

Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast)

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PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

on open data and the re-use of public sector information

(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure⁽²⁾,

Whereas:

- (1) Directive 2003/98/EC of the European Parliament and of the Council⁽³⁾ 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 Directive 2013/37/EU of the European Parliament and of the Council⁽⁴⁾, which amended Directive 2003/98/EC, the Commission, after consulting the relevant stakeholders, evaluated and reviewed the functioning of Directive 2003/98/EC in the framework of a regulatory fitness and performance programme.
- (3) Following the stakeholder consultation and in the light of the result of the impact assessment, 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, in order to bring the legislative framework up to date with the advances in digital technologies and to further stimulate digital innovation, especially with regard to 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 should focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, the increase of the supply of valuable public data for re-use, including from public undertakings, research performing organisations and research funding

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organisations, the tackling of 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 Regulation (EU) 2016/679 of the European Parliament and of the Council⁽⁵⁾ and Directives 96/9/EC⁽⁶⁾, 2003/4/EC⁽⁷⁾ and 2007/2/EC⁽⁸⁾ of the European Parliament and of the Council.

- (5) Access to information is a fundamental right. The Charter of Fundamental Rights of the European Union (Charter) provides that everyone has the right to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- (6) Article 8 of the Charter guarantees the right to the protection of personal data and provides 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 subject to control by an independent authority.
- (7) The Treaty on the Functioning of the European Union (TFEU) 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 those objectives.
- (8) The public sector in 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, meteorological, seismic, touristic, business, patent-related and educational areas. Documents produced by public sector bodies of the executive, legislature or judiciary constitute a vast, diverse and valuable pool of resources that can benefit society. Providing that information, which includes dynamic data, in a commonly used electronic format allows citizens and legal entities to find new ways to use them and create new, innovative products and services. Member States and public sector bodies may be able to benefit from and receive adequate financial support from relevant Union funds and programmes, ensuring a wide use of digital technologies or the digital transformation of public administrations and public services, in their efforts to make data easily available for re-use.
- (9) Public sector information represents an extraordinary source of data that can contribute to improving the internal market and to the development of new applications for consumers and legal entities. Intelligent data usage, including their processing through artificial intelligence applications, can have a transformative effect on all sectors of the economy.
- (10) Directive 2003/98/EC established a set of minimum rules governing the re-use and the practical arrangements for 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,

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such as machine learning, artificial intelligence and the internet of things. That 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 amended in 2013, no longer keep pace with those rapid changes, and as a result, the economic and social opportunities offered by the re-use of public data risk being missed.

- (11) The evolution towards a data-based society, where data from different domains and activities are used, influences the life of every citizen in the Union, inter alia, by enabling them to gain new ways of accessing and acquiring knowledge.
- (12) Digital content plays an important role in that evolution. Content production has given rise to rapid job creation in recent years and continues to do so. Most of those jobs are created by innovative start-ups and small and medium-sized enterprises (SMEs).
- (13) One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of services and products Union-wide and within Member States. 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. Broad, cross-border geographical coverage will also be essential in that context. Increased possibilities of re-using such information is expected, inter alia, to allow all Union businesses, including microenterprises and SMEs, as well as civil society, to exploit its potential and contribute to economic development and high-quality job creation and protection, especially for the benefit of local communities, and to important societal goals such as accountability and transparency.
- (14) Allowing the re-use of documents held by a public sector body adds value for the benefit of re-users, end users and society in general and in many cases for the benefit of the public sector body itself, by promoting transparency and accountability and by providing feedback from re-users and end users, which allows the public sector body concerned to improve the quality of the information collected and the performance of its tasks.
- (15) 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 that key document resource. The fact that practice in public sector bodies in exploiting public sector information continues to vary among Member States should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be pursued 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.
- (16) Open data as a concept is generally understood to denote data in an open format that can be freely used, re-used and shared by anyone for any purpose. Open data policies

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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 primarily for the public, can play an important role in promoting social engagement, and kick-start and promote the development of new services based on novel ways to combine and make use of such information. Member States are therefore encouraged to promote the creation of data based on the principle of ‘open by design and by default’, with regard to all documents falling within the scope of this Directive. In doing so they should ensure a consistent level of protection of public interest objectives, such as public security, including where sensitive critical infrastructure protection related information are concerned. They should also ensure the protection of personal data, including where information in an individual data set does not present a risk of identifying or singling out a natural person, but when that information is combined with other available information, it could entail such a risk.

- (17) Moreover, without minimum harmonisation at Union level, legislative activity at national level, which has already been initiated in a number of Member States in order to respond to the technological challenges, might result in even more significant divergence. The impact of such legislative divergence and uncertainties will become more significant with the further development of the information society, which has already greatly increased cross-border exploitation of information.
- (18) 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 the re-use of accessible public data easier for citizens and legal entities beyond the minimum level set by that Directive. There is a risk that diverging rules across Member States act as a barrier to the cross-border offer of products and services and prevent comparable public data sets from being re-usable for pan-Union applications based on them. Therefore, minimum harmonisation is required to determine what public data are available for re-use in the internal information market, consistent with and not affecting the relevant access regimes, both general and sectoral, such as that defined in Directive 2003/4/EC. The provisions of Union and national law that go beyond those minimum requirements, in particular in cases of sectoral law, 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 provided for in this Directive or less restrictive licensing terms than those referred to in this Directive. In particular, this Directive is 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⁽⁹⁾.
- (19) Moreover, Member States are encouraged to go beyond the minimum requirements set out in this Directive by applying its requirements to documents held by public undertakings, which are related to activities that have been found, pursuant to Article 34 of Directive 2014/25/EU of the European Parliament and of the Council⁽¹⁰⁾, to be directly exposed to competition. Member States may also decide to apply the requirements of this Directive to private undertakings, in particular those that provide services of general interest.

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- (20) 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. Public undertakings collect, produce, reproduce and disseminate documents to provide services in the general interest. Use of such documents for other reasons constitutes re-use. Member States' policies can go beyond the minimum standards established in this Directive, thus allowing for more extensive re-use. When transposing this Directive, Member States can use terms other than 'document', provided that they retain the full scope of the definition of 'document' set out in this Directive.
- (21) 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.
- (22) This Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell, disseminate, exchange or provide 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 typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market.
- (23) This Directive does not restrict or impair the performance of the statutory tasks of public authorities and other public sector bodies. This Directive lays down an obligation for Member States to make all existing documents re-usable unless access is restricted or excluded under national rules on access to documents or subject to the other exceptions laid down in this Directive. This 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 to cases in which citizens or legal entities can, under the relevant access regime, obtain a document only if they can prove a particular interest. At Union level, Article 41 on the right to good administration and Article 42 on the right of access to documents in the Charter 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 documents held by the European Parliament, the Council and the Commission. 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.
- (24) 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, Directive 2003/98/EC applies only to documents held by public sector bodies, while excluding public undertakings from its scope. This leads to