

Amendment of the Directive on the Re-use of Public Sector Information

The new legal framework for open data

On 15th April 2013, [the Council of the European Union approved the amendment of Directive 2003/98/EC on the Re-use of Public Sector Information](#). [Final approval by the European Parliament of the legal](#) text and its publication in the Official Journal of the European Union is pending in order for the new regulation to come into force. Almost a year and a half following the publication of the [European Commission's](#) initial proposal, Europe has a new legal framework for the Re-use of Public Sector Information, in accordance with the technological evolution witnessed since the approval of the original [Directive 2003/98/EC](#), which recognises the economic and social value of the publication of open data as an engine for transparency and the call for accountability of public powers in its introduction.

Before taking an in-depth look at the novelties of the amended version of the Directive, it is worth reviewing the path that has brought us to this point. The amendment of the Directive is, to a great extent, an effort to complete the legislative work of its original version, based on the 1999 Green Paper [“PSI in the Information Society”](#). Charges for public information or the relationship between intellectual property and personal data protection and re-use, among others, were aspects that had been analysed in that paper and whose legislation is still being perfected.

As of 2010, the process of amending Directive 2003/98/EC has been accelerated. With the approval of the Digital Agenda for Europe, the European Commission began work on putting forward a proposal for a new legal framework for re-use. The first step of this amendment was a public consultation regarding the aspects that the community of re-users and

Administrations considered could be improved. Based on the results of this consultation and the growing demand for an increasingly more extensive European Community fostering open data, the European Commission published the amendment proposal and the communication [“Open Data. An engine for innovation, growth and transparent governance” COM \(2011\) 882](#) in December 2011, which sets out the European strategy for the forthcoming years.

The amended version of Directive 2003/98/EC maintains the view that the Re-use of Public Sector Information adds value to the access rules to official documents. However, it introduces the general authorisation for re-use of any public document in accordance with the access rules of each Member State. The general authorisation of the re-use of public information is a qualitative leap within the framework of the Union, which had already been introduced in our country for the state public sector by virtue of [Royal Decree 1495/2011](#).

The legal text introduces a limited extension of its field of application. European regulations on the Re-use of Public Sector Information will now be applicable to public archives, libraries and museums, but express authorisation of re-use is required, in line with the legal regulations of the initial version of Directive 2003/98/EC.

As for the technical and legal rules regarding publication, the main novelty of the regulation is the introduction of the recommendation to preferably publish information in standard, open and machine-readable formats, all of which with as much granularity as possible. Having recognised the right to re-use, it is recommended that this re-use should be without conditions or with the minimum possible conditions, set out in a licence for use, which is preferably available by electronic means.

Charges for the re-use of public sector information are still allowed, although the Directive seeks to limit the possibility of applying them. On one hand, the charges established should in principle be limited to marginal costs, only allowing a return on investment to be applied in those cases in which the public body owning the document needs to do so in order to maintain its public activity or to cover production costs. On the other hand, these charges should be set according to transparent criteria, including their electronic publication, with an obligation for greater justification as the charges move away from the principle of marginal costs.

The amendment of the Directive maintains the possibility of exclusive agreements regarding the re-use of information on grounds of public interest. In general, the duration limit of three years for such agreements is maintained. In the field of museums, archives and libraries, in which returns on investment require greater stability and longer agreement periods, the new legal regulation paves the way for public-private cooperation agreements of up to ten years.

It is also worth highlighting that the Directive grants the European Commission powers in two areas. First of all, the Member States must report on the implementation of the Directive every 36 months, paying particular attention to reporting cases of conflict between Administration and re-users received by the impartial supervising body that is also introduced by the Directive. Secondly, the Commission must draw up guidelines regarding licenses, charges, data for preferential publication, which will not be legally binding, but will introduce a harmonising factor in the implementation of the Directive in all Member States.

Our country, like the rest of the Member States, has a period of two years for the transposition of the amendment of the Directive. The digital single

market on the Re-use of Public Sector Information is closer today, and the European Commission estimates that the economic gain in the European Union amounts to € 40 billion.