(^\text{28}\) has been substantially amended. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

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(1) Directive 2003/98/EC of the European Parliament and of the Council\(^\text{28}\) has been substantially amended\(^{28a}\). Since further amendments are to be made, that Directive should be recast in the interests of clarity.

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\(^{28a}\) See Annex I, Part A.

Amendment 3

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Pursuant to \textbf{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\(^{29}\).

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(2) Pursuant to 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\(^{29}\).

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\(^{29}\) See Annex I, Part A.
Amendment 4

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) Following the stakeholder consultation and in the light of the Impact Assessment\(^{30}\) 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.

\(^{30}\) SWD(2018) 127.

Amendment

(3) Following the stakeholder consultation and in the light of the Impact Assessment\(^{30}\) 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 *machine learning*, Artificial Intelligence and the Internet of Things.

\(^{30}\) SWD(2018) 127.

Amendment 5

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) The substantive changes introduced to the legal text so as to fully exploit the potential of public sector information for the European economy and society focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, including from public undertakings, research performing organisations and research funding organisations, tackling the emergence of new forms of exclusive arrangements, the use of exceptions to the

Amendment

(4) The substantive changes introduced to the legal text so as to fully exploit the potential of public sector information for the European economy and society focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, including from public undertakings, research performing organisations and research funding organisations, tackling the emergence of new forms of exclusive arrangements, the use of exceptions to the
principle of charging the marginal cost and the relationship between this Directive and certain related legal instruments, including Directive 96/9/EC\textsuperscript{31} and Directive 2007/2/EC of the European Parliament and of the Council\textsuperscript{32}.


\textbf{Amendment 6}

\textbf{Proposal for a directive}

\textbf{Recital 4 a (new)}

\textit{Text proposed by the Commission}

\begin{quote}
\textbf{(4 a)} The access to information is a fundamental right. The Charter of Fundamental Rights of the European Union (the ‘Charter’) provides that everyone has the right to freedom of expression, including the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
\end{quote}

\textbf{Amendment}

\textbf{Amendment 7}

\textbf{Proposal for a directive}

\textbf{Recital 6}
(6) The public sector in the Member States collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy, which is based on the quantity, quality and accessibility of the information available and leads to better adaptation to consumer needs.

Amendment 8

Proposal for a directive
Recital 7

(7) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information established a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the Member States, including executive, legislative and judicial bodies. Since the adoption of the first set of rules on re-use of public sector information, the amount of data in the world, including public data, has increased exponentially and new types of data are being generated and collected. In parallel, we are witnessing a continuous evolution in technologies for analysis, exploitation and processing of data. This rapid technological evolution makes it possible to create new services and new applications, which are built upon the use, such as machine learning, Artificial intelligence and Internet of Things. This rapid technological evolution makes it possible to create new services and new
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.

Amendment 9

Proposal for a directive
Recital 8

*Text proposed by the Commission*

(8) The evolution towards a data-based society influences the life of every citizen in the Community, among other things, by enabling them to gain new ways of accessing and acquiring knowledge.

*Amendment*

(8) The evolution towards a data-based society influences the life of every citizen in the Union, among other things, by enabling them to gain new ways of accessing and acquiring knowledge.

Amendment 10

Proposal for a directive
Recital 11

*Text proposed by the Commission*

(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.

*Amendment*

(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 as well as the pursuit of its public tasks.

Amendment 11
Proposal for a directive
Recital 12

Text proposed by the Commission

(12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Practice in public sector bodies in exploiting public sector information continues to vary among Member States. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Community.

Amendment

(12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Practice in public sector bodies in exploiting public sector information continues to vary among Member States. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Union.

Amendment 12

Proposal for a directive
Recital 13

Text proposed by the Commission

(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.

Amendment

(13) Member States should ensure the creation of data based on the principle of “open by design and by default”, with regard to all documents falling in the scope of this Directive, while ensuring a consistent level of protection of public interest objectives, such as public security or personal data protection, including where sensitive information related to critical infrastructures are concerned or where information in an individual dataset may not present a risk of identifying a natural person, but when combined with other available information, could entail such risk. 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 promoting the development of new services based on novel ways to combine and make use of such information, stimulate economic growth and promote social engagement. Interoperability, open standards and open data should therefore be implemented at national, regional and local level of each Member State’s administration. At the same time, the Commission should facilitate the cooperation among Member States and support the design, testing, implementation and deployment of interoperable electronic interfaces that will enable more efficient and secure public services.

Amendment 13
Proposal for a directive
Recital 14

Text proposed by the Commission
(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-

Amendment
(14) Without minimum harmonisation at Union level, legislative activities at national level, which have already been initiated in a number of Member States in order to respond to the technological challenges, might result in even more significant differences. The impact of such legislative differences and uncertainties will become more significant with the further development of the information society, which has already greatly increased cross-border exploitation of
border exploitation of information.

Amendment 14

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) This Directive should apply to documents that are made accessible for reuse when public sector bodies license, sell, disseminate, exchange or give out information. To avoid cross-subsidies, reuse 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.

Amendment

(18) This Directive should apply to documents that are made accessible for reuse when public sector bodies commission the production of, or license, sell, disseminate, exchange or give out information. To avoid cross-subsidies, reuse 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.

Amendment 15

Proposal for a directive
Recital 19

Text proposed by the Commission

(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

Amendment

(19) The Directive lays down an obligation for Member States to make all documents re-usable without prejudice to the exceptions laid down in this Directive, such as national security or the protection of personal data, allowing Member States to restrict or exclude certain documents from access. In the absence of harmonisation, procedures and modalities regarding access to public sector
apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Union level, Articles 41 (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. Information remain within the competence of Member States. The Directive builds on the existing access regimes in the Member States and does not change the national rules for access to documents. It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Union level, Articles 41 (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. Although this Directive does not set an obligation for public sector bodies to ensure the storage of a certain type of documents with a view to the re-use of such documents, Member States should make all reasonable efforts to ensure that this does not unduly impair the exploitation of their economic potential.

Amendment 16

Proposal for a directive
Recital 21

Text proposed by the Commission

(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

Amendment

(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\(^ \text{33} \), 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 ship owners 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).


Amendment 17

Proposal for a directive

Recital 22

*Text proposed by the Commission*

(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

*Amendment*

(22) This Directive *does not* contain an obligation to allow the re-use of documents produced by public undertakings. The decision whether or not to authorise re-use of documents or parts of documents, falling within the scope of this directive
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.

Amendment 18
Proposal for a directive
Recital 26

Text proposed by the Commission

(26) This Directive lays down a generic definition of the term ‘document’. It covers any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (written on paper, or stored in electronic form or as a sound, visual or audio-visual recording). The definition of ‘document’ is not intended to cover computer programmes.

Amendment

(26) This Directive lays down a generic definition of the term ‘document’. It covers any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (written on paper, or stored in electronic form or as a sound, visual or audio-visual recording). Member States should guarantee transparency as regards the methodology used in compiling the documents.

Amendment 19
Proposal for a directive
Recital 27

Text proposed by the Commission

(27) Public sector bodies are increasingly making their documents

Amendment

(27) Public sector bodies are increasingly making their documents
available for re-use in a proactive manner, by ensuring online **discoverability** and actual availability of both metadata and the underlying content. Documents should also be made available for re-use following a request lodged by a re-user. **In those cases**, the time limit for replying to requests for re-use should be reasonable and in accordance with the equivalent time for requests to access the document under the relevant access regimes. Public undertakings, educational establishments, research performing organisations and research funding organisations **should however** be exempt from this requirement.

Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. This is particularly important for dynamic data (including traffic data, satellite data, weather data), 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.

available for re-use in a proactive manner, by ensuring online **findability** 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. **Member States should enable applicants to request documents for re-use without having to state an interest.** Member States should guarantee that practical arrangements are defined for ensuring that the re-use of public-sector information can be exercised effectively, such as the designation of information officers, the establishment and maintenance of facilities for the examination of documents, registers or lists of documents held by public sector bodies or information points, with clear indications of where such documents can be found.

The time limit for replying to requests for re-use should be reasonable and in accordance with the equivalent time for requests to access the document under the relevant access regimes. Public undertakings, educational establishments, research performing organisations and research funding organisations **could therefore** be exempt from this requirement. Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. This is particularly important for dynamic data (including traffic data, satellite data, weather data), 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.

Amendment 20

Proposal for a directive
Recital 28

Text proposed by the Commission

(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.

Amendment

(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 **structured** web interface, or more complex set-ups. **There are considerable differences among Member States in using APIs and additional financial support should be foreseen to move towards enhanced use of dynamic data and APIs in general. APIs are necessary to the development of fully interoperable information exchanges.** 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, **reliability, availability, efficiency, 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 **should** make this available for re-use immediately after collection by ways of suitable APIs. **In particular, the**
API should adhere to the principle of stability, meaning that it should consistently work on the same technical specifications. The API should adhere to the principle of reliability, so that when changes are made, these are communicated well in advance, unless in duly justified urgent cases where changes must be applied earlier. The API should ensure availability, by operating at a steady level of quality. In order to ensure efficiency, the API’s performance and complexity should not significantly vary between when being accessed by the data provider or data producer, or the data user. In order to improve interoperability of API’s the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the minimum criteria for the interoperability of APIs.

Amendment 21
Proposal for a directive
Recital 32

Text proposed by the Commission

Amendment

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for re-use without charges and, where charges are necessary, they should in principle be limited to the marginal costs. In exceptional cases, the necessity of not hindering the normal running of public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged.

(32) A wide range of practices in terms of charging for the re-use of documents persists not only between Member States, but also between public sector bodies within the same Member State. 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 or, where charges are necessary, they should in principle be limited to the marginal costs, as referred to in the Commission’s Notice 2014 /C 240/01. In exceptional cases, the necessity of not hindering the performance of the public tasks and the normal running of public
In such cases, public sector bodies and public undertakings should therefore be able to charge above marginal costs. Those charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. The requirement to generate revenue to cover a substantial part of the public sector bodies’ costs relating to the performance of their public tasks or the scope of the services of general interest entrusted with public undertakings does not have to be a legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.

Amendment 22

Proposal for a directive
Recital 32 a (new)

Text proposed by the Commission

(32 a) The return on investment can be understood as a percentage, in addition to marginal costs, allowing for the recovery of the cost of capital and the inclusion of a real rate of return. As the cost of capital is closely linked to credit institutions’ interest rates, themselves based on the ECB’s fixed rate on main refinancing operations, the reasonable return on investment should not be expected to be more than 5 % above the ECB’s fixed interest rate.

Amendment
Amendment 23

Proposal for a directive
Recital 36

Text proposed by the Commission

(36) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide information market. Therefore, all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use. Applicants for re-use of documents held by entities other than public undertakings, educational establishments, research performing organisations and research funding organisations should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.

Amendment

(36) Ensuring that the conditions for access and re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide information market. Therefore, all applicable conditions for the access and 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 access and 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.

Amendment 24

Proposal for a directive
Recital 37

Text proposed by the Commission

(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

Amendment

(37) The means of redress should include the possibility of review by an impartial review body. That body could be an already existing national authority, such as the national competition authority, the
national access to documents authority or a national judicial authority. That body should be organised in accordance with the constitutional and legal systems of Member States and should not prejudge any means of redress otherwise available to applicants for re-use. It should however be distinct from the Member State mechanism laying down the criteria for charging above marginal costs. The means of redress should include the possibility of review of negative decisions but also of decisions which, although permitting re-use, could still affect applicants on other grounds, notably by the charging rules applied. The review process should be swift, in accordance with the needs of a rapidly changing market.

Amendment 25

Proposal for a directive
Recital 39

Text proposed by the Commission

(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.

Amendment

(39) Member States should ensure that the re-use of documents will take place without conditions. Where necessary and justified by a public interest objective, Member States may impose conditions, where appropriate through a licence, dealing with issues such as liability, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source, while guaranteeing that the least restrictive conditions or licensing terms apply, including the possibility of dedicating documents to the public domain. If public sector bodies license documents for re-use, the licence conditions should be fair and transparent. Member States should in particular evaluate the compatibility of these obligations with the principle of proportionality to ensure that such licences or conditions do not
unnecessarily restrict possibilities for re-use or competition. Member States should also encourage the use of open standard licences for the re-use of public sector documents and ensure that such licences are available in digital format and can be processed electronically. 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 and should eventually become common practice across the Union. The Commission should provide guidance on recommended standard licences and licensing approaches.

Amendment 26
Proposal for a directive
Recital 41

Text proposed by the Commission

(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.

Amendment

(41) Conditions for re-use should be non-discriminatory for comparable categories of re-use. Member States should guarantee fair competition between public sector bodies and public undertakings on the one hand, and other users on the other, in cases where documents are re-used by those public sector bodies or public undertakings as input for their commercial activities. Member States should in particular ensure that re-use of documents of public undertakings does not lead to market distortion and that fair competition is not undermined. 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.
commercial re-use.

Amendment 27

Proposal for a directive
Recital 42

Text proposed by the Commission

(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.

Amendment 28

Proposal for a directive
Recital 43

Text proposed by the Commission

(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

(43) Public sector bodies should respect competition rules when establishing the principles for re-use of documents avoiding as far as possible exclusive agreements or any preferential use of the data between themselves and private partners. However,
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.

Amendment 29
Proposal for a directive
Recital 51 a (new)

Text proposed by the Commission


Amendment 30
Proposal for a directive
Recital 52

Text proposed by the Commission

(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.
Amendment 31

Proposal for a directive
Recital 52 a (new)

Text proposed by the Commission

(52 a) The Commission and the Member States should further simplify the access to datasets, in particular by providing a single point of access and progressively make available suitable datasets from public sector bodies with regard to all documents to which this Directive applies as well as to data from Union institutions.

Amendment 32

Proposal for a directive
Recital 58

Text proposed by the Commission

(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.

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.

\[1a \text{ OJ L 123, 12.5.2016, p. 1}\]

Amendment 33

Proposal for a directive
Recital 59

\textit{Text proposed by the Commission}

(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. \textit{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.

\textit{Amendment}

(59) An EU-wide list of datasets with a particular potential to generate \textit{civic or} socio-economic benefits together with harmonised re-use conditions constitutes an important enabler of cross-border data applications and services. \textit{Annex IIa provides a list of categories of high value datasets which could be amended by a delegated act. The additional categories for the list should take into account sectoral legislation that already regulates the publication of datasets, as well as the categories indicated in the Technical Annex of the G8 Open Data Charter and in the Commission's Notice 2014 /C 240/01. In the process leading to the identification of additional categories or datasets for the list, the Commission should carry out an impact assessment and appropriate public consultations, including at expert level. For the purposes of the impact}
assessment, the Commission should carry out public consultations with all interested parties, including public sector bodies, public undertakings, data re-users, research organisations, civil society groups and representative organisations. All interested parties should be given the possibility to submit suggestions to the Commission for additional categories of high value datasets or concrete datasets.

Amendment 34
Proposal for a directive
Recital 60

Text proposed by the Commission

(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.

Amendment

(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. **High value datasets should be published via a single point of access to promote findability and facilitate access.** They should also be published via Application Programming Interfaces, whenever the dataset in question contains dynamic data.

Amendment 35
Proposal for a directive
Recital 60 a (new)

Text proposed by the Commission

(60 a) The High Value Datasets identified within the categories listed in Annex IIa have the potential to generate civic or socio-economic benefits, and advance fundamental societal and democratic tasks. In order to further the goals of transparency, accountability,
compliance, efficiency and fair competition, it is necessary to include datasets from among categories such as business registers, budget and government spending, procurement, and statistics. To encourage innovative services and products, to stimulate sustainable growth, and to contribute to high consumer protection standards, including by taking into account factors that have no immediate economic value, such as education, environment, or healthcare, it is necessary to include datasets from among the categories of national law, earth observation and environmental data, as well as geospatial data.

Amendment 36
Proposal for a directive
Recital 62

Text proposed by the Commission

(62) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to privacy (Article 7), the protection of personal data (Article 8), the right to property (Article 17) and the integration of persons with disabilities (Article 26). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Amendment

(62) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to privacy (Article 7), the protection of personal data (Article 8), the freedom of expression and information (Article 11), 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.

Amendment 37
Proposal for a directive
Recital 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, 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.

Following the evaluation, the Commission could, where necessary, present relevant proposals.

Amendment 38
Proposal for a directive
Article 1 – paragraph 1 (new)

Text proposed by the Commission

-1. This Directive aims at establishing a regulatory framework governing the re-use of public sector information in order to promote the use of open data and stimulate innovation in products and services.

Justification

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 39
Proposal for a directive
Article 1 – paragraph 1 – point b

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.
Text proposed by the Commission

(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\(^{42}\) 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\(^{43}\), 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\(^{44}\), and public undertakings acting as Community **ship owners** fulfilling public service obligations pursuant to Article 4 of Council Regulation (EEC) No 3577/92\(^{45}\).

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Amendment

(b) **publicly accessible** documents held by public undertakings active in the areas defined in Directive 2014/25/EU of the European Parliament and of the Council\(^{42}\) 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\(^{43}\), 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\(^{44}\), and public undertakings acting as Community **ship owners** fulfilling public service obligations pursuant to Article 4 of Council Regulation (EEC) No 3577/92\(^{45}\).

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Amendment 40

Proposal for a directive  
Article 1 – paragraph 2 – point d – indent 1

Text proposed by the Commission

— the protection of national security *(that is to say, State security)*, defence, or public security.

Amendment

— the protection of national security *and* defence, or public order, including sensitive critical infrastructure protection related information within the meaning of Article 2(d) of Directive 2008/114/EC.

Amendment 41

Proposal for a directive  
Article 1 – paragraph 3 a (new)

Text proposed by the Commission

3 a. *This Directive is without prejudice to Regulation (EU) 2016/679 and it does not affect the level of protection of individuals with regard to the processing of personal data in accordance with Union law on personal data protection.*

Amendment

Amendment 42

Proposal for a directive  
Article 1 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. The right for the maker of a database provided for in Article 7(1) of Directive 96/9/EC shall not be exercised in order to prevent or restrict the re-use of documents pursuant to this Directive.
Amendment 43

Proposal for a directive
Article 1 – paragraph 6

Text proposed by the Commission

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\(^\text{46}\) applies.

Amendment

6. This Directive governs the re-use of existing documents held by public sector bodies and public undertakings of the Member States, including documents to which Directive 2007/2/EC of the European Parliament and of the Council\(^\text{46}\) applies.


Amendment 44

Proposal for a directive
Article 2 – paragraph 1 – point 6 a (new)

Text proposed by the Commission

6 a. ‘application programming interface’ (API) means a well-documented set of functions, procedures, definitions, and protocols for the structured retrieval of information online;

Amendment

Amendment 45

Proposal for a directive
Article 2 – paragraph 1 – point 8

Text proposed by the Commission

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;

Amendment

8. “high value datasets” means documents the re-use of which is associated with important civic or 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;

Amendment 46

Proposal for a directive
Article 2 – paragraph 1 – point 14 a (new)

Text proposed by the Commission

14 a. ‘personal data’ means data as referred to in Article 4(1) of Regulation (EU) 2016/679.

Amendment

14 a. ‘personal data’ means data as referred to in Article 4(1) of Regulation (EU) 2016/679.

Amendment 47

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. 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.

Amendment 48
Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States shall ensure that documents falling within the scope of this Directive are produced and made available for re-use according to the principle of "open by design and by default".

Justification

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 49

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

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.

Amendment 50

Proposal for a directive
Article 4 – paragraph 2
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.

Amendment 51

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

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 right-holder, 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.

Amendment

3. In the event of a negative decision, the public sector bodies shall communicate within 20 working days the reasons for refusing, in full or in part, access to and/or re-use of a document in the form or format requested, 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). 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 right-holder, 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.

Amendment 52

Proposal for a directive
Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. Member State shall draw up a publicly accessible list of criteria on the basis of which the body concerned may decide how to handle requests.

Amendment 53

Proposal for a directive
Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. For the purposes of this Article, Member States shall ensure that:

(a) support is granted in seeking access to documents;

(b) lists of public sector bodies are publicly accessible;

(c) practical arrangements are defined for ensuring that the re-use of public sector information can be exercised effectively;

(d) public sector bodies inform the public adequately of the rights they enjoy on the basis of this Directive and as a result of existing access to information rules, laid down at national or at Union level, and to an appropriate extent provide information, guidance and advice to this end.
Amendment 54

Proposal for a directive
Article 5 – title

*Text proposed by the Commission*

Available formats

*Amendment*

Available formats and quality of documents

Amendment 55

Proposal for a directive
Article 5 – paragraph -1 (new)

*Text proposed by the Commission*

-1. **Member States shall make all reasonable efforts to ensure that documents to which this Directive applies are up to date, accurate and comparable.**

*Justification*

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 56

Proposal for a directive
Article 5 – paragraph 1

*Text proposed by the Commission*

1. Without prejudice to Chapter V, public sector bodies and public undertakings shall make their documents available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata shall, where possible, comply with formal open standards.

*Amendment*

1. Without prejudice to Chapter V, public sector bodies and public undertakings shall make their documents available, interoperable, readily findable and re-usable by electronic means, in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata shall, where possible, comply
with formal open standards.

**Justification**

*This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.*

**Amendment 57**

**Proposal for a directive**  
**Article 5 – paragraph 3**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. <strong>On the basis of this Directive,</strong> public sector bodies and public undertakings <em>cannot</em> 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.</td>
<td>3. Public sector bodies and public undertakings <em>shall not</em> 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.</td>
</tr>
</tbody>
</table>

**Justification**

*This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.*

**Amendment 58**

**Proposal for a directive**  
**Article 5 – paragraph 4**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Public sector bodies and public undertakings shall make dynamic data available for re-use immediately after collection, via suitable Application Programming Interfaces (APIs).</td>
<td>4. Public sector bodies and public undertakings shall make dynamic data available for re-use immediately after collection, <em>in real-time and without delay where possible</em>, via suitable Application Programming Interfaces (APIs).</td>
</tr>
</tbody>
</table>

**Amendment 59**

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85/158  
PE623.664v02-00  
EN
Proposal for a directive
Article 5 – paragraph 5

**Text proposed by the Commission**

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.

**Amendment**

5. Where making available documents immediately after collection in real-time and without delay 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. **Users shall be notified of the exact timeframe of making documents available and the frequency with which documents are updated.**

**Justification**

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 60

Proposal for a directive
Article 5 – paragraph 5 a (new)

**Text proposed by the Commission**

5 a. Where applicable, public sector bodies shall reply to requests for information on the methodology used in compiling the documents.

**Amendment**

5 a. Where applicable, public sector bodies shall reply to requests for information on the methodology used in compiling the documents.

**Justification**

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.
Amendment 61

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

Application Programming Interfaces

1. Whenever a document is made available for re-use to an applicant or when a licence is granted to an applicant, a public sector body or a public undertaking shall also make this document available for re-use through Application Programming Interfaces and portal sites if possible and appropriate.

2. Where a public sector body or a public undertaking makes information available for re-use through an API, that body shall give access to all users. In particular for real-time information, the public sector body or public undertaking shall also ensure access to past information, where available. This shall be without prejudice to obligations laid down in Union law. Where such obligations exist, resulting restrictions shall be justified and the justification shall be made publicly available.

3. Where an API is used to make information available, the information shall be of the same scope and extent as when made available by other means.

4. Public sector bodies or public undertakings shall develop and document the API and its technical specification using open standards and structured, machine-readable, and open formats.

5. Public sector bodies or public undertakings shall communicate any change to an API’s technical specification in advance to users, as soon as possible and no later than 3 months before the change is implemented, except in duly justified urgent cases where the changes...
must be applied immediately.

6. Public sector bodies or public undertakings shall ensure that the API is consistently accessible, and at a consistent level of quality.

7. Public sector bodies or public undertakings shall make access to the API and its technical specification available under the conditions set out in Articles 5, 6, 7, 8, 9, and 10 of this Directive. Documentation shall be made available free of charge, applying as few formal restrictions and conditions as possible, but in any case under conditions no more restrictive than for the information itself.

8. The Commission shall lay down criteria for the interoperability of APIs among public sector bodies and public undertakings in the Member States to facilitate there-use of documents through APIs and in order to support machine-to-machine interaction.

9. The measures referred to in paragraph 8 shall be adopted by the Commission by means of a delegated act in accordance with Article 14.

Justification

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 62

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. Re-use of documents shall be free of charge or limited to the marginal costs incurred for their reproduction, provision and dissemination, and – where applicable – anonymisation of personal

Amendment

1. The re-use of documents shall be free of charge.
data and measures taken to protect commercially confidential information.

Amendment 63
Proposal for a directive
Article 6 – paragraph 2 – introductory part

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

Amendment
2. Member States may decide not to apply paragraphs 1 and 1a to the following:

Amendment 64
Proposal for a directive
Article 6 – paragraph 2 – point a

Text proposed by the Commission
(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;

Amendment
(a) documents for which the public body concerned is required by national law to generate sufficient revenue to cover at least 60% of their costs relating to their collection, production, reproduction, dissemination and data storage.

Amendment 65
Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission
3. In the cases referred to in points (a) and (c) of paragraph 2, the total charges shall be calculated according to objective, transparent and verifiable criteria to be laid down by the Member States. The total income from supplying and allowing re-use of documents over the appropriate

Amendment
3. In the cases referred to in points (a) and (c) of paragraph 2, the total charges shall be calculated according to objective, transparent and verifiable criteria to be laid down by the Member States. The total income from supplying and allowing re-use of documents over the appropriate
accounting period shall not exceed the cost
of 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.

Amendment 66
Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. Where charges are made by the
public sector bodies referred to in point (b)
of paragraph 2, the total income from
supplying and allowing re-use of
documents over the appropriate accounting
period shall not exceed the cost of
collection, production, reproduction,
dissemination, preservation and rights
clearance and – where applicable –
anonymisation of personal data and
measures taken to protect commercially
confidential information, together with a
reasonable return on investment. Charges
shall be calculated in line with the
accounting principles applicable to the
public sector bodies involved.

Amendment

4. Where charges are made by the
public sector bodies referred to in point (b)
of paragraph 2, the total income from
supplying and allowing re-use of
documents over the appropriate accounting
period shall not exceed the cost of
collection, production, reproduction,
dissemination, data storage, 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.

Amendment 67
Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission

5. The re-use of high value datasets,

Amendment

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.

Amendment 68

Proposal for a directive
Article 6 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Member States shall publish, through electronic means where possible and appropriate, the list of documents referred to in point (a) of paragraph 2. The prior inclusion of a document in the list shall be a prerequisite for invoking exceptions referred to in point (a) of paragraph 2.

Amendment 69

Proposal for a directive
Article 7 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Member States may disclose the costs to be incurred for the reproduction, dissemination and data storage of documents, as well as, where applicable, costs for the anonymisation of personal data and costs for measures to protect confidentiality as referred to in point (d) of Article 1(2).

Justification

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.
Amendment 70

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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

*deleted*

**Justification**

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 71

Proposal for a directive
Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. Re-use of documents *may be allowed without or with conditions, where appropriate through a licence. Those conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.*

1. **Member States shall not make the re-use of documents subject to conditions or a licence, unless the need for such conditions or a licence is non-discriminatory, justified by a public interest objective and proportionate.**

*deleted*

**Justification**

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 72

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. **In Member States where licences are used,** Member States shall ensure that standard licences for the re-use of public

2. Where the re-use of documents is subjected to conditions or a licence, Member States shall:
sector documents, *which can be adapted to meet particular licence applications*, are available in digital format and can be processed electronically. **Member States shall encourage the use of such standard licences.**

(a) ensure that *such conditions or licences do not unnecessarily restrict possibilities for re-use or competition and that data be released under the least restrictive conditions or licensing terms, including the possibility to dedicate documents to the public domain*;

(b) evaluate whether commonly used, open licences exist that meet those requirements. **Member States shall then use the most commonly used and least restrictive compatible licence or licences**;

(c) encourage the use of standard open licences for the re-use of public sector documents and ensure that such licences, are available in digital format and can be processed electronically.

**Justification**

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

**Amendment 73**

Proposal for a directive

**Article 8 – paragraph 2 a (new)**

*Text proposed by the Commission*

2 a. **Without prejudice to liability requirements, laid down in Union law, where a public body or a public undertaking makes documents available for re-use without any conditions and restrictions, that public body or a public undertaking shall be allowed to waive all liability with regards to the documents**
made available for re-use.

Justification

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 74

Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

I. 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.

Justification

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

Amendment 75

Proposal for a directive
Article 9 – paragraph 1 a (new)

Text proposed by the Commission

1a. Member States shall ensure that public sector bodies and public undertakings provide the Commission with necessary access to all data they make available for re-use to allow for an aggregation of datasets at Union level, in particular to provide full coverage datasets for the Union for a particular category of data as set out in Annex IIa.

Amendment

1a. Member States shall ensure that public sector bodies and public undertakings provide the Commission with necessary access to all data they make available for re-use to allow for an aggregation of datasets at Union level, in particular to provide full coverage datasets for the Union for a particular category of data as set out in Annex IIa.
The Commission shall make practical arrangements to make available datasets at Union level through a single point of access.

**Justification**

This amendment is needed in view of the internal logic of the text and because the amendment is inextricably linked to other admissible amendments.

**Amendment 76**

Proposal for a directive
Article 10 – paragraph 2 a (new)

**Text proposed by the Commission**

2 a. By [2 years after the date for transposition of this Directive], and every three years thereafter, Member States shall submit a report to the Commission about the national open access policies and relevant actions, which have been adopted.

**Amendment**

2 a. By [2 years after the date for transposition of this Directive], and every three years thereafter, Member States shall submit a report to the Commission about the national open access policies and relevant actions, which have been adopted.

**Amendment 77**

Proposal for a directive
Article 11 – paragraph 2

**Text proposed by the Commission**

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.

**Amendment**

2. **Member States shall guarantee fair competition between public sector bodies and public undertakings, and other users in cases where** documents are re-used by those public sector bodies or public undertakings as input for its commercial activities which fall outside the scope of their public tasks, by ensuring that the same charges and other conditions shall apply to the supply of the documents
for those activities as apply to other users.

3. Member States shall ensure in the same way that re-use of documents and information of public undertakings does not lead to distortion of fair competition.

Amendment 78

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

1. The re-use of documents shall be open to all potential actors in the market, even if one or more market actors already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies or public undertakings holding the documents and third parties shall not grant exclusive rights.

Amendment

1. The re-use of documents shall be open to all potential users in the market, even if one or more users 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, nor any preferential use of the data.

Amendment 79

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall ensure that the high value datasets, listed in Annex IIa are available for free, machine-readable and accessible for download, and, where appropriate, via interoperable APIs. The conditions for re-use shall be compatible with open standard licences. The Commission shall be empowered to adopt delegated acts in accordance with Article 14 in order to extend the list of categories of high value datasets in Annex IIa and in particular to further specify the
datasets from these categories, among the documents to which this Directive applies, together with the conditions and modalities of their publication and re-use.

Amendment 80
Proposal for a directive
Article 13 – paragraph 2

Text proposed by the Commission
Amendment

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.

Amendment 81
Proposal for a directive
Article 13 – paragraph 3

Text proposed by the Commission
Amendment

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 and if no less restrictive approach to mitigating such distortion is available, charges shall be calculated without prejudice to Article 6.
Amendment 82

Proposal for a directive
Article 13 – paragraph 4

Text proposed by the Commission

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.

Amendment 83

Proposal for a directive
Article 13 – paragraph 5

Text proposed by the Commission

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.

5. The selection of additional categories and high value datasets for the list referred to in paragraph 1 shall be based on the assessment of their potential to generate significant civic or socio-economic benefits, innovation, the number of users, especially small and medium-sized enterprises, the revenues they may help generate, and their potential for being combined with other datasets.

Amendment 84

Proposal for a directive
Article 13 – paragraph 7 a (new)
7 a. For the purposes of paragraph 7, the Commission shall carry out public consultations with all interested parties, including public sector bodies, public undertakings, data re-users, research organisations, civil society groups, and other representative organisations. All interested parties shall be given the possibility to submit suggestions to the Commission for additional categories of high value datasets or concrete datasets. The Commission shall take these into account, or provide the interested party with reasons for not taking into account the suggestion.

Amendment 85

Proposal for a directive
Article 14 – paragraph 2

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.

Amendment 86
Proposal for a directive
Article 14 – paragraph 3

Text proposed by the Commission

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.

Amendment 87

Proposal for a directive
Article 14 – paragraph 6

Text proposed by the Commission

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.

Amendment

6. A delegated act adopted pursuant to Articles 5a and 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three 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 three months at the initiative of the European Parliament or of the Council.

Amendment 88

Proposal for a directive
Article 16 – paragraph 1
1. **No sooner than four years** after the date of transposition of this Directive, the Commission shall carry out an evaluation of this Directive and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

47 SWD (2017)0350

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**Amendment 89**

**Proposal for a directive**

**Article 16 – paragraph 2**

1. **By [36 months after the date for transposition of this Directive] and at the latest every five years thereafter,** the Commission shall carry out an evaluation of this Directive and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall be conducted according to the Commission's better regulation Guidelines. Member States shall provide the Commission with the information necessary for the preparation of that Report.

47 SWD (2017)0350

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2. The evaluation shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents to which this Directive applies, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, the re-use of documents held by other entities than public sector bodies, the interaction between data protection rules and re-use possibilities, as well as further possibilities of improving the proper functioning of the internal market and the development of the European data economy.
internal market and the development of the European data economy.

Amendment 90

Proposal for a directive
Article 16 – paragraph 2 a (new)

Text proposed by the Commission

2 a. Where appropriate, the report referred to in paragraph 1 shall be accompanied by relevant proposals.

Amendment 91

Proposal for a directive
Annex II a (new)

Text proposed by the Commission

Amendment

Annex IIa

List of High value datasets

<table>
<thead>
<tr>
<th>Category</th>
<th>Examples of Datasets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget and spending</td>
<td>Planned and ongoing expenditure and subsidies, detailed records of spending on all levels of government</td>
</tr>
<tr>
<td>Companies</td>
<td>Company and business registers (lists of registered companies, ownership and management data, registration identifiers, balance sheets)</td>
</tr>
<tr>
<td>Earth observation and environment</td>
<td>Space and in situ data (monitoring of weather, land and water quality, energy consumption, emission levels)</td>
</tr>
<tr>
<td>Geospatial data</td>
<td>Spatial data subject to Directive 2007/2/EC (INSPIRE), including postcodes, national and local maps (cadastral, topographic, marine, administrative boundaries, at a scale of at least 1:20.000 (1cm ~ 200m))</td>
</tr>
<tr>
<td>National Law</td>
<td>Legislative, regulatory and administrative measures; Draft</td>
</tr>
</tbody>
</table>
measures, including procedural information related to their adoption; Measures which have been amended, repealed or are no longer in force; Accompanying documents, such as explanatory statements, impact assessments, opinions of advisory bodies and voting records; Case law.

Public procurement

Past and current tenders and awards on all levels of administration, aggregated by office, in all states (e.g. open, closed, cancelled)

Statistics

National, regional and local statistical data with main demographic and economic indicators (GDP, age, unemployment, income, education)

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the opinion, until the adoption thereof in committee:

<table>
<thead>
<tr>
<th>Person</th>
<th>Entity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Henning Twickler</td>
<td>EDSO for Smart Grids</td>
</tr>
<tr>
<td>Camille Alleguede</td>
<td>ENEDIS</td>
</tr>
<tr>
<td>Audrey Gourraud</td>
<td>European Federation of Local Energy Companies (CEDEC)</td>
</tr>
<tr>
<td>Robbie Morrison, Tom Brown,</td>
<td>Open Knowledge International / Open Knowledge Foundation</td>
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<tr>
<td>Ingmar Schlecht, Walter</td>
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</tr>
<tr>
<td>Palmetshofen</td>
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<tr>
<td>Oliver Kaye</td>
<td>PSI Alliance</td>
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<tr>
<td>Jean-Gabriel Audebert-Lasrochas</td>
<td>Trainline.com</td>
</tr>
<tr>
<td>Lucie Petersen</td>
<td>Verband Deutscher Verkehrsunternehmen (VDV)</td>
</tr>
<tr>
<td>Janine Prantl, Konstantin</td>
<td>Verband öffentlicher Wirtschaft (vöwg)</td>
</tr>
<tr>
<td>Schöffmann</td>
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## PROCEDURE – COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Title</th>
<th>Re-use of public sector information (recast)</th>
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<tr>
<td>Committee responsible</td>
<td>ITRE</td>
</tr>
<tr>
<td>Date announced in plenary</td>
<td>28.5.2018</td>
</tr>
<tr>
<td>Opinion by</td>
<td>IMCO</td>
</tr>
<tr>
<td>Date announced in plenary</td>
<td>28.5.2018</td>
</tr>
<tr>
<td>Associated committees - date announced in plenary</td>
<td>13.9.2018</td>
</tr>
<tr>
<td>Rapporteur</td>
<td>Julia Reda</td>
</tr>
<tr>
<td>Date appointed</td>
<td>16.5.2018</td>
</tr>
<tr>
<td>Discussed in committee</td>
<td>19.6.2018  3.9.2018</td>
</tr>
<tr>
<td>Date adopted</td>
<td>11.10.2018</td>
</tr>
</tbody>
</table>
| Result of final vote | +: 30  
| | --: 1  
| | 0: 5 |
| Members present for the final vote | John Stuart Agnew, Pascal Arimont, Dita Charanzová, Carlos Coelho, Anna Maria Corazza Bildt, Daniel Dalton, Pascal Durand, Evelyne Gebhardt, Maria Grapini, Robert Jaroslaw Iwaszkiewicz, Liisa Jaakonsaari, Philippe Juvin, Antonio López-Istúriz White, Morten Løkkegaard, Eva Maydell, Marlene Mizzi, Christel Schaldemose, Andreas Schwah, Olga Sehnalová, Jasenko Selimovic, Richard Sulík, Róža Gräfin von Thun und Hohenstein, Mylène Troszczynski, Marco Zullo |
| Substitutes present for the final vote | Lucy Anderson, Biljana Borzan, Edward Czesák, Arndt Kohn, Julia Reda, Martin Schirdewan, Lambert van Nistelrooij, Sabine Verheyen |
| Substitutes under Rule 200(2) present for the final vote | Ramón Jáuregui Atondo, Stanislav Polčák, Flavio Zanonato, Tomáš Zdechovský |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

<p>| | | |</p>
<table>
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<td><strong>30</strong></td>
<td><strong>+</strong></td>
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<tr>
<td>ALDE</td>
<td>Dita Charanzová, Morten Løkkegaard, Jasenko Selimovic</td>
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</tr>
<tr>
<td>EFDD</td>
<td>Robert Jarosław Iwaszkiewicz</td>
<td></td>
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<tr>
<td>GUE/NGL</td>
<td>Martin Schirdewin</td>
<td></td>
</tr>
<tr>
<td>PPE</td>
<td>Pascal Arimont, Carlos Coelho, Anna Maria Corazza Bildt, Philippe Juvin, Antonio López-Istúriz White, Eva Maydell, Lambert van Nistelrooij, Stanislav Polčák, Andreas Schwab, Róža Gräfin von Thun und Hohenstein, Sabine Verheyen, Tomáš Zdechovský</td>
<td></td>
</tr>
<tr>
<td>S&amp;D</td>
<td>Lucy Anderson, Biljana Borzan, Evelyne Gebhardt, Maria Grapini, Liisa Jaakonsaari, Ramón Jáuregui Atondo, Arndt Kohn, Marlene Mizzi, Christel Schaldemose, Olga Sehnalová, Flavio Zanonato</td>
<td></td>
</tr>
<tr>
<td>VERTS/ALDE</td>
<td>Pascal Durand, Julia Reda</td>
<td></td>
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</tbody>
</table>

| **1** | **-** |   |
| EFDD | John Stuart Agnew |   |

| **5** | **0** |   |
| ECR | Edward Czesak, Daniel Dalton, Richard Sulík |   |
| EFDD | Marco Zullo |   |
| ENF | Mylène Troszczynski |   |

**Key to symbols:**
- **+** : in favour
- **-** : against
- **0** : abstention
OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Industry, Research and Energy


Rapporteur for opinion: Theodoros Zagorakis

SHORT JUSTIFICATION

Re-using public sector information can provide economic, societal and democratic benefits by permitting users other than the originating public authorities to create new products and services using official information. This can stimulate economic activity and increase the efficiency and transparency of public functions.

Directive 2003/98/EC on the re-use of public sector information, a core element of Union to open up government data for economic purposes whilst pursuing societal goals, encouraged public sector bodies to make their information available by setting out rules to apply when a discretionary choice was made to permit re-use.

Revised in July 2013, the Directive went further by making re-use mandatory for most public authorities, bringing museums, libraries (including university libraries) and archives within its scope in order to increase transparency, data-based innovation and fair competition.

On 25 April 2018, the Commission published a legislative proposal to recast the Directive, to further encourage and facilitate re-use. The recast notably aims to strengthen the position of SMEs by reducing market barriers to reusing public sector information for commercial purposes, whilst bringing public undertakings and research data within the scope of the Directive.

The Rapporteur welcomes the Commission's proposal. The Rapporteur supports in particular the Commission's approach to leave the treatment of cultural sector bodies (libraries, archives and museums) currently in force unchanged, as the Directive in this field continues to work satisfactorily.

Moreover the Rapporteur takes note of the Commission's intention to designate, by way of a
delegated act, certain high value public sector databases (List of high value datasets, Article 13) as ones that must be made available free of charge at a future date. The Rapporteur does not object to the Commission's proposal in that regard. The Rapporteur would like to stress however that it is necessary that such a list should be as clear and as detailed as possible in order to ensure legal certainty for all parties concerned.

In this context, the Rapporteur gives overall support to the Commission's proposal and suggests a minimum set of amendments to provide further legal clarity, as well as to specify some provisions further.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) The public sector in the Member States collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy.

Amendment

(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, cultural, geographical, weather, tourist, business, patent and educational information. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy.

Amendment 2

Proposal for a directive
Recital 19

Text proposed by the Commission

(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

Amendment

(19) The Directive lays down an obligation for Member States to make all documents re-usable without prejudice to exceptions laid down in this Directive. The Directive builds on the access regimes currently in force in the Member States. In
Directive. The Directive builds on the existing access regimes in the Member States and does not change the national rules for access to documents. It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Union level, Articles 41 (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.

Justification

The Directive should only govern the rules with regards to the re-use of public documents, Member States having exclusive competences on access to documents. This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

Amendment 3

Proposal for a directive
Recital 31

Text proposed by the Commission

(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

Amendment

(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, in a technologically neutral manner, extract specific data from it. Data encoded in files
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.

Amendment 4
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for re-use without charges and, where charges are necessary, they should in principle be limited to the marginal costs. In exceptional cases, the necessity of not hindering the normal running of public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged. In such cases, public sector bodies and public undertakings should therefore be able to charge above marginal costs. Those charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Where applicable, the costs of 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.

Amendment

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs, in particular in the cultural and creative sectors. Documents should therefore be made available for re-use without charges and, where charges are necessary, they should in principle be limited to the marginal costs. Marginal costs consist of the extra costs occurring from the digitisation, storage and management of documents, as well as the costs of digital mass storage, the additional effort to render data machine readable and the extra burden deriving from infrastructure measures. In exceptional cases, the necessity of not hindering the normal running of public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged. In such cases, public sector bodies and public undertakings should therefore be able to charge above marginal costs. Those
anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. The requirement to generate revenue to cover a substantial part of the public sector bodies’ costs relating to the performance of their public tasks or the scope of the services of general interest entrusted with public undertakings does not have to be a legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.

Charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. The requirement to generate revenue to cover a substantial part of the public sector bodies’ costs relating to the performance of their public tasks or the scope of the services of general interest entrusted with public undertakings does not have to be a legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.

**Justification**

This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

**Amendment 5**

**Proposal for a directive**  
**Recital 52**

**Text proposed by the Commission**

(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.

**Amendment**

(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.
arrangements. Measures to facilitate the authentication of public documents also offer important guarantees to users.

Justification

With the risks of hacking or tampering in the digital age, it is important for public sector to be authenticable to be trusted. Tools are easily available, and implementing them early on in the process requires relatively little effort to great benefit.

Amendment 6

Proposal for a directive
Recital 57

Text proposed by the Commission

(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.

Amendment

(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. The re-use of documents held by such institutions possesses substantial social and economic potential for cultural and creative industries, as well as for society, in particular since digitisation projects have multiplied the amount of digital public domain material, which is accessible on platforms such as Europeana. 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 not only for the cultural and creative sectors, but also in other 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.
Justification

This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

Amendment 7

Proposal for a directive
Recital 60

Text proposed by the Commission
(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.

Amendment
(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. As with other public sector information, they should be accompanied by authentication tools which give confidence to users.

Amendment 8

Proposal for a directive
Recital 60 a (new)

Text proposed by the Commission
(60a) Given the high risk of current technological formats for storing and giving access to public sector information becoming obsolete, public authorities – in particular in the case of high-value datasets – should implement effective long-term preservation policies to ensure the usage possibilities into the future.

Amendment

Justification

In order to guarantee long-term access, meaningful preservation policies are essential, supporting future research, analysis and transparency.
Amendment 9
Proposal for a directive
Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) existing documents held by public sector bodies of the Member States;

Amendment

(a) publicly accessible documents held by public sector bodies of the Member States;

Justification

This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

Amendment 10
Proposal for a directive
Article 1 – paragraph 1 – point b

Text proposed by the Commission


Amendment


p. 243).


Amendment 11

Proposal for a directive
Article 1 – paragraph 2 – point b

Text proposed by the Commission

(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;

Amendment

(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 or in the absence of such rules, in accordance with standard administrative practice currently in force in the Member State concerned;

Amendment 12

Proposal for a directive
Article 1 – paragraph 3 a (new)

Text proposed by the Commission

3a. The Directive shall not affect the level of protection granted to individuals

Amendment
with regard to the processing of their personal data under Union and national law, and, in particular, shall be without prejudice to the obligations and rights set out in Regulation EU 2016/679 (General Data Protection Regulation (GDPR)).

Amendment 13

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Chapter V, public sector bodies and public undertakings shall make their documents available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata shall, where possible, comply with formal open standards.

Amendment

1. Without prejudice to Chapter V, public sector bodies and public undertakings shall make their documents available, interoperable, readily findable, re-usable by electronic means, in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata shall, where possible, comply with formal open standards.

Justification

This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

Amendment 14

Proposal for a directive
Article 6 – paragraph 2 – point a a (new)

Text proposed by the Commission

(aa) documents for which the public sector body concerned is required, under national law, or in the absence thereof, under common administrative practice in the Member State concerned, to generate sufficient revenue to cover a substantial part of the costs - at least 60% - relating to their collection, production, reproduction and dissemination;

Amendment

(aa) documents for which the public sector body concerned is required, under national law, or in the absence thereof, under common administrative practice in the Member State concerned, to generate sufficient revenue to cover a substantial part of the costs - at least 60% - relating to their collection, production, reproduction and dissemination;
This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

Amendment 15

Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission

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.

Amendment

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 or at a reduced cost for the user.

Amendment 16

Proposal for a directive
Article 9 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 and authentication tools. Where possible Member States shall facilitate the cross-linguistic search for documents.

Justification

This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

Amendment 17

Proposal for a directive
Article 12 a (new)
Article 12a

Preservation of Public Sector Information

Member States shall ensure the implementation of meaningful preservation policies for public sector information in any format which offers best possible guarantees of long-term access.

Justification

This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.

Amendment 18

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall ensure that the high value datasets, listed in Annex Ia, are available for free, machine-readable and accessible for download, and accompanied by authentication tools, subject to effective long-term preservation policies, and, where appropriate, via APIs. The conditions for re-use shall be compatible with open standard licences. The Commission is empowered to adopt delegated acts in accordance with Article 14 in order to supplement this Directive by extending the list of categories of high value datasets in Annex Ia and in particular by further specifying the high value datasets among the documents to which this Directive applies, together with the modalities of their publication and re-use.

Amendment 19
Proposal for a directive
Article 13 – paragraph 2

Text proposed by the Commission

Amendment

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.

Justification

We support the proposed changes made in the IMCO Opinion, with an addition to reflect the points made above.

Amendment 20

Proposal for a directive
Annex I a (new)

Text proposed by the Commission

Amendment

Annex Ia

List of High Value Datasets
National law, including legislative, regulatory and administrative measures; Draft measures, including procedural information related to their adoption; Measures which have been amended, repealed or are no longer in force; Accompanying documents, such as explanatory statements, impact assessments, opinions of advisory bodies and voting records.

Justification

This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.
<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>Re-use of public sector information (recast)</th>
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<tr>
<td><strong>Committee responsible</strong></td>
<td>ITRE 28.5.2018</td>
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<td><strong>Opinion by</strong></td>
<td>CULT 28.5.2018</td>
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<tr>
<td><strong>Rapporteur</strong></td>
<td>Theodoros Zagorakis 1.6.2018</td>
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<tr>
<td><strong>Discussed in committee</strong></td>
<td>10.10.2018</td>
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<tr>
<td><strong>Date adopted</strong></td>
<td>20.11.2018</td>
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| **Result of final vote** | +: 24  
| | --: 0  
| | 0: 3 |
| **Members present for the final vote** | Isabella Adinolfi, Dominique Bilde, Nikolaos Chountis, Silvia Costa, Mircea Diaconu, Damian Drăghici, Angel Dzhambazki, Maria Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Svetoslav Hristov Malinov, Rupert Matthews, Luigi Morgano, Yana Toom, Helga Trüpel, Sabine Verheyen, Julie Ward, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver |
| **Substitutes present for the final vote** | Norbert Erdős, Santiago Fisas Ayxelà, Dietmar Köster, Emma McClarkin, Michel Reimon |
| **Substitutes under Rule 200(2) present for the final vote** | Nicola Danti, Tomáš Zdechovský |
**FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION**

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<td>Michel Reimon</td>
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Key to symbols:
+ : in favour
- : against
0 : abstention
27.11.2018

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council on the re-use of public sector information (recast)

Rapporteur for opinion: Ignazio Corrao

SHORT JUSTIFICATION

Your rapporteur acknowledges the Commission’s proposal for a recast of Directives 2013/37/EU and 2003/98/EC on the re-use of public sector information (PSI). The objective of the proposal is to update existing Directives with a view to facilitating the re-use of public sector information throughout the Union by harmonising the basic conditions that make PSI available to re-users.

The proposal broadens its material scope and seeks to ensure consistency with European Union law, particularly data protection legislation, as well as other Union policies and initiatives, on artificial intelligence or internet of things.

However, your rapporteur considers necessary to reflect properly this internal legal consistency of European Union law to avoid any legal uncertainty between different legal instruments. Particularly, the proposal needs to reflect clearly the interaction between re-use of PSI and compliance with EU data protection law, which applies to any processing of personal data carried out within the framework of this Directive. Moreover, in order to avoid divergent interpretations or understandings of essential concepts for the proper application of this proposal, and which are already used by EU data protection law, your rapporteur considers necessary to introduce in the legislative part of the proposal specific provisions. This is the case, for instance, of the definitions of “personal data” and “anonymous data”. Both of them refer to the concepts used by Regulation (EU) 2016/679 (GDPR) and with a clear meaning. In particular, a definition of “anonymous data” is necessary since, in many
instances, this concept is understood as referring to “pseudonymous data”. However “pseudonymous data” is ‘personal data” and its processing or use remains subject to the provisions of the GDPR in any circumstances.

Last, in order to address also stakeholders concerns related to the respect of protection of personal data, especially in sectors such as the health sector or other sectors processing “sensitive personal data”, your rapporteur considers necessary to provide that, when considering decisions on the scope and conditions for the re-use of documents which contain personal data, the organisations subject to the present Directive, shall perform data protection impact assessments. This would enable them to assess the risks related to the release of personal data into the public domain, taken into account of the conditions for re-use.

In short, the amendments proposed increase the legal quality of the text by ensuring the internal legal consistency between this proposal for re-use of public sector information and the rules on the protection of personal data.

**AMENDMENTS**

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

**Amendment 1**

**Proposal for a directive**

**Title 1**

*Text proposed by the Commission*  
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the re-use of public sector information (recast)

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

**Justification**

*Whereas when Directive 2003/98/EC was adopted, the term Open Data wasn’t widely known, the situation today is different. ‘Open Data’ as a term is broadly used by the Commission in its communication (for example, on the Commission’s European Data Portal), and also in the*
explanatory memorandum to this Directive. The term is widely understood and describes to a wider audience the idea behind the technical term “re-use of public sector information”.

Amendment 2

Proposal for a directive  
Recital 3

Text proposed by the Commission

(3) Following the stakeholder consultation and in the light of the Impact Assessment\(^{30}\) 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.

Amendment

(3) Following the stakeholder consultation and in the light of the Impact Assessment\(^{30}\) 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, High Performance Cloud Computing and Quantum Technology. Open-source data sets will contribute to rapidly progress and create a new strategy to embrace new digital technologies, especially Artificial Intelligence.

\(\text{\(^{30}\) SWD(2018) 127.}\)

Amendment 3

Proposal for a directive  
Recital 4

Text proposed by the Commission

(4) The substantive changes introduced to the legal text so as to fully exploit the potential of public sector information for the European economy and society focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, including from public undertakings,

Amendment

(4) The substantive changes introduced to the legal text so as to fully exploit the potential of public sector information for the European economy and society focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, including from public undertakings,
research performing organisations and research funding organisations, tackling the emergence of new forms of exclusive arrangements, the use of exceptions to the principle of charging the marginal cost and the relationship between this Directive and certain related legal instruments, including Directive 96/9/EC and Directive 2007/2/EC of the European Parliament and of the Council.


Justification

Include GDPR reference, corresponding to addition of paragraph 3a to Article 1.

Amendment 4

Proposal for a directive
Recital 4 a (new)
Text proposed by the Commission

(4a) The access to information is a fundamental right. The Charter of Fundamental Rights of the European Union (the ‘Charter’) provides that everyone has the right to freedom of expression, including the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Justification

The fundamental right to access to information is the foundation of this Directive and should therefore be cited here.

Amendment 5

Proposal for a directive
Recital 4 b (new)

Text proposed by the Commission

(4b) Article 8 of the Charter of Fundamental Rights of the European Union guarantees the right to the protection of personal data and states that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law and under the control by an independent authority.

Justification

Necessary for pressing reasons related to the internal logic of the text in order to ensure its legal consistency.

Amendment 6

Proposal for a directive
Recital 6
(6) The public sector in the Member States collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy.

Amendment

Proposal for a directive
Recital 11

Text proposed by the Commission

(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.

Amendment

(11) Allowing access to and 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.

Justification

This amendment is needed because it is inextricably linked to other amendments on access to documents, including those to Recitals 4, 4a, 27, 32.

Amendment 8

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public

Amendment

(12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public
sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Practice in public sector bodies in exploiting public sector information continues to vary among Member States. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Community.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 9

Proposal for a directive
Recital 13

Text proposed by the Commission

(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.

Amendment

(13) Member States should ensure the creation of data based on the principle of "open by design and by default", with regard to all documents falling in the scope of this Directive, while ensuring a consistent level of protection of public interest objectives, such as public security, including where sensitive information related to critical infrastructures are concerned; and while ensuring the protection of personal data, including where information in an individual data set may not present a risk of identifying or singling out a natural person, but when combined with other available information, could entail such risk. Open
data policies ensuring the findability, accessibility, interoperability and reusability (FAIR principles), and encouraging 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 promoting the development of new services based on novel ways to combine and make use of such information, stimulate economic growth and promote social engagement. Interoperability, open standards and open data should therefore be implemented at the level of each Member State’s administration. At the same time, the Commission should facilitate the cooperation among Member States and support the design, testing, implementation and deployment of interoperable electronic interfaces that will enable more efficient and secure public services.

Justification

Open Data policies are enumerated in Recital (23) of the Commission proposal. The fundamental right to access to information lays the foundation for this directive and thus mandates that Member States proactively take the principle into account so that when a request for information is granted, data need not first be converted into a format that can be published, where possible. Corresponding recital (4a).

Amendment 10

Proposal for a directive

Recital 16

Text proposed by the Commission

(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

Amendment

(16) A general framework for the conditions governing access to and re-use of public sector documents is needed in order to ensure fair, proportionate and non-discriminatory conditions for the re-use of such documents. 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.

**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.**

**Justification**

*Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.*

**Amendment 11**

**Proposal for a directive**

**Recital 18**

**Text proposed by the Commission**

(18) This Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell, disseminate, exchange or give out information. To avoid cross-subsidies, re-use should include further use of documents within the organisation itself for activities falling outside the scope of its public tasks. Activities falling outside the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market.

**Amendment**

(18) This Directive should apply to documents that are made available for re-use when public sector bodies commission the production of or 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.

**Justification**

*The fundamental right to access to information mandates the principle of ‘open by design’ (Recital 13). Since documents may at a later stage be requested by citizens exercising their fundamental right, and in order to proactively support this, documents should already be designed to be “made accessible for re-use”, including at the stage when the production of information is being commissioned by a body.*
Amendment 12

Proposal for a directive
Recital 19

Text proposed by the Commission

(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 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.

Amendment

(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, including situations in which access is restricted or excluded in order to ensure the security of the network and information systems pursuant to Directive 2016/1148\(^a\) 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 or a part of a document if they can prove a particular interest. At 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.

\(^a\) Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union
Justification

Necessary for pressing reasons related to the internal logic of the proposal. Needed to clarify the relationship and coherence between the PSI Directive and the GDPR and to make clear that the exclusions apply to documents and parts of documents in all cases. Inextricably linked to the amendment to Article 1(2)(g) in order to ensure the internal logic of the proposal.

Amendment 13

Proposal for a directive
Recital 20

Text proposed by the Commission

(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.

Amendment

(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. Re-use of data 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 public engagement.

Amendment 14

Proposal for a directive
Recital 23
(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 swiftly becoming a standard scientific practice for ensuring data that is findable, accessible, interoperable and re-usable (FAIR principles).

Amendment 15

Proposal for a directive
Recital 24

Text proposed by the Commission  
Amendment

(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 swiftly becoming a standard scientific practice for ensuring data that is findable, accessible, interoperable and re-usable (FAIR principles), and it should be further encouraged.
(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\(^\text{34}\), 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, confidentiality, 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.

\(^{34}\text{C(2018)2375}\)
Recital 32

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for re-use without charges and, where charges are necessary, they should in principle be limited to the marginal costs. In exceptional cases, the necessity of not hindering the normal running of public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged. In such cases, public sector bodies and public undertakings should therefore be able to charge above marginal costs. Those charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. The requirement to generate revenue to cover a substantial part of the public sector bodies’ costs relating to the performance of their public tasks or the scope of the services of general interest entrusted with public undertakings does not have to be a legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.

Amendment

(32) Charges for the access to and re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for access to and re-use without charges and, where charges are necessary, they should in principle be limited to the marginal costs. In exceptional cases, the necessity of not hindering the normal running of public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged. In such cases, public sector bodies and public undertakings should therefore be able to charge above marginal costs. Those charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. The requirement to generate revenue to cover a substantial part of the public sector bodies’ costs relating to the performance of their public tasks or the scope of the services of general interest entrusted with public undertakings does not have to be a legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.

Justification

Although the re-use of information requires that it be made available for access, this
requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 17

Proposal for a directive
Recital 36

Text proposed by the Commission

(36) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide information market. Therefore all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use. Applicants for re-use of documents held by entities other than public undertakings, educational establishments, research performing organisations and research funding organisations should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.

Amendment

(36) Ensuring that the conditions for access to and re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide information market. Therefore all applicable conditions for the access to and 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 access to and 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.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 18

PE623.664v02-00 136/158 RR\1171578EN.docx
Proposal for a directive
Recital 37

Text proposed by the Commission

(37) The means of redress should include the possibility of review by an impartial review body. That body could be an already existing national authority, such as the national competition authority, the national access to documents authority or a national judicial authority. That body should be organised in accordance with the constitutional and legal systems of Member States and should not prejudge any means of redress otherwise available to applicants for re-use. It should however be distinct from the Member State mechanism laying down the criteria for charging above marginal costs. The means of redress should include the possibility of review of negative decisions but also of decisions which, although permitting re-use, could still affect applicants on other grounds, notably by the charging rules applied. The review process should be swift, in accordance with the needs of a rapidly changing market.

Amendment

(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 supervisory authority set up pursuant to Regulation (EU) 2016/679\(^1\), the national access to documents authority or a national judicial authority. That body should be organised in accordance with the constitutional and legal systems of Member States and should not prejudge any means of redress otherwise available to applicants for access to and 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.


Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.
Amendment 19
Proposal for a directive
Recital 39

Text proposed by the Commission

(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.

Amendment

(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 protection of personal data, 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.

Justification

Necessary for pressing reasons related to the internal logic of the text in order to ensure its legal consistency.

Amendment 20
Proposal for a directive
Recital 47

Text proposed by the Commission

(47) This Directive is without prejudice and should be implemented and applied in full compliance with Union law relating to the protection of personal data including Regulation (EU) 2016/679 of the European Parliament and of the Council\(^7\) and Directive 2002/58/EC of the European Parliament and of the Council\(^8\). Anonymisation is a means to reconcile the interests in making public sector

Amendment

(47) This Directive is without prejudice and should be implemented and applied in full compliance with Union law relating to the protection of personal data including Regulation (EU) 2016/679 of the European Parliament and of the Council and Directive 2002/58/EC of the European Parliament and of the Council\(^8\). 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. In this regard, anonymous information should mean any information that cannot be related, directly or indirectly, alone or in combination with associated data, to a natural person or personal data rendered anonymous in such a manner that a data subject is no longer identifiable. Moreover, when taking decisions on the scope and conditions for the re-use of public sector documents containing personal data, the organisations subject to this Directive should perform data protection impact assessments before making the document public. This should be done in particular for specific sectors routinely dealing with special categories of personal data, such as health sector, or other personal data referred to in Article 9 of Regulation (EU) 2016/679. In order to properly address the concerns related to the necessary protection of personal data such data protection impact assessment should be conducted in accordance with Article 35 of Regulation (EU) 2016/679.

37 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) […]

Justification

Needed to ensure consistency with the current legislative framework on data protection and to avoid other interpretations of concepts that may refer to other techniques such as pseudonymisation. Furthermore, in line with the recommendations of the European Data Protection Supervisor, the Rapporteur deems it necessary to ensure an impact assessment to ascertain the legitimacy and necessity of publishing personal data in the public domain, particularly when dealing with certain categories of sensitive data.

Amendment 21

Proposal for a directive
Recital 52

Text proposed by the Commission

(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.

Amendment

(52) Tools that help potential re-users to find documents available for re-use and the conditions for access to and 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.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 22

Proposal for a directive
Recital 62
This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to privacy (Article 7), the protection of personal data (Article 8), the right to property (Article 17) and the integration of persons with disabilities (Article 26). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Justification

Changes corresponding to new Recital (4a).

Amendment 23

Proposal for a directive
Recital 62 a (new)

Text proposed by the Commission

(62) The European Data Protection Supervisor delivered an Opinion 5/2018 on 10 July 2018 pursuant to Article 41(2) of Regulation (EC) 45/20011a.


Justification

Necessary for pressing reasons related to the internal logic of the text in order to ensure its legal consistency; EU legal text have to comply with legislative technique rules and it must be
indicated that the EDPS issued on opinion pursuant to Regulation 45/2001.

Amendment 24
Proposal for a directive
Article -1 (new)

Text proposed by the Commission

Amendment

Article -1

-1. This Directive aims at establishing a regulatory framework governing the right to access to and re-use of public sector information in order to set out basic terms and practical arrangements for its exercise, as well as to promote the use of open data and stimulate innovation in products and services.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 25
Proposal for a directive
Article 1 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) documents access to which is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data;

(g) documents or parts of documents access to which is excluded or restricted by access regimes on the grounds of protection of personal data, or which contain personal data the re-use of which could undermine the protection of privacy and integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data;
Justification

This amendment follows the EDPS opinion. It is necessary to ensure coherence between this Directive and other Union legislation.

Amendment 26

Proposal for a directive
Article 1 – paragraph 2 – point k a (new)

Text proposed by the Commission

Amendment

(ka) documents access to which is restricted by virtue of the access regimes in the Member States, including cases whereby access is restricted or excluded in order to ensure the security of the network and information systems pursuant to Directive 2016/1148;

Justification

Necessary for pressing reasons related to the internal logic of the proposal, legal consistency with other instruments of EU law and national law applicable.

Amendment 27

Proposal for a directive
Article 1 – paragraph 2 – point k b (new)

Text proposed by the Commission

Amendment

(kb) documents held by institutions which are covered by the definition of critical infrastructure as defined by Article 2(a) of Directive 2008/114/EC.

Justification

Necessary for pressing reasons related to the internal logic of the text in order to ensure its legal consistency.

Amendment 28

Proposal for a directive
Article 1 – paragraph 3 a (new)
3a. This Directive leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under Union and national law, and in particular it does not alter any obligations and rights set out in Regulation (EU) 2016/679 and Directive 2002/58/EC.

Justification

Needed to ensure the inextricable link between reuse of public information law and EU Data Protection law, as it is currently provided in Directive 2003/98. It enhances legal consistence. A recital alone is not enough.

Amendment 29

Proposal for a directive
Article 2 – paragraph 1 – point 5 a (new)

Text proposed by the Commission

5a. ‘personal data’ means personal data as defined in Article 4(1) of Regulation (EU) 2016/679;

Justification

Necessary for pressing reasons related to the internal logic of the text in order to ensure its legal consistency. Current PSI Directive 2003/98/EC contains this definition which should be kept.

Amendment 30

Proposal for a directive
Article 2 – paragraph 1 – point 5 b (new)

Text proposed by the Commission

5b. ‘anonymous information’ or ‘anonymised information’ means information which does not relate to an identified or identifiable natural person or personal data rendered anonymous in
such a manner that the data subject is not or no longer identifiable;

Justification

Needed to ensure legal consistency and avoid other interpretations of the notion of personal data different from the one included in the GDPR. Current PSI Directive 2003/98/EC contains this definition which should be kept.

Amendment 31

Proposal for a directive
Article 3 – paragraph 1

Text proposed by the Commission
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.

Amendment
1. Subject to paragraph 2 Member States shall ensure that documents to which this Directive applies in accordance with Article 1 shall be \textit{given access to and re}-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 32

Proposal for a directive
Article 3 – paragraph 2

Text proposed by the Commission
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

Amendment
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 \textit{access to and} re-use of such documents is allowed, these documents shall be \textit{given access to and} re-usable for
purposes in accordance with the conditions set out in Chapters III and IV.

commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 33

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that documents falling within the scope of this Directive are produced and made available for re-use according to the principle of "open by design and by default".

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 34

Proposal for a directive
Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall provide that, when taking decisions on the scope and conditions for the re-use of documents, the organisations subject to this Directive, shall perform data protection impact assessments, in particular for specific
sectors routinely dealing with special categories of personal data, such as health sector, or other personal data referred to in Article 9 of Regulation (EU) 2016/679. Such data protection impact assessment shall be carried out in accordance with Article 35 of Regulation (EU) 2016/679.

Justification

Amendment necessary for pressing needs related to the internal logic of the text. Needed to ensure legal consistency of EU law and to guarantee that when personal data are to be made public an impact assessment has previously been conducted to ascertain the lawfulness and the need of publishing personal data in the public domain, account taken of the impact and effects of the publication on data subjects concerned.

Amendment 35

Proposal for a directive
Chapter 2 – title

Text proposed by the Commission  Amendment

REQUESTS FOR RE-USE  ACCESS TO DOCUMENTS AND REQUESTS FOR RE-USE

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 36

Proposal for a directive
Article 4 – title

Text proposed by the Commission  Amendment

Requirements applicable to the processing of requests for re-use  Requirements applicable to the processing of requests for access to documents and re-use

RR\1171578EN.docx  147/158  PE623.664v02-00
**Justification**

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

**Amendment 37**

Proposal for a directive  
Article 4 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>1. Public sector bodies shall, through electronic means where possible and appropriate, process requests for access to documents or for their re-use and shall make the document available for re-use to the applicant or, if a licence is needed for re-use, 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.</td>
</tr>
</tbody>
</table>

**Justification**

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

**Amendment 38**

Proposal for a directive  
Article 4 – paragraph 2

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>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,</td>
<td>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 for</td>
</tr>
</tbody>
</table>
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. 

re-use, finalise the licence offer to the applicant as soon as possible or, at the latest, 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 as soon as possible, and in any case within three weeks after the initial request that more time is needed to process it and of the reasons for it.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 39

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. In the event of a negative decision, the public sector bodies shall communicate within 20 working days the reasons for refusing, in full or in part, access to or re-use of a document in the form or format requested, 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 right holder, 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.
Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 40

Proposal for a directive
Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member State shall draw up a publicly accessible list of criteria on the basis of which the body concerned may decide how to handle requests.

Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 41

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

Amendment

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.

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 supervisory authority set up in accordance with Article 51 of Regulation (EU) 2016/679, the national access to documents authority or a national judicial authority, whose decisions are binding upon the public
sector body concerned.

Justification

Necessary for pressing reasons to ensure EU legal consistency. EU DPAS are competent authorities to deal with cases relating to compliance with data protection law. GDPR endows DPAs with appropriate powers of enforcement and redress for breaches of data protection law and cover this situation. See AM to recital 37.

Amendment 42

Proposal for a directive
Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. For the purposes of this Article, Member States shall ensure that:

(a) support is granted in seeking access to documents;

(b) lists of public sector bodies are publicly accessible; and

(c) practical arrangements are defined for ensuring that the right of access to documents and their re-use of public-sector information can be exercised effectively, such as:

i. the designation of information officers;

ii. the establishment and maintenance of facilities for the examination of the documents required;

iii. registers or list of documents held by public sector bodies or information points, with clear indications of where such documents can be found;

(d) public sector bodies inform the public adequately of the rights they enjoy on the basis of this Directive and as a result of existing access to information rules, laid down at national or at Union level, and to an appropriate extent provide information, guidance and advice to this end.
Justification

Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 43

Proposal for a directive
Article 5 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Public sector bodies and public undertakings shall ensure that access to and re-use of public sector information comply with the Union data protection legislation.

Justification

Necessary for pressing reasons related to the internal logic of the text in order to ensure its legal consistency.

Amendment 44

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Re-use of documents 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.

1. Access to and re-use of documents shall be free of charge.

Justification

Restructuring of the Article in the interest of the objectives of better legal drafting. Although the re-use of information requires that it be made available for access, this requirement is missing from the recast. These amendments seek to establish basic requirements for the access to information related to its re-use. Therefore this amendment is needed for the
internal logic of the text and it is inextricably linked to other admissible amendments.

Amendment 45
Proposal for a directive
Article 6 – paragraph 1 a (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a. By way of exception, 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 may be recovered by the Member States.</td>
<td></td>
</tr>
</tbody>
</table>

Justification
Restructuring of the Article in the interest of the objectives of better legal drafting

Amendment 46
Proposal for a directive
Article 6 – paragraph 2 – introductory part

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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</thead>
<tbody>
<tr>
<td>2. By way of exception, paragraph 1 shall not apply to the following:</td>
<td></td>
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<tr>
<td>2. Member States may decide not to apply paragraph 1 and 1a to the following:</td>
<td></td>
</tr>
</tbody>
</table>

Justification
Necessary for pressing reasons related to the internal logic of the text in order to ensure its legal consistency.

Amendment 47
Proposal for a directive
Article 7 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. In the case of standard charges for the re-use of documents, any applicable conditions and the actual amount of those charges, including the calculation basis for</td>
<td></td>
</tr>
<tr>
<td>1. In the case of standard charges for the re-use of documents or parts of documents, any applicable conditions and the actual amount of those charges,</td>
<td></td>
</tr>
</tbody>
</table>
such charges, shall be pre-established and published, through electronic means where possible and appropriate. including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate.

**Justification**

*Necessary for pressing reasons related to the internal logic of the proposal and to AM tabled to refer to documents or parts of documents.*
## PROCEDURE – COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Title</th>
<th>Re-use of public sector information (recast)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee responsible</td>
<td>ITRE</td>
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<tr>
<td>Date announced in plenary</td>
<td>28.5.2018</td>
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<td>Opinion by</td>
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<td>28.5.2018</td>
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<td>Rapporteur</td>
<td>Ignazio Corrao</td>
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<td>Date appointed</td>
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<td>11.10.2018 27.11.2018</td>
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| Result of final vote | +: 34  
-: 2  
0: 0 |
| Members present for the final vote | Asim Ademov, Martina Anderson, Heinz K. Becker, Malin Björk, Caterina Chinnici, Daniel Dalton, Rachida Dati, Cornelia Ernst, Tanja Fajon, Romeo Franz, Kinga Gál, Sylvie Guillaume, Dietmar Köster, Barbara Kudrycka, Cécile Kasha, Kyenge, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, József Nagy, Péter Niedermüller, Ivari Padar, Judith Sargentini, Giancarlo Scottà, Branislav Škripek, Traian Ungureanu, Bodil Valero, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský |
| Substitutes present for the final vote | Carlos Coelho, Ignazio Corrao, Pál Csáky, Miriam Dalli, Innocenzo Leontini |
| Substitutes under Rule 200(2) present for the final vote | Reimer Böge |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
## PROCEDURE – COMMITTEE RESPONSIBLE

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<tr>
<th>Title</th>
<th>Re-use of public sector information (recast)</th>
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<td>Date submitted to Parliament</td>
<td>25.4.2018</td>
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<td>Rapporteurs</td>
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<td>Date appointed</td>
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## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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