



# **Open data and Re-use of Public Sector Information**

## **Open Data Directive and HVDs**

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## European Council Conclusions (21 – 22 March 2019)

*"The EU needs to go further in developing a competitive, secure, inclusive and ethical digital economy with world-class connectivity. **Special emphasis should be placed on access to, sharing of and use of data, on data security and on Artificial Intelligence, in an environment of trust.**"*

## Today the value of the data economy



2017

**336**

2018

**377**

Growth '18/'17



**12%**



Share of EU GDP, '18

**2.6%**

## Expected growth if right conditions and framework are in place:



2020

**477**

2025

**1,054**

CAGR '25/'20



**17.2%**



Share of EU GDP, '25

**6.3%**



Public sector and  
publicly funded data



Private sector data



Research data

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

Guidance on sharing  
private sector data  
in the European  
data economy  
(B2B & B2G)

Updated  
Recommendation  
on access to and  
preservation of  
scientific  
information

# 2018 DATA PACKAGE

*Different policy instruments for different types of data*

# Object of this presentation

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 ('Open Data Directive')

NB:

Directive 2003/98/EC of on the reuse of public sector information ('PSI Directive') as amended by Directive 2013/37/EU

remains in force until 17 July 2021

more Open Data can help make  
**better decisions**



2,549 hours  
**wasted**  
finding parking



**7,000 lives**  
saved due to  
quicker response



**629 million**  
hours saved is  
equivalent to  
**€ 27.9 bn**



**5.5% less**  
road fatalities



Congestion  
**costs are**  
**1% of GDP**

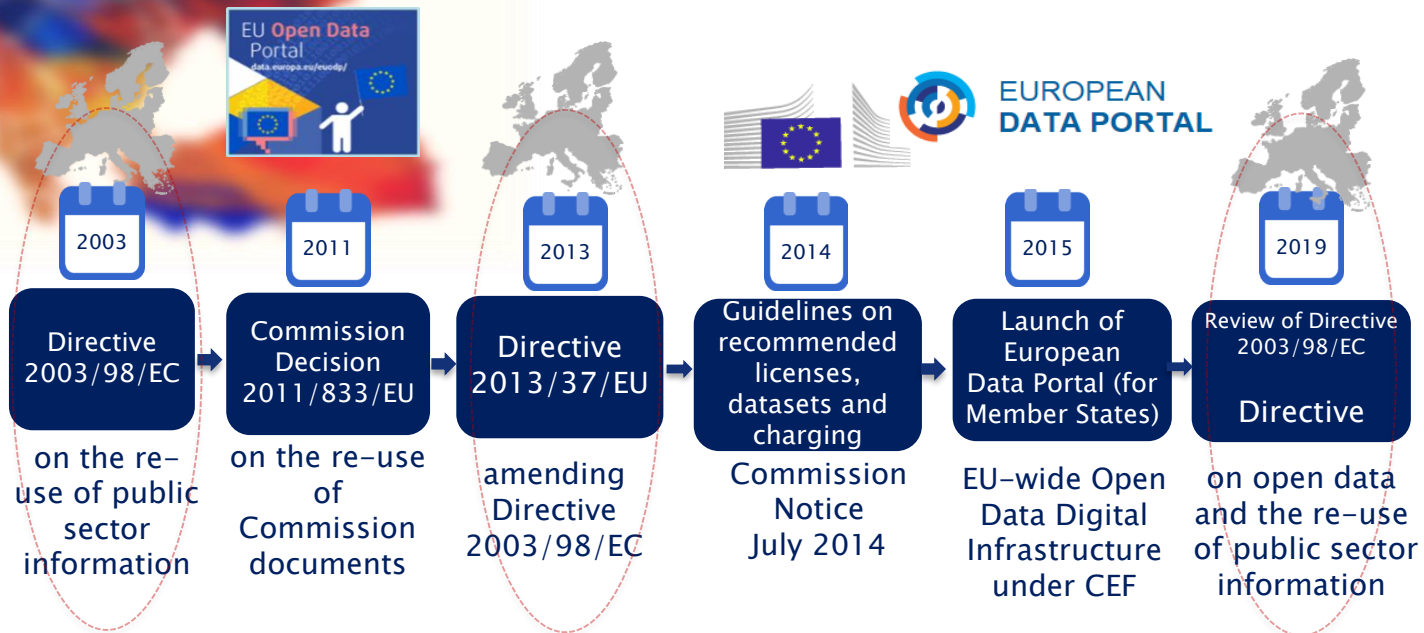


**16% less**  
less energy used

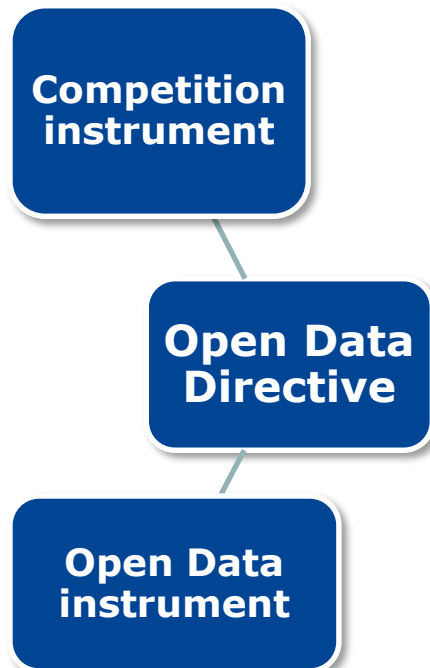




## Milestones of EU open data policy



# Open Data Directive – basic facts (I)



Introduces a minimal set of rules to make more data from the public sector easier and cheaper to use for innovation

The Directive does not apply to:

- data not publicly accessible under access to information regimes
- information protected by third party intellectual property rights

Application of the Directive must fully respect the Union and the national data protection rules

**Latest revision in 2019:** now entitled '**Directive on Open Data and the re-use of public sector information**'



# Open Data Directive – basic facts (II)

## **What it covers (articles 1&2):**

- Any type of content held by public bodies
- Accessible to the public
- Not subject to third party copyright

## **Who is concerned (article 1)**

- Bodies of public administration – central, regional, local
- Certain cultural institutions: Museums, libraries and archives
- Certain public undertakings
- Research funding and research performing organisations

# Open Data Directive: What is new (I)?

The new Directive is a recast: it brings together the original Directive and all the amendments made to it, in a single legal act. It introduces the following key changes:

- **List of High Value Datasets** (free of charge, disseminated in machine readable formats through APIs) to be laid down in an implementing act, within a thematic range indicated in an Annex (which can be extended via delegated act)
- **New rules on charging:** free re-use becomes a principle, with narrowly defined exceptions (and stronger transparency, e.g.: list of all public bodies that charge above marginal costs of dissemination to be made public)
- **Extension of scope:**
  - a) Re-use of data held by public undertakings in utilities and transport sector will now comply with the principles of transparency, non-discrimination and non-exclusivity set out in the Directive (unless exempted from public procurement rules under article 34 of the Procurement Directive)
  - a) Re-use of publicly-funded research data will also be governed by the rules of the Directive (if data already accessible via repositories). MS under obligation to adopt open access policies to support availability of research data.

# Open Data Directive - what is new (II)?

- **Prevention of data lock-in:** Directive imposes new transparency and review requirements to public-private agreements which may lead to a situation in which the range of potential re-users would be severely restricted
- **Real-time data and APIs:** obligation on public sector bodies and public undertakings to make dynamic data available for re-use immediately after collection, via suitable Application Programming Interfaces (APIs) and where relevant as a bulk download
- **Licensing:** to promote openness, the re-use of documents shall not be subject to any conditions, unless justified by public interest
- **Practical arrangements to facilitate re-use:** Member States shall encourage the availability of documents according to the principle of 'open by design and by default', facilitate metadata aggregation at Union level, promote data preservation and simplify access to documents
- **New title:** The Directive will now be entitled 'Directive on Open Data and the re-use of public sector information' to reflect the shift towards a fully free/open re-use.

# High value datasets – key points

Datasets listed in the implementing act to be made available for free, in machine-readable formats, via APIs and (where relevant) as bulk downloads

## Exceptions:

- Free availability requirement shall not apply to public undertakings if there is a risk of competition distortion
- In case of a substantial impact on the budget of the public bodies involved, free availability can be delayed by up to 2 years

# Thematic categories of high value datasets

***Geospatial***

***Earth  
observation and  
environment***

***Meteorological***

***Statistics***

***Companies and  
company  
ownership***

***Mobility***

An Implementing Regulation planned for 2021 will define the list of specific high-value data sets within the 6 thematic categories set out in Annex I among the documents to which the Directive applies

*Examples in recital 66:*

"the thematic categories listed in the Annex could inter alia cover postcodes, national and local maps (Geospatial), energy consumption and satellite images (Earth observation and environment ), in situ data from instruments and weather forecasts (Meteorological), demographic and economic indicators (Statistics), business registers and registration identifiers (Companies and company ownership), road signs and inland waterways (Mobility)."

Categories can be extended (delegated act).

# Availability for re-use of research data resulting from public funding

**Two elements** of Open access to research information are **lifted into the Directive (new article 10)**:

- Requirement for the Member States to **adopt national Open Access policies** to further encourage the availability and re-use of research data.
- **Re-use layer of publicly-funded research data already publicly accessible via repositories.**



# Availability for re-use of research data resulting from public funding

## **Reusability of all of the research data?**

*No. Only if they are publicly funded and researchers, research performing organisations or research funding organisations have already made them publicly available through a repository.*

## **Unlimited scope of the data to be made re-usable?**

*No. Research data in a digital form, other than scientific publications, which are collected or produced in the course of scientific research activities. Other documents continue to be exempt (data papers or a paper in a data journal).*

## **Protection of interests of private funders?**

*Yes. Concerns in relation to privacy, protection of personal data, confidentiality, national security, legitimate commercial interests, such as trade secrets, and to intellectual property rights of third parties should be duly taken into account, according to the principle 'as open as possible, as closed as necessary'.*

## **All the data of research organisations to be made available?**

*No. The Directive applies to such hybrid organisations only in their capacity as research performing organisations and to their research data*

# Availability for re-use of data held by public undertakings

## **Are public undertakings obliged to allow the re-use of their data?**

*Generally speaking – no. The following conditions must be satisfied for the data to be covered by the OD Directive:*

- It is held by one of the public undertakings defined in art. 1(1)b
- It was produced in the context of provision of services in the general interest
- It is not related to activities directly exposed to competition which are exempted from procurement rules by Article 34 of Directive 2014/25/EU
- Its re-use is already mandated by national or EU rules or
- It is being offered for re-use by the public undertaking itself
- Specific case: The data is included in the list of High Value Datasets

## **Does the re-use of data have to be free of charge?**

*No. Apart from the special case of HVDs, the re-use of data held by public undertakings can be charged for, within the limits of article 6(4) – 'cost recovery'.*

## **Are undertakings subject to a full set of obligations under the Directive?**

*No. They do not need to apply Chapter II of the Directive (requests for re-use)*

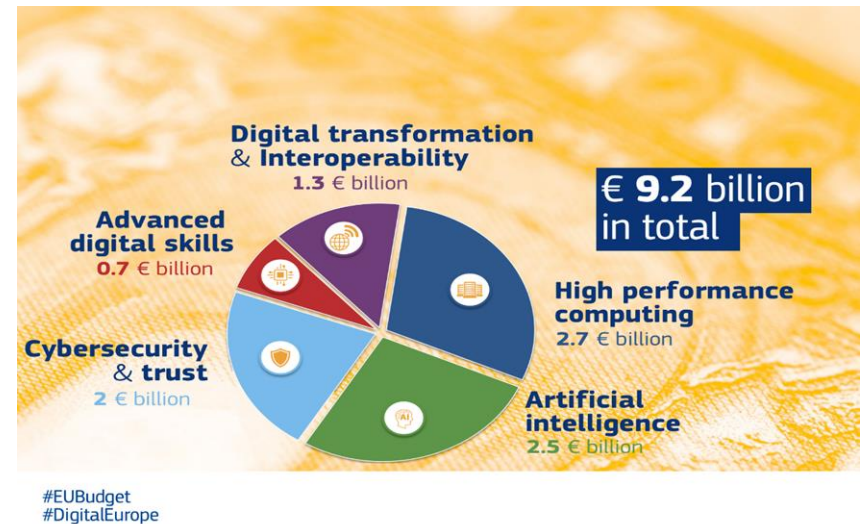
## Supporting activities

### Open Data digital infrastructure: European Data Portal (harvesting 1 million datasets)

**Connected Europe Facility (CEF):** actions funded from the 2019-2020 Work Programme to improve the availability for re-use of existing open data falling into the high-value datasets categories,

**Digital Europe Programme (DEP):** Specific Objective 2 'Data for Artificial Intelligence (AI)' will strengthen core AI capacities in Europe, including data resources. Calls will focus on, inter alia, making specific datasets interoperable and fit for AI applications. Activities could cover, for example:

- **curation;**
- **semantic annotation;**
- **harmonisation of metadata;**
- **facilitating publication in machine-readable formats and accessibility through APIs.**





# **Thank you very much for your attention**

**For further questions:**

**email:** [CNECT-G1@ec.europa.eu](mailto:CNECT-G1@ec.europa.eu)  
Unit G1 of DG CONNECT

**Internet pages with more information:**

<https://ec.europa.eu/digital-single-market/en/open-data>

<https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=celex:32019L1024>

# Annexes

# Main obligations on public sector data holders

- be transparent on conditions for re-use;
- avoid any form of discrimination between re-users, including a re-use by the public sector body itself;
- deal with applications for re-use within a time limit;
- not enter into exclusive arrangements other than in exceptional circumstances.
- Limit charges (Free re-use by default; covering marginal cost of reproduction is possible; narrowly defined exceptions that allow full recovery of costs of data)



# How do I know what obligations from the Directive apply?

Situation: Someone asks for re-use of specific data (e.g. economic statistics). What does the PSB need to do?

Is the PSB a body covered by the Directive (see article 1(1))?

If no: No obligations from the Directive.

If yes: Is the information requested excluded from the scope of application of the Directive (see article 1(2))?

If yes: only procedural obligations from article 4 apply;

If no: Is the data accessible (without need to show particular interest in order to be granted access) under national access to information law?

If no: Only procedural obligations from article 4 apply;

If yes: Is the data requested personal data?

If yes: Case-by-case assessment whether reuse compliant with data protection rules; procedural obligations of article 4 apply

# Obligations from the Directive (I)

Procedural requirements (article 4):

20 working days to reply to a request (may be prolonged by another 20 working days)

When refusing reuse requests:

Obligation to explain grounds for refusal;  
Obligation to indicate third party rights holders;  
Obligation to mention a means of redress.

At the same time, public sector bodies should make necessary arrangements to facilitate the online search and discovery of the documents they keep.

# Obligations from the Directive (II)

## Rules on administrative charges for reuse (article 6)

**Default rule:** for free

**Exception** Marginal costs of reproduction, provision and dissemination

### **Exception under special conditions:**

Full cost recovery (total income from charges may not be higher than total costs plus reasonable return on investment)

Applies to:

- Museums, libraries and archives
- Public bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks (NB: list of all public bodies that charge above marginal costs of dissemination has to be made public);
- Public undertakings (as far as their documents are covered)

# Obligations from the Directive (III)

Fair trading and non-discrimination  
(articles 7, 8, 11, 12):

- The re-use of documents shall not be subject to any conditions, unless justified by public interest;
- Conditions for re-use shall be the same for all comparable categories of re-use (e.g.: for all commercial re-users)
- Conditions for re-use shall be established before the first re-use request and made public, preferably electronically;
- As a general rule, arrangements between public-sector bodies or public undertakings holding the documents and third parties cannot grant exclusive rights.
- In narrowly defined cases where the directive allows for the conclusion of such arrangements, their validity is subject to regular review and special transparency requirements apply.
- Specific rules with respect to digitisation agreements in museums, libraries and archives

## Obligations from the Directive (IV)

No cross-subsidies

Ensuring a level playing field between private reusers and PSBs engaging in commercial activities (article 11(2)):

Should a PSB engage in commercial activities outside its public tasks: Equal treatment with commercial reusers should be ensured (separation of the commercial 'branch' of the PSB from the 'branch' fulfilling public tasks)