Compromise amendments

on the Draft Opinion
on the re-use of Public Sector Information
2018/0111(COD)
Rapporteur: Julia Reda
Compromise amendments

CA 1 on the Title

Compromise amendment replacing all relevant amendments, including AM 1 and AM 42

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

CA 2 on Article 1

Compromise amendment replacing all relevant amendments, including AMs 64, 65, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 109, 112, 113, 120

Article 1

Subject matter and scope

-1 (new). 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) **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\(^1\) 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\(^2\), 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\(^3\), and public undertakings acting as

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Community shipowners fulfilling public service obligations pursuant to Article 4 of Council Regulation (EEC) No 3577/92\(^4\).
(c) research data, pursuant to conditions set out in Article 10(1) and (2).

2. This Directive shall not apply to:

(a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules, as defined in line with common administrative practice in the Member State in question, provided that the scope of the public tasks is transparent and subject to review;

(b) documents held by public undertakings, produced outside the scope of the provision of services in the general interest as defined by law or other binding rules in the Member State;

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

(d) documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of:
   – the protection of national security (that is to say, State security) and defence, or public security order, including sensitive critical infrastructure protection related information within the meaning of Article 2(d) of Directive 2008/114/EC,
   – statistical confidentiality,
   – commercial confidentiality (including business, professional or company secrets);

(e) documents access to which is restricted by virtue of the access regimes in the Member States, including cases whereby citizens or companies have to prove a particular interest to obtain access to documents;

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

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

(h) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

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

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

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

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

3a. 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.

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 pursuant to this Directive.

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\(^\text{5}\) applies.

CA 3 on Article 2

Compromise amendment replacing all relevant amendments, including AM 14, 15, 16, 90

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;

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

5. ‘document’ means:
   (a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording);
   (b) any part of such content;

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

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 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;

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;

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

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

12. ‘formal open standard’ means a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;
13. 'reasonable return on investment' means a percentage of the overall charge, in addition to that needed to recover the eligible costs, not exceeding 5 percentage points above the fixed interest rate of the European Central Bank;

14. ‘third party’ means any natural or legal person other than a public sector body or a public undertaking that holds the data.

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

CA 4 on Article 3

Compromise amendment replacing all relevant amendments, including AM 91, 92

Article 3

General principle

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

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

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".

CA 5 on Article 4

Replacing all relevant amendments, including AMs 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104

CHAPTER II

REQUESTS FOR RE-USE

Article 4

Requirements applicable to the processing of requests for re-use

1. Public sector bodies shall, through electronic means where possible and appropriate, process requests for access to documents and/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.
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 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.

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) 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.

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.

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.

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 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.

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

   (a) public undertakings;
   (b) educational establishments, research performing organisations and research funding organisations.

CA 6 on Article 5
Replacing all relevant amendments, including AMs 93, 105, 106, 107, 108
Article 5

Available formats and quality of documents

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

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.

2. Paragraph 1 shall not imply an obligation for public sector bodies or public undertakings to create or adapt documents or provide extracts in order to comply with that paragraph where this would involve disproportionate effort, going beyond a simple operation.

3. On the basis of this Directive, public sector bodies and public undertakings cannot be required to continue the production and storage of a certain type of documents with a view to the re-use of such documents by a private or public sector organisation.

4. Public sector bodies and public undertakings shall make dynamic data available for re-use immediately after collection, in real-time and without delay where possible, via suitable Application Programming Interfaces (APIs).

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.

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

CA 7 on Article 5a
Replacing all relevant amendments, including AM 18, 108

Article 5a

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 the re-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.

CA 8 on Article 6
Replacing all relevant amendments, including AMs 19, 57, 58, 109, 110, 111, 112, 113, 114, 115

Article 6
Principles governing charging

1. The re-use of documents shall be free of charge.

1a. By way of exception, the marginal costs incurred for their reproduction, provision and dissemination, data storage, and – where applicable – anonymisation of personal data and measures taken to protect commercially confidential information may be recovered by the Member States.

2. Member States may decide not to apply paragraphs 1 and 1a 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.
which the public sector 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.)

(b) libraries, including university libraries, museums and archives;
(c) public undertakings.

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 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.

6. 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.

CA 9 on Article 7
Replacing all relevant amendments, including AMs 116 and 57, 58

Article 7
Transparency

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).

1. In the case of standard charges for the re-use of documents, any applicable conditions and the actual amount of those charges, including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate.
2. In the case of charges for the re-use other than those referred to in paragraph 1, the factors that are taken into account in the calculation of those charges shall be indicated at the outset. Upon request, the holder of documents in question shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.

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

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.

CA 10 on Article 8
Replacing all relevant amendments, including AMs 20, 21, 117, 118

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 a 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. Where the re-use of documents is subject to conditions or a licence, Member States shall:
(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.

2a. 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.

CA 11 on Article 9
Replacing all relevant amendments, including AM 22

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 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.

CA 12 on Article 10
Replacing all relevant amendments, including AMs 119, 120

Article 10
Availability and re-use of research data

1. Member States shall support the availability of research data by adopting national policies and relevant actions aiming at making publicly funded research data openly available ('open access policies'). These open access policies shall be addressed to research performing organisations and research funding organisations.

2. Research data shall be re-usable for commercial or non-commercial purposes under the conditions set out in Chapters III and IV, insofar as they are publicly funded and whenever access to such data is provided through an institutional or subject-based repository. In this context, legitimate commercial interests and pre-existing intellectual property rights shall be taken into account. This provision shall be without prejudice to point (e) of Article 1(2).

2a. 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.

CHAPTER IV

NON-DISCRIMINATION AND FAIR TRADING

CA 13 on Article 11
Replacing all relevant amendments, including AM 123

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 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.**

**CA 14 on Article 12**
*Replacing all relevant amendments, including AMs 121; 122*

**Article 12**

**Prohibition of exclusive arrangements**

1. The re-use of documents shall be open to all potential users 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, nor any preferential use of the data.

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. The final terms of such arrangements shall be transparent and made publicly available.

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.
CA 15 on Article 13
Replacing all relevant amendments, including AMs 23, 24, 25, 26, 27, 28, 124, 125, 126, 127, 128, 129, 130, 131, 132

Article 13

List of high value datasets

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.

2. These datasets shall be available for free, machine-readable and accessible via APIs. The conditions for re-use shall be compatible with open standard licences.

3. By way of exception, the free availability referred to in paragraph 1 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.

4. In addition to the conditions set out in paragraph 1, the Commission may define other applicable modalities, in particular

a. any conditions for re-use;
b. formats of data and metadata and technical modalities of their publication and dissemination.

5. The selection of 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,) and the revenues they may help generate, and their potential for being combined with other datasets.

6. The measures referred to in this Article shall be adopted by the Commission by means of a delegated act in accordance with Article 290 of the TFEU and subject to the procedure laid down in Article 14.

7. The Commission shall conduct an impact assessment including a cost-benefit analysis prior to the adoption of 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 high value datasets held by public undertakings are concerned, the impact assessment shall give special consideration to the role of public undertakings in a competitive economic environment.

7a. 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.

CA 16 on Article 14
Replacing all relevant amendments, including AMs 108, 133, 134, 135, 136, 137

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 Articles 5a and 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 Articles 5a and 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 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 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 three two months at the initiative of the European Parliament or of the Council.
CA 17 on Article 16
Replacing all relevant amendments, including AMs 138, 139, 140

Article 16
Evaluation
1. No sooner than four [36 months after the date for transposition of this Directive] and at the latest every five years thereafter [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.

2. The evaluation shall in particular address the scope, civic and socio-economic impact of this Directive, including the extent of the increase in re-use of public sector documents to which this Directive applies, the impact of high value datasets, the relevance for specific stakeholders such as consumers and enterprises, particularly for small and medium-sized enterprises, 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 and the development of the European data economy.

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

CA 18 on Annex IIa
Replacing all relevant amendments, including all relevant AMs, including AMs 31, 125, 128 and 141

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>
</tbody>
</table>

6 SWD (2017)350
### Geospatial data

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)).

### National Law

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; 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).

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**Compromises on recitals**

**CA 19 on recitals 1, 2, 3, 4 and 4a.**

Replacing all relevant amendments, including AMs 2, 32, 33, 34, 37,

(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, such as machine learning, Artificial Intelligence and the Internet of Things.

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

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8 See Annex I, Part A.
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{11}, and Directive 2007/2/EC of the European Parliament and of the Council\textsuperscript{12}, and Regulation (EU) 2016/679.

new (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.

CA 20 on recitals 6, 7, 8
Replacing all relevant amendments, including AMs 35, 36, 37

(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.

(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 there is a continuous evolution in technologies for analysis, exploitation and processing of data, such as machine learning, Artificial intelligence and 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 influences the life of every citizen in the Community, among other things, by enabling them to gain new ways of accessing and acquiring knowledge.

CA 21 on recitals 11, 12, 13 and 14
Replacing all relevant amendments, including AMs 3, 38, 39, 40, 41, 50

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.

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

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

CA 22 on recital 18
Replacing all relevant amendments, including AM 4

This Directive should apply to documents that are made accessible 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.

CA 23 on recital 19
Replacing all relevant amendments, including AMs 5, 44, 45,

The Directive lays down an obligation for Member States to make all documents reusable 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 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.

CA 24 on recitals 21 and 22
Replacing all relevant amendments, including AM 47, 48
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, as well as by public undertakings acting as public service operators pursuant to Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and the Council on public passenger transport services by rail and by road, public undertakings acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, and public undertakings acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

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 should remain with the public undertaking concerned. Only after the public undertaking has chosen to make a document available for re-use, should it observe the relevant obligations laid down in Chapters III and IV of this Directive, in particular as regards formats, charging, transparency, licences, non-discrimination and prohibition of exclusive arrangements. On the other hand, the public undertaking is not required to comply with the requirements laid down in Chapter II, such as the rules applicable to processing of requests.

CA 25 on recital 26
Replacing all relevant amendments, including AM 43, 93

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

CA 26 on recital 27
Replacing all relevant amendments, including AMs 6, 52, 101

Public sector bodies are increasingly making their documents 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

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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. 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 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.

CA 27 on recital 28
Replacing all relevant amendments, including AMs 9, 10, 53, 55.

(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.

CA 28 on recital 32 and 32a
Replacing all relevant amendments, including AMs 57, 58, 59, 60, 61

(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 and 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 sector bodies that are required to generate revenue to cover at least 60 % of the costs relating to the documents, falling within the scope of this Directive 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 and data storage, 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 at least 60 % of the costs 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 operations, the reasonable return on investment should not be expected to be more than 5 % above the ECB’s fixed interest rate.

CA 29 on recital 36
Replacing all relevant amendments, including AM 62

(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.

CA 30 on recital 37
Replacing all relevant amendments, including AM 63

(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 access 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.

CA 31 on recitals 39, 41, 42 and 43
Replacing all relevant amendments, including AMs 7, 8, 49, 65 and 122

(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.

(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.

(42) In relation to any re-use that is made of the document, public sector bodies may impose conditions, where appropriate through a licence, such as acknowledgment of source and acknowledgment of whether the document has been modified by the re-user in any way. Any licences for the re-use of public sector information should in any event place as few restrictions on re-use as possible, for example limiting them to an indication of source. Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, should play an important role in this respect. Therefore, Member States should encourage the use of open licences that should eventually become common practice across the Union.

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

CA 32 on recitals 51a, 52 and 52a
Replacing all relevant amendments, including AMs 11, 66, 121


(52) Tools that help potential re-users to find documents available for access and 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. Such practical arrangements can include 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.
CA 33 on recital 58
Replacing all relevant amendments, including AMs 12, 67, 68, 69, 70

(58) In order to set in place conditions supporting the re-use of documents which is associated with important civic or 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 respect of additions to the list of categories of datasets set out in Annex IIa, and the addition of specific 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.

CA 34 on recital 59
Replacing all relevant amendments, including AMs 71, 72, 73

(59) An EU-wide list of datasets with a particular potential to generate civic or 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 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.

CA 35 on recitals 60 and 60a
Replacing all relevant amendments, including AMs 74, 75, 76

(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.

(60a) 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.

CA 36 on recital 62
Replacing all relevant amendments, including AM 2

(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.

CA 37 on recital 63
Replacing all relevant amendments, including AM 77

(63) The Commission should carry out an evaluation of this Directive [36 months after its transposition]. 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\(^4\), 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.

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\(^4\) OJ L123, 12.5. 2016, p1.