

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)

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 In order to promote the use of open data and stimulate innovation in products and services, this Directive establishes a set of minimum rules governing the re-use and the practical arrangements for facilitating the re-use of:

- a existing documents held by public sector bodies of the Member States;
- b existing documents held by public undertakings that are:
 - (i) active in the areas defined in Directive 2014/25/EU;
 - (ii) acting as public service operators pursuant to Article 2 of Regulation (EC) No 1370/2007;
 - (iii) acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008; or
 - (iv) acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Regulation (EEC) No 3577/92;
- c research data pursuant to the conditions set out in Article 10.

2 This Directive does 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 accordance 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:
 - (i) 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;
 - (ii) related to activities directly exposed to competition and therefore, pursuant to Article 34 of Directive 2014/25/EU, not subject to procurement rules;
- c documents for which third parties hold intellectual property rights;
- d documents, such as sensitive data, which are excluded from access by virtue of the access regimes in the Member State, including on grounds of:
 - (i) the protection of national security (namely, State security), defence, or public security;
 - (ii) statistical confidentiality;

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- (iii) commercial confidentiality (including business, professional or company secrets);
 - e documents access to which is excluded or restricted on grounds of sensitive critical infrastructure protection related information as defined in point (d) of Article 2 of Directive 2008/114/EC;
 - f documents access to which is restricted by virtue of the access regimes in the Member States, including cases whereby citizens or legal entities have to prove a particular interest to obtain access to documents;
 - g logos, crests and insignia;
 - h documents, access to which is excluded or restricted by virtue of the access regimes on 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 or as undermining the protection of privacy and the integrity of the individual, in particular in accordance with Union or national law regarding the protection of personal data;
 - i 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;
 - j documents held by cultural establishments other than libraries, including university libraries, museums and archives;
 - k documents held by educational establishments of secondary level and below, and, in the case of all other educational establishments, documents other than those referred to in point (c) of paragraph 1;
 - l documents other than those referred to in point (c) of paragraph 1 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, Union and national access regimes.
- 4 This Directive is without prejudice to Union and national law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC and the corresponding provisions of national law.
- 5 The obligations imposed in accordance with this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention, the TRIPS Agreement and the WCT.
- 6 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 the re-use of documents or to restrict re-use beyond the limits set by this Directive.
- 7 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 applies.

Article 2

Definitions

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

- (1) 'public sector body' means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;
- (2) 'bodies governed by public law' means bodies that have all of the following characteristics:
 - (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - (b) they have legal personality; and
 - (c) they are financed, for the most part by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;
- (3) 'public undertaking' means any undertaking active in the areas set out in point (b) of Article 1(1) over which the public sector bodies may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public sector bodies shall be presumed in any of the following cases in which those bodies, directly or indirectly:
 - (a) hold the majority of the undertaking's subscribed capital;
 - (b) control the majority of the votes attaching to shares issued by the undertaking;
 - (c) can appoint more than half of the undertaking's administrative, management or supervisory body;
- (4) 'university' means any public sector body that provides post-secondary-school higher education leading to academic degrees;
- (5) 'standard licence' means a set of predefined re-use conditions in a digital format, preferably compatible with standardised public licences available online;
- (6) 'document' means:
 - (a) any content whatever its medium (paper or electronic form or as a sound, visual or audiovisual recording); or
 - (b) any part of such content;
- (7) 'anonymisation' means the process of changing documents into anonymous documents which do not relate to an identified or identifiable natural person, or the process of rendering personal data anonymous in such a manner that the data subject is not or no longer identifiable;
- (8) 'dynamic data' means documents in a digital form, subject to frequent or real-time updates, in particular because of their volatility or rapid obsolescence; data generated by sensors are typically considered to be dynamic data;
- (9) '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

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- used as evidence in the research process, or are commonly accepted in the research community as necessary to validate research findings and results;
- (10) ‘high-value datasets’ means documents the re-use of which is associated with important benefits for society, the environment and the economy, in particular because of their suitability for the creation of value-added services, applications and new, high-quality and decent jobs, and of the number of potential beneficiaries of the value-added services and applications based on those datasets;
- (11) ‘re-use’ means the use by persons or legal entities of documents held by:
- (a) 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 for the exchange of documents between public sector bodies purely in pursuit of their public tasks; or
 - (b) public undertakings, for commercial or non-commercial purposes other than for the initial purpose of providing services in the general interest for which the documents were produced, except for the exchange of documents between public undertakings and public sector bodies purely in pursuit of the public tasks of public sector bodies;
- (12) ‘personal data’ means personal data as defined in point (1) of Article 4 of Regulation (EU) 2016/679;
- (13) ‘machine-readable format’ means a file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure;
- (14) ‘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;
- (15) ‘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;
- (16) ‘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 ECB;
- (17) ‘third party’ means any natural or legal person other than a public sector body or a public undertaking that holds the data.

Article 3

General principle

1 Subject to paragraph 2 of this Article, 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 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, those documents shall be re-usable for commercial or non-commercial purposes in accordance with Chapters III and IV.