

Amendments the Proposal for the Directive of the European Parliament and of the Council on the re-use of public sector information (recast)

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Original PSI text (only proposed changes and additions)	Comments and proposed amendments
<p>Paragraph (22), page 6 “This Directive should not contain an obligation to allow the re-use of documents produced by public undertakings. The decision whether or not to authorise re-use should remain with the public undertaking concerned.</p> <p>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.</p>	<p>Amendments to the PSI Directive: Amend paragraph (22) and replace the section:</p> <p><i>“This Directive should not contain an obligation to allow the re-use of documents produced by public undertakings. The decision whether or not to authorise re-use should remain with the public undertaking concerned.”</i></p> <p>with the following:</p> <p><i>“Public undertakings providing services in the general interest will be obliged to comply with 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.”</i></p> <p>Rationale: Public undertakings should be required to publish data referenced in the PSI Directive. Leaving it at the discretion of public undertakings to make their data reusable risks to significantly hamper the availability of key data, important for the acceleration of growth in Europe’s data economy.</p>
<p>Paragraph (42), page 12 In relation to any re-use that is made of the document, public sector bodies may impose conditions, where appropriate</p>	<p>Amendments to the PSI Directive: Add to the passage</p> <p><i>“Open licences available online, which</i></p>

<p>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.</p>	<p><i>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.”</i></p> <p>the following:</p> <p><i>“These open licences must comply with the Open Definition, and be selected from the Open Definition compliant licences. Preference shall be given to public domain dedication and attribution licences in accordance with the European LAPSI 2.0 licensing guidelines.”</i></p> <p>Amend the final sentence to say:</p> <p><i>“Therefore, Member States should encourage the use of open licences compliant with the Open Definition that should eventually become common practice across the Union.”</i></p> <p>Rationale: Significant issues arise when datasets are published using licenses that are incompatible. Only if standardised open licenses are used, a user can be confident that there are no legal barriers to combining different datasets.</p>
<p>Paragraph (58), page 16 In order to set in place conditions supporting the re-use of documents which is associated with important socio-economic benefits having a particular high value for economy and society, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the adoption of a list of high-value datasets among the documents to which this Directive applies, along with the modalities of their publication and re-use.</p> <p>It is of particular importance that the Commission carry out appropriate</p>	<p>Amendments to the PSI Directive: Amend paragraph (58) to include the following:</p> <p><i>“The public will be granted access to summary documents and meeting notes of expert consultations and be enabled to contribute feedback to these. This may include to provide input to expert opinions or to develop own standpoints. The input of the public must be taken into account when preparing a delegated act, and expert groups must communicate to the public how they have used the public’s input.”</i></p> <p>Rationale: It must be ensured that the public will be able to participate in this definition process</p>

<p>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.</p>	<p>to gather multiple viewpoints and limit the risks of biased value assessments.</p>
<p>Paragraph (59), page 17 An EU-wide list of datasets with a particular potential to generate socio-economic benefits together with harmonised re-use conditions constitutes an important enabler of cross-border data applications and services. In the process leading to the establishment of the list, the Commission should carry out appropriate consultations, including at expert level.</p> <p>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.</p>	<p>Amendments to the PSI Directive: Amend the following sentence to say:</p> <p><i>“In the process leading to the establishment of the list, the Commission should carry out appropriate consultations, including at expert level, as well as by taking into account and responding to feedback from members of the public.”</i></p> <p>Rationale: The public must have access to the methods, meeting notes, and consultations to define high value data. Article 13 must ensure that the public will be able to participate in this definition process to gather multiple viewpoints and limit the risks of biased value assessments.</p>
<p>Article 13 (3) By way of exception, the free availability referred to in paragraph 2 shall not apply to high-value datasets of public undertakings if the impact assessment referred to in Article 13(7) shows that making the datasets available for free will lead to a considerable distortion of competition in the respective markets.</p>	<p>Amendments to the PSI Directive: Amend Article 13(3) to include the following condition:</p> <p><i>“In accordance with article 7, all methods, meeting notes, and results of consultations used to calculate the costs and benefits of publishing high-value datasets must be publicly accessible, clearly laying out the reasons why market distortion is to be expected, and who brings these reasons forward.”</i></p> <p>Rationale:</p>

	<p>When defining high-value datasets, the PSI Directive should not rule out data generated under market conditions. A stronger transparency requirement must be added to enable the public to understand why market distortion is anticipated, including to communicate assessments of economic costs and societal benefits.</p>
<p>Article 13 (4) In addition to the conditions set out in paragraph 2, the Commission may define other applicable modalities, in particular</p> <ul style="list-style-type: none"> a) Any conditions for re-use b) formats of data and metadata and technical modalities of their publication and dissemination <p>(5) The selection of datasets for the list referred to in paragraph 1 shall be based on the assessment of their potential to generate socio-economic benefits, the number of users and the revenues they may help generate, and their potential for being combined with other datasets.</p> <p>(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.</p> <p>(7) The Commission shall conduct an impact assessment including a cost-benefit analysis prior to the adoption of the delegated act and ensure that the act is complementary to the existing sector based legal instruments with respect to the re-use of documents that belong to the scope of application of this Directive. Where high value datasets held by public undertakings are concerned, the impact assessment shall give special consideration to the role of public undertakings in a competitive economic environment.</p>	<p>Amendments to the PSI Directive: Amend Article 13(4)a to replace the possibility to add any conditions for re-use with the following:</p> <p><i>“High-value datasets must be made reusable under an open licence with the least restrictions possible, subject at most to requirements that preserve provenance and openness. Open licences must comply with the Open Definition, and be selected from the Open Definition compliant licences. Preference is given to public domain dedication and attribution licences in accordance with the European LAPSI 2.0 licensing guidelines.”</i></p> <p>Amend Article 13(5) to say:</p> <p><i>“The selection of datasets for the list referred to in paragraph 1 shall be based on a mix of expert judgement, results of public feedback, and quantitative calculations. This shall include the assessment of their potential to generate socio-economic benefits, the number of users and the revenues they may help generate, and their potential for being combined with other datasets. The rationale for weighing costs and benefits against one another shall be made accessible to the public.”</i></p> <p>Rationale: Currently the European Commission risks to create use silos if governments will be allowed to add “any restrictions on re-use” to the use terms of high-value datasets. Therefore a requirement for harmonised licences is necessary.</p> <p>Furthermore, the criteria, methods, and</p>

	<p>processes to determine high value must be transparent and accessible to the broader public to enable the public to negotiate benefits and to reflect the viewpoints of many stakeholders.</p> <p>It is paramount that mixed methods are used to define key data, from quantitative calculations, to expert judgement and public consultations.</p>
<p>Article 14(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.</p>	<p>Amendments to the PSI Directive: Amend article 14(4) to include the following:</p> <p><i>“Prior to the adoption of a delegated act, public consultations will be conducted during which objections and amendments to proposed delegated acts may be articulated. The results of public consultations shall inform the formulation of delegated acts.</i></p> <p>Rationale: The public should be able to proactively inform the development of delegated acts for high-value datasets instead of merely being able to track proposals for high-value datasets in the EU’s Interinstitutional Register of Delegated Acts.</p>
<p>Article 8(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.</p>	<p>Amendments to the PSI Directive: Amend article 8(2) as follows:</p> <p><i>“Standard open licences are those compliant with the Open Definition. Member states shall endorse the use of Open Definition compliant licences from Creative Commons and Open Data Commons when developing new open data policies, in accordance with the LAPSI 2.0 licensing guidelines.”</i></p> <p>Add the following provision:</p> <p><i>“Member states will enshrine legal compatibility tests in their open data policies to mandate the legal compatibility with other open licences. Legal compatibility tests should follow the recommendations outlined</i></p>

in the LAPSI 2.0 guidelines.”

Rationale:

Legal incompatibilities may jeopardise the Digital Single Market.

In accordance with the [LAPSI 2.0 licensing guidelines](#), standard open licences developed by Creative Commons or Open Data Commons are the best option for the Digital Single Market.

Europe’s data economy can only benefit from open data if licence terms are standardised. This allows data from different member states to be combined without legal issues, and enables to combine datasets, create cross-country applications, and spark innovation. Europe’s licensing ecosystem is a patchwork of many (possibly conflicting) terms, creating use silos and legal uncertainty.

The current proposal does not only speak vaguely about standard open licences, and makes national policies responsible to add “less restrictive terms than those outlined in the PSI Directive”. It also contradicts its aim to smoothen the digital Single Market encouraging the creation of bespoke licences, suggesting that governments may add new licence terms with regards to real-time data publication. Currently the PSI Directive would allow the European Commission to add “any conditions for re-use” to high-value datasets, thereby encouraging to create legal incompatibilities (see Article 13 (4.a)). We strongly recommend that the PSI Directive draws on the EU co-funded [LAPSI 2.0 recommendations](#) to understand licence incompatibilities and ensure a compatible open licence ecosystem.