



*European Economic and Social Committee*

**TEN/665**

**Accessibility and re-use of public and publicly funded data**

## **OPINION**

European Economic and Social Committee

**Proposal for a Directive of the European Parliament and of the Council on the re-use of public sector information (recast) and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Towards a common European data space"**

[COM(2018) 234 final - 2018/0111 (COD); COM(2018) 232 final]

Rapporteur: **Baiba MILTOVIČA**

Consultation	European Parliament, 28/05/2018 Council of the European Union, 04/06/2018
Legal basis	Articles 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	06/09/2018/
Adopted at plenary	17/10/2018
Plenary session No	538
Outcome of vote (for/against/abstentions)	122/0/3

## 1. Conclusions and recommendations

1.1 The reuse of public sector data will strengthen the EU's data economy and assist the development of society and general prosperity. The EESC takes the view that the directive and the planned improvements and additions to it are particularly important in resolving the problems that are so important for the whole of society relating to the implementation of the Digital Single Market Strategy.

1.2 The EESC has evaluated the consistency of the planned changes to the directive with the aims for improvement, generally welcomes the Commission's proposal for a revised directive and is sure that the proposed changes will have a beneficial effect on the general aims for improvement. It does, however, think that the proposed changes are not sufficient to effectively improve the problematic areas.

1.3 The EESC has studied the Commission Communication "Towards a common European data space" and endorses the principles and measures set out therein, which will make it easier for companies and the public sector to access and re-use data from different sources, economic sectors and specialist areas.

1.4 Conclusions:

1.4.1 The EESC takes the view that the proposed changes to the directive concerning the general aims for improvement should seek to achieve the following:

- Improving the already existing positive impact of the PSI Directive, strengthening the EU data economy, increasing the amount of re-usable public sector data;
- Establishing comparable conditions for the provision of data across the Union and ensuring fair competition (see point 3.2.2);
- Reducing administrative burden over the long term for holders of re-usable public sector information (see point 3.2.3);
- Strengthening the position of SMEs in the data market by making sure that obstacles do not prevent them from re-using public data for commercial purposes (see point 3.2.4). However, the aim of strengthening SMEs must not be jeopardised by overly strict prohibitions of data lock in impeding the development and output of innovative, local projects with SMEs.

1.4.2 The EESC thinks that the planned changes to the directive regarding the challenges identified will improve the situation in general and make it easier to solve the problems targeted. However, the following observations should be made regarding the individual problems identified:

- "**Dynamic data/APIs**" – the changes are only partially appropriate for improving the problem area, since the result of the amendments is neither verifiable nor foreseeable. In the short term, in particular, the improvement may prove inadequate (see points 3.1.3, 3.3.1);
- "**Charging**" – the changes are appropriate for improving the problem area and will establish compensation for increased charges and encourage the re-use of data, primarily by making it

more accessible for SMEs (see points 3.1.5, 3.3.2), at the same time, the EESC points out that appropriate compensation for the expenses incurred is essential for public companies;

- **"Scope of the PSI Directive"** – the changes are insufficient, since extending the directive's scope is a pure formality and does not involve any real additional obligations. This does not solve the problem at hand (see points 3.1.1, 3.1.3, 3.3.3);
- **"Lock-in of public sector data"** – the changes are insufficient and will only partially and indirectly help to solve the issue of the lock-in of public sector data (see points 3.1.4, 3.3.4).

## 1.5 Recommendations

- 1.5.1 EESC position: The "lower legislative intensity" options chosen by the Commission are not sufficient to address all the problems identified regarding the effectiveness of the directive (see point 4.1.3).

EESC recommendation: If one of the main reasons for amending the directive and one of the main goals is to tackle the problems identified, a more active and targeted approach is needed and a "high legislative intensity" option must be chosen in order to solve specific problems. This may be accompanied by a change to the options listed in the impact assessment.

- 1.5.2 EESC position: It is essential to remedy the shortcomings identified by the Regulatory Scrutiny Board and to take the corresponding corrective measures in relation to the amendments to the directive (see point 4.1.2).

EESC recommendation: One such corrective measure is to set out plainly and simply in the directive which legal provision takes precedence in the event of conflicts between this directive and some other pieces of legislation: the General Data Protection Regulation, the Database Directive or the INSPIRE Directive.

- 1.5.3 EESC position: The impact assessment insufficiently reflects the views of stakeholders on the choice between high or lower legislative intensity options (see point 4.1.4).

EESC recommendation: A further evaluation should be conducted of the position of the stakeholder groups concerning the choice of solutions for tackling the individual problems and assessing the overall societal relevance of the various stakeholder groups, leading to a more objective and more informed choice of options for individual issues.

- 1.5.4 EESC position: Because information and documents increasingly have to be produced within a short period, the maximum processing time of twenty working days is in some cases too long (see point 3.1.2).

EESC recommendation: The possibility should be considered to give more flexibility.

- 1.5.5 EESC position: The draft directive and the impact assessment take insufficient account of the main aims of a number of stakeholder groups (see point 4.2.1).

EESC recommendation: The following points, which have received insufficient attention, should be further assessed.

- a possible reduction in employment in the public sector due to automation, the need for retraining of workers and the resolving of social problems;
- equal rights and obligations for the public and private sectors, with regard to access to data;
- compensation for public enterprises;
- protection of critical infrastructure;
- making sure the directive does not overlap with local or industry-specific legislation;
- distortion of competition for public undertakings.

1.5.6 EESC position: In the proposed recast of the Directive, the Commission purposely points to the need to modify the previously identified shortcomings of the directive. However, it does not provide significant improvements in relation to the previously identified shortcomings because it does not strike a balance between the varying interests of the different stakeholder groups and especially does not provide similar conditions for the public and private companies in connection with the exchange of information.

EESC recommendation: The Committee would urge the Commission to reconsider its position on improvements of problems found in the assessment of the previous Directive and should specify:

- the objectives to be achieved by recast of the directive, taking into account the current situation with different interests and concerns of the different stakeholder groups;
- the conditions of transition for gradual progress towards the objectives of the recast of the directive, by relating the different points of the Directive with other legislative documents or activities that allow to balance differing interests of the stakeholder groups.

## 2. **Overview of the contents of the proposal for a directive**

### 2.1 **Background to the amendment to the directive**

2.1.1 The public sector in the EU Member States produces huge amounts of data that are used to bring greater efficiency to the delivery of private and public services and to improve decision-making. The EU has therefore been promoting the re-use of public sector information (PSI) for several years. The review of the PSI Directive is an important initiative on accessibility and re-use of public and publicly funded data announced by the Commission in the Mid-Term Review of the Digital Single Market (DSM) Strategy.

2.1.2 The Commission has revised the directive and adapted it to the recent developments in the field of data management and use:

- Directive 2003/98/EC of the European Parliament and the Council on the re-use of public sector information ("PSI Directive") was adopted on 17 November 2003.

**The aim was to facilitate the re-use of PSI throughout the Union** by harmonising the basic conditions for re-use and removing major barriers to re-use in the internal market.

- Directive 2003/98/EC was amended in July 2013 by Directive 2013/37/EU.

**The changes introduced an obligation to allow the re-use of generally accessible public data and expanded the scope of the directive. A default charging rule was established** that limited charging to the marginal cost for reproduction, provision and dissemination of the information and **required public sector bodies to be more transparent about their charging rules and the conditions they apply.**

- A proposal for a **recast** of the PSI Directive was presented on 25 April 2018 (COM (2018) 234 final). This proposal substantially amends Directive 2003/98/EC and adds a number of new provisions. In accordance with Article 13 of the PSI Directive, the directive's current application was reviewed and attention drawn to matters of concern. To better capitalise on the potential of public sector information, **the revised directive provides for the improvement of a number of areas identified as problematic in the assessment.**

2.1.3 The proposed amendment of the directive is **part of the third data package**, which was adopted by the European Commission on 25 April 2018. This also includes the Communication *Towards a common European data space*<sup>1</sup>, in which access to private sector data is considered to be in the public interest and in which the principles are laid down for the exchange of data between businesses (B2B), and between businesses and public authorities (B2G).

2.1.3.1 The communication lists the key principles for the re-use of private-sector data (B2B):

- Transparency;
- Shared value creation;
- Respect for each other's commercial interests;
- Ensure undistorted competition;
- Minimised data lock-in.

2.1.3.2 The communication also lists the key principles for the re-use of private-sector data in the public sector (B2G):

- Proportionality in the use of private sector data;
- Purpose limitation;
- "Do no harm";
- Conditions for data re-use;
- Mitigate limitations of private sector data;
- Transparency and societal participation.

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<sup>1</sup>

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards a common European data space (COM(2018) 232 final).

## 2.2 Aims of the amendment to the directive

### 2.2.1 General aims:

- strengthening the beneficial effect of both the PSI Directive and the EU's data economy by increasing the amount of public sector data available for re-use;
- establishing comparable conditions for the provision of data across the Union, thereby ensuring fair competition;
- reducing administrative burden for holders of re-usable public sector information;
- strengthening the position of SMEs in the data market by making sure that obstacles do not prevent them from re-using public data for commercial purposes.

### 2.2.2 Specific aims:

- improving the four main areas in which the earlier impact assessment of the directive's effectiveness identified problems.

## 2.3 The main problem areas regarding the effectiveness of the directive (areas where there is room for improvement)

### 2.3.1 Problem area: **Dynamic data/APIs:**

- incomplete real-time access to data held by public sector bodies, especially to dynamic – i.e. periodically updated – data;
- insufficient allocation and use of appropriate technical means (Application Programming Interfaces (API)).

### 2.3.2 Problem area: **Charging:**

- public bodies make use of various currently allowed exceptions and charge far higher fees for the re-use of public sector data than are needed to cover costs, leading to market distortions: support is given to large companies, while obstacles are put in the way of small and medium-sized enterprises (SMEs), which cannot afford to buy public sector data.

### 2.3.3 Problem area: **Scope of the PSI Directive:**

- the directive does not apply to those operating in the transport and utilities sector;
- the directive does not apply to research data obtained with the help of public funding.

### 2.3.4 Problem area: **Lock-in of public sector data**

- holders of public sector data conclude exclusive agreements with the private sector to secure additional revenue from their data, thus limiting the number of potential re-users of data.

## 2.4 **The options for improving problem areas and the option chosen**

2.4.1 The impact assessment<sup>2</sup> considered possible options for future measures:

- a) a baseline scenario (maintaining the current approach without changes);
- b) discontinuing existing EU action (repeal of the PSI Directive);
- c) soft law measures alone;
- d) a packaged solution consisting of both amendments of the PSI Directive and soft law.

2.4.2 Choice of option to improve the problem areas:

- option (a) was retained as the baseline scenario against which the benefits of the other options were compared;
- options (b) and (c) were discarded at an early stage;
- option (d) served as the basis for two sub-options:
  - one option with all elements of lower legislative intensity;
  - one option with all elements of higher legislative intensity.

The option chosen by the Commission is a mixed package of lower intensity regulatory intervention combined with an update of existing soft law – overall, a "lower legislative intensity" approach.

## 3. **General comments**

The EESC has assessed the proposed amendments to the directive from a threefold perspective:

- Main changes and additions to the original text of the directive (see point 3.1);
- Consistency of the amendments and additions to the directive with the general aims of the amendments to the directive (see point 3.2);
- Consistency of the amendments and additions to the directive with the most important areas with scope for improvement (see point 3.3).

### 3.1 **Main changes and additions to the original directive**

3.1.1 Chapter I of the directive – General provisions

3.1.1.1 Amendments to the directive in Article 1 – Subject matter and scope

- Extension of the scope of the directive to include data from public services and transport services as well as research data;
- The explanatory text of the directive<sup>3</sup> states:

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<sup>2</sup> Impact assessment (SWD(2018) 127).

<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council on the re-use of public sector information (recast), COM(2018) 234 final.



- Data in the transport and utilities sector: A limited set of obligations will apply: "public undertakings can charge above marginal costs for dissemination and are under no obligation to release the data they do not want to release".
- Research data: "Member States will be obliged to develop policies for open access to research data [...]". This is in reality an empty stipulation and leaves all activity relating to this matter to the discretion of Member States (as is currently the case).

**EESC position:**

- The Committee endorses in part the changes proposed, but considers that they offer an inadequate solution to the issue of the scope of the PSI Directive, since the extension of this scope may lead to market distortions between public companies and private companies operating in the same market. The extension of the scope also to private companies can solve that problem and, at the same time, promote innovation in public companies.
- The planned changes involve additional work and costs.

### 3.1.2 Chapter II of the directive – Requests for re-use

Amendments to the directive in Article 4 (Requirements applicable to the processing of requests for re-use):

- Exceptions identified where the requirements applicable to the processing of requests for re-use do not apply.

**EESC position:**

- The EESC supports the proposed changes regarding the exceptions, but takes the view that, because information and documents increasingly have to be produced quickly, the maximum processing time of twenty working days can be shorter in the case of requests involving data that can be easily made available.

### 3.1.3 Chapter III of the directive – Conditions for re-use

Amendments to the directive in Article 5 – Available formats

- Public sector bodies and public undertakings are required to make dynamic data available for re-use immediately after collection, via suitable Application Programming Interfaces (APIs);
- The directive requires that: *Where making available documents immediately after collection would exceed the financial and technical capacities of the public sector body or the public undertaking, documents referred to in paragraph 4 shall be made available in a timeframe that does not unduly impair the exploitation of their economic potential.*
- The option is chosen which provides for "a 'soft' obligation for Member States to make dynamic data available in a timely manner and to introduce APIs" (lower legislative intensity option).

**EESC position:**

- The EESC endorses in part the proposed changes and takes the view that this will generally help to solve the problem of "dynamic data". However, the result of the amendments is neither verifiable nor foreseeable and – particularly in the short term – the result of the improvement may prove insufficient;
- Data holders will initially incur additional costs (for establishing APIs and technology take-up) but gains for data holders are expected in the long run through improved working practices (consideration should also be given to possible changes in employment in the civil service due to automation and the need to solve social problems).

## Amendments to the directive in Article 10 – Availability and re-use of research data

- It is specified that Member States shall support the availability of research data by adopting national policies and relevant actions aiming at making all publicly funded research data openly available ('open access policies').

**EESC position:**

- The EESC endorses in part the new version, which it thinks will generally improve the effectiveness of the PSI Directive but is not the answer to the problem regarding the scope of the PSI Directive, since it is declarative, with the effect that nothing is required at EU level and all possible activities are left to the discretion of the individual Member State.

## 3.1.4 Chapter IV of the directive – Non-discrimination and fair trading

## Amendments to the directive in Article 12 – Prohibition of exclusive arrangements

- It is required that legal or practical arrangements that, without expressly granting an exclusive right, could restrict the re-use of documents must be made publicly available at least two months before their coming into effect;
- The chosen option only sets transparency requirements ("lower legislative intensity" option), but no practices are prohibited that lead to the lock-in of data ("high legislative intensity" option).

**EESC position:**

- The Committee endorses in part the proposed changes and considers that they generally help to resolve the problem concerning the lock-in of public sector data. However, the aim of strengthening SMEs must not be jeopardised by overly strict prohibitions of data lock in impeding the development and output of innovative, local projects with SMEs.

### 3.1.5 Chapter V of the directive – High value datasets

#### Amendments to the directive in Article 13 – List of high value datasets

- The Commission sets out a list of high value datasets and arrangements for how they are published and re-used.

#### **EESC position:**

- The EESC supports the proposed changes and thinks that this will increase the re-use of public sector information;
- It should be borne in mind that this could involve additional expenditure for the introduction of new technology and reduced revenues for data holders;
- There is no clear information on procedures for the compilation, maintenance and use of high-quality data sets;
- There is no clear information on mechanisms for compensating data holders for making data available free of charge.

### 3.2 Consistency of the amendments and additions to the directive with the general aims of the changes to the directive

3.2.1 **Aim:** Further improving the already existing positive impact of the PSI Directive, strengthening the EU data economy, increasing the amount of re-usable public sector data.

**EESC position:** The planned changes are generally in line with the overall objective.

3.2.2 **Aim:** Establishing comparable conditions for the provision of data across the Union, thereby ensuring fair competition.

**EESC position:** The proposed amendments are directly and unequivocally targeted at this objective, in that:

- the provisions governing charging are improved – (Article 6 of the directive);
- the opportunities to conclude exclusive agreements are more strictly regulated – (Article 12 of the directive);
- provision of data free of charge and of high-value datasets is closely regulated – (Article 13 of the directive);
- at the same time, the EESC points out the danger that unilateral obligations for public companies which are in direct competition with private companies result in market distortions.

3.2.3 **Aim:** Reducing administrative burden for holders of re-usable public sector information.

**EESC position:**

The planned are generally welcome:

- They will lead in the long term to a reduction in the administrative burden for holders of re-usable public sector information, in particular in conjunction with the use of new technological methods (Articles 5 and 13 of the directive);
- However, possible changes in employment in the civil service should be expected, with a consequent need to solve the related social problems.

3.2.4 **Aim:** Strengthening SMEs in the data market by making sure that obstacles do not prevent them from re-using public data for commercial purposes.

**EESC position:** This aim is addressed in the proposed amendments and, if implemented, they will improve the position of SMEs with regard to the re-use of public sector data (Articles 6, 12 and 13 of the directive). However, output, innovation and development of SMEs shall not be hindered by excessive obligation of passing on data of cooperation partners from the public sector or by the prohibition of exclusive rights.

3.3 **Consistency of the amendments and additions to the directive with the most important areas with scope for improvement**

3.3.1 Problem area: **Dynamic data/APIs:**

**Proposed improvements:**

- There is a "soft" obligation on Member States to make dynamic data available in a timely manner and to introduce APIs – (Article 5 of the directive);
- A stricter obligation on Member States to ensure the possibility of re-using a limited number of high-value datasets – (Article 13 of the directive).

**EESC position:**

- The proposed amendments are partially appropriate for improving this problem area (see point 3.1.3);
- The proposed amendments will help, in the long term, to solve the questions relating to access to dynamic data and to further the re-use of dynamic data and the use of new technologies (APIs) for automated data exchange. Making data available in a timely manner should be a soft obligation, making it possible to compensate for difficult local conditions and to address local practices.

3.3.2 Scope for improvement: **Charging**

**Proposed improvements:**

- Tighter rules on invoking the exceptions to the general rule that public sector bodies cannot charge more than marginal costs for dissemination – (Article 6 of the directive);
- Creation of a list of high value datasets that must be freely available in all Member States – (Article 13 of the directive).

**EESC position:**

- The proposed amendments are appropriate for improving this problem area (see point 3.1.5), at the same time, the EESC points out that appropriate compensation for the expenses incurred is essential for public companies;
- the proposed amendments will establish compensation for the increased charges and encourage the re-use of data, primarily by making it more accessible for SMEs.

**3.3.3 Scope for improvement: Scope of the PSI Directive****Proposed improvements:**

- Extension of the directive's subject matter and scope – (Article 1 of the directive);
- Member States will be obliged to develop policies for open access to research data resulting from publicly funded research while keeping flexibility in implementation (Article 10 of the directive).

**EESC position:**

- The proposed amendments are not enough to improve this problem area (see points 3.1.1, 3.1.3).

**3.3.4 Problem area: Lock-in of public sector data****Proposed improvements:**

- More rigorous requirements on non-exclusivity and transparency for public-private agreements related to public sector information – (Articles 11 and 12 of the directive).

**EESC position:**

- The proposed amendments are not enough to improve this problem area (see points 3.1.4);
- The proposed amendments will help in part to solve the problem of the lock-in of public sector data and promote the re-use of data. However, excessive measures to avoid data lock in must not create obstacles to innovative projects and partnerships.

## 4. Specific comments

### 4.1 Assessment of the impact of the planned amendments

4.1.1 The impact assessment of the proposed changes is an important document. It is the basis for conclusions and decisions on what the changes and additions should look like, which in turn will have a significant impact on the EU Member States.- This is why it is essential the impact assessment has a solid methodology that leads to objective and reliable results.

4.1.2 The main shortcomings identified in the opinion of the Regulatory Scrutiny Board<sup>4</sup>:

- The impact assessment does not adequately reflect stakeholder views. In particular, it does not sufficiently address stakeholder concerns about personal data security and database protection.
- The impact assessment does not sufficiently explain how the planned changes relate to the Database Directive and the General Data Protection Regulation.
- In the impact assessment the conceivable alternatives to the changes are not described thoroughly enough and the range of them is too narrow (or too uniform) to provide a genuine selection of alternative solutions.

#### **EESC position:**

- The main shortcomings identified by the Regulatory Scrutiny Board must be corrected;
- Corresponding corrective measures must, where necessary, be taken in relation to the amendments to the directive.

4.1.3 Interests of the affected groups listed in the summary of the impact assessment<sup>5</sup>:

- Data holders (public entities) tend to support the maintenance of the status quo regarding the re-use of public sector information, i.e. the "lower legislative intensity" option.
- Data re-users (including SMEs) prefer the option of swifter and more effective progress in increasing the amount of data re-used, i.e. the "high legislative intensity" option.

#### **EESC position:**

- Although the aim of the directive is to increase the volume of re-used data and to strengthen the position of SMEs in the data market, the possible market distortions must not be disregarded, thus the Commission has nevertheless decided to opt for "lower legislative intensity" action and so does not fully exploit the potential for improvement of the problem areas;

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<sup>4</sup> *Opinion of the Regulatory Scrutiny Board, SEC(2028) 206.*

<sup>5</sup> Executive summary of the impact assessment (SWD(2018) 128).

- In order to pursue the aims of the revision of the directive more effectively, the effectiveness of the measures taken must be evaluated.

#### 4.1.4 Stakeholder views identified and evaluated in the impact assessment<sup>6</sup>:

- Choosing the appropriate measures to solve problems ("lower legislative intensity" or "high legislative intensity" options) requires that the views of stakeholders be identified;
- The impact assessment reflects the views of the various stakeholders on the overall evaluation of the operation of the directive and desirable changes.
- EESC position:
- The impact assessment does not reflect the views of stakeholders on the choice between high or lower legislative intensity options in a sufficiently specific way;
- No distinction is made within stakeholder groups on the basis of different interests and opportunities, type of information, type of activity (e.g. data holders who are not paid for providing data, data holders who are paid for providing data, data users - large companies, SMEs, other public sector entities);
- The position of each interest group on each possible solution option for each individual problem has not been identified;
- There is no assessment of the overall societal relevance of each stakeholder group and thus an assessment of its representativeness and of the actual scale of the impact.

#### 4.2 **Other insufficiently covered points concerning the directive**

4.2.1 The EESC believes that key concerns of several stakeholder groups have not been given sufficient consideration in the proposal for a directive and the impact assessment. The Committee calls for detailed consideration of the following issues:

- equal rights and obligations for the public and private sectors, with regard to access to data;
- compensation to the public sector for providing free access to public data;
- protection of "critical infrastructure" – exemptions for critical infrastructure from the application of the directive;
- avoidance of duplication – adapting the directive to the existing sectoral legislation on the exchange and use of data;
- fair competition – threat to public undertakings in cases where they have to provide competing private firms with information free of charge;
- a possible reduction in employment in the public sector due to automation, the need for retraining of workers and the resolving of social problems.

#### 4.3 **Communication from the Commission – Towards a common European data space**

4.3.1 The EESC welcomes and supports the view expressed in the Commission communication that access to public and publicly funded data and its re-use are cornerstones of a common European

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<sup>6</sup> Impact assessment (SWD(2018) 127).

data space. This is fully in line with the activities related to the review of the directive on the re-use of public sector information. The communication sets out the objectives of the review of the directive, and the EESC believes that progress on the achievement of the objectives will increase the availability of data for re-use.

4.3.2 The EESC endorses the basic principles set out in the communication for businesses-to-business (*B2B*) and business-to-government (*B2G*) data sharing and considers them as a potentially good basis for future cooperation with stakeholders.

4.3.3 The EESC supports the measures proposed in the Commission communication, which will, it believes, make it easier for companies and the public sector to access and re-use in the EU data from different sources, economic sectors and specialist areas.

Brussels, 17 October 2018.

Luca JAHIER  
President of the European Economic and Social Committee

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**N.B.:** Appendix overleaf.



**APPENDIX**  
to the  
**OPINION**  
of the European Economic and Social Committee

The following section opinion texts were rejected by the assembly in favour of amendments, but at least one-quarter of the votes cast were in favour of retention of the section opinion texts:

3.1.1.1 Amendments to the directive in Article 1 – Subject matter and scope

- Extension of the scope of the directive to include data from public services and transport services as well as research data;
- The explanatory text of the directive<sup>3</sup> states:
  - Data in the transport and utilities sector: A limited set of obligations will apply: "public undertakings can charge above marginal costs for dissemination and are under no obligation to release the data they do not want to release".
  - Research data: "Member States will be obliged to develop policies for open access to research data [...]". This is in reality an empty stipulation and leaves all activity relating to this matter to the discretion of Member States (as is currently the case).

**EESC position:**

- The Committee endorses in part the changes proposed, but considers that they offer an inadequate solution to the issue of the scope of the PSI Directive, since the extension of this scope is a formality and establishes no real additional duties and responsibilities.
- The planned changes involve additional work and costs. Data holders have to invest in the short term, while both they and re-users stand to profit in the long term.

**Outcome of the vote:**

Votes in favour: 80  
Votes against: 52  
Abstentions: 16

3.1.2 Chapter II of the directive – Requests for re-use

Amendments to the directive in Article 4 (Requirements applicable to the processing of requests for re-use):

- Exceptions identified where the requirements applicable to the processing of requests for re-use do not apply.

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<sup>3</sup>

Proposal for a Directive of the European Parliament and of the Council on the re-use of public sector information (recast), COM(2018) 234 final.

**EESC position:**

- The EESC supports the proposed changes regarding the exceptions, but takes the view that, because information and documents increasingly have to be produced quickly, the maximum processing time of twenty working days is too long and should be reduced with a view to better workflow in the public sector.

**Outcome of the vote:**

Votes in favour: 83  
Votes against: 55  
Abstentions: 7

3.1.4 Chapter IV of the directive – Non-discrimination and fair trading

Amendments to the directive in Article 12 – Prohibition of exclusive arrangements

- It is required that legal or practical arrangements that, without expressly granting an exclusive right, could restrict the re-use of documents must be made publicly available at least two months before their coming into effect;
- The chosen option only sets transparency requirements ("lower legislative intensity" option), but no practices are prohibited that lead to the lock-in of data ("high legislative intensity" option).

**EESC position:**

- The Committee endorses in part the proposed changes and considers that they generally help to resolve the problem concerning the lock-in of public sector data but that the results achieved will not be sufficient to resolve the essence of the problem. The EESC believes that a more effective approach to this problem would be to choose an option that prohibits activities leading to the lock-in of data.

**Outcome of the vote:**

Votes in favour: 80  
Votes against: 60  
Abstentions: 12

3.2.2 **Aim:** Establishing comparable conditions for the provision of data across the Union, thereby ensuring fair competition.

**EESC position:** The proposed amendments are directly and unequivocally targeted at this objective, in that:

- the provisions governing charging are improved – (Article 6 of the directive);

- the opportunities to conclude exclusive agreements are more strictly regulated – (Article 12 of the directive);
- provision of data free of charge and of high-value datasets is closely regulated – (Article 13 of the directive).

**Outcome of the vote:**

Votes in favour: 80  
 Votes against: 61  
 Abstentions: 9

3.2.4 **Aim:** Strengthening SMEs in the data market by making sure that obstacles do not prevent them from re-using public data for commercial purposes.

**EESC position:** This aim is addressed in the proposed amendments and, if implemented, they will improve the position of SMEs with regard to the re-use of public sector data (Articles 6, 12 and 13 of the directive). However, the choice of a "high legislative intensity" option would have been more efficient.

**Outcome of the vote:**

Votes in favour: 76  
 Votes against: 53  
 Abstentions: 6

3.3.1 Problem area: **Dynamic data/APIs:**

**Proposed improvements:**

- There is a "soft" obligation on Member States to make dynamic data available in a timely manner and to introduce APIs – (Article 5 of the directive);
- A stricter obligation on Member States to ensure the possibility of re-using a limited number of high-value datasets – (Article 13 of the directive).

**EESC position:**

- The proposed amendments are partially appropriate for improving this problem area (see point 3.1.3);
- The proposed amendments will help, in the long term, to solve the questions relating to access to dynamic data and to further the re-use of dynamic data and the use of new technologies (APIs) for automated data exchange. However, given the fact that the obligation on Member States "to make dynamic data available in a timely manner" is a "soft" one, the result of the amendments is neither verifiable nor foreseeable. In the short term, in particular, the improvement may prove inadequate.

**Outcome of the vote:**

Votes in favour: 77

Votes against: 58

Abstentions: 10

**3.3.3 Scope for improvement: Scope of the PSI Directive****Proposed improvements:**

- Extension of the directive's subject matter and scope – (Article 1 of the directive);
- Member States will be obliged to develop policies for open access to research data resulting from publicly funded research while keeping flexibility in implementation (Article 10 of the directive).

**EESC position:**

- The proposed amendments are not enough to improve this problem area (see points 3.1.1, 3.1.3);
- Extending the directive's scope while using the chosen "lower legislative intensity" option is a pure formality and does not involve any real additional obligations. This does not solve the problem at hand.

**Outcome of the vote:**

Votes in favour: 78

Votes against: 61

Abstentions: 10

**3.3.4 Problem area: Lock-in of public sector data****Proposed improvements:**

- More rigorous requirements on non-exclusivity and transparency for public-private agreements related to public sector information – (Articles 11 and 12 of the directive).

**EESC position:**

- The proposed amendments are not enough to improve this problem area (see points 3.1.4);
- The proposed amendments will help in part to solve the problem of the lock-in of public sector data and promote the re-use of data. However, the planned "lower legislative intensity" option chosen will not be sufficient to effectively address the problem of data lock-in. The EESC believes that the option involving "high legislative intensity" action would be more appropriate here.

**Outcome of the vote:**

Votes in favour: 82

Votes against: 57

Abstentions: 8

**4.1.3 Interests of the affected groups listed in the summary of the impact assessment<sup>5</sup>:**

- Data holders (public entities) tend to support the maintenance of the status quo regarding the re-use of public sector information, i.e. the "lower legislative intensity" option.
- Data re-users (including SMEs) prefer the option of swifter and more effective progress in increasing the amount of data re-used, i.e. the "high legislative intensity" option.

**EESC position:**

- Although the aim of the directive is to increase the volume of re-used data and to strengthen the position of SMEs in the data market, the Commission has nevertheless decided to opt for "lower legislative intensity" action and so does not fully exploit the potential for improvement of the problem areas;
- In order to pursue the aims of the revision of the directive more effectively, a more active and targeted approach must be taken and the option of action with a "high legislative intensity" chosen when seeking to resolve specific problems. This may be accompanied by a change to the options identified in the impact assessment.

**Outcome of the vote:**

Votes in favour: 87

Votes against: 58

Abstentions: 6

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<sup>5</sup> Executive summary of the impact assessment (SWD(2018) 128).