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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 April 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY  
OF THE IMPACT ASSESSMENT Accompanying the document Proposal  
for a Directive of the European Parliament and of the Council on the re-use  
of public sector information

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Delegations will find attached document SWD(2018) 128 final.

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Brussels, 25.4.2018  
SWD(2018) 128 final

**COMMISSION STAFF WORKING DOCUMENT**  
**EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT**

*Accompanying the document*

**Proposal for a Directive of the European Parliament and of the Council**  
**on the re-use of public sector information**

{COM(2018) 234 final} - {SWD(2018) 127 final}

## Executive Summary Sheet

Impact assessment on the review of Directive 2003/98/EC on the re-use of public sector information<sup>1</sup>

### A. Need for action

#### Why is there a need for action? What is the problem?

Public sector bodies hold vast amounts of data known as public sector information (PSI), e.g. legal data, traffic data, meteorological data, economic and financial data. Allowing this data to be re-used for other purposes, including commercial ones (e.g. for satellite navigation services, weather apps etc.) can stimulate economic growth, spur innovation and help to address various societal problems, e.g. in healthcare or public transport.

Directive 2003/98/EC on the re-use of public sector information (the PSI Directive) created a basic legal framework for re-using PSI in the single market by imposing certain obligations on public sector bodies. In line with Article 13 (review clause) of the Directive, and following up on the commitment made in the mid-term review of the Digital Single Market Strategy, this impact assessment includes an evaluation of the implementation of the current version of the Directive and sets out policy options needed to address four problem areas:

1. **Dynamic data:** The provision of real-time access to data held by public sector bodies, in particular dynamic data, using adequate technical means (application programming interfaces / APIs) is rare. This means that dynamic data often cannot be re-used to develop new products and services such as real-time travel apps.
2. **Charging:** Several public sector bodies continue to overcharge for the re-use of public sector data — well above what is needed to cover reproduction and dissemination costs. Such charges are counterproductive from a macroeconomic perspective as they constitute a market barrier for small and medium-sized enterprises (SMEs). As a result, charges tend to strengthen large multinational platforms, to the detriment of SMEs — they cannot afford to purchase public data. Evidence shows that getting rid of charges typically results in a surge in demand for public sector data, which translates into more innovation, more business growth and ultimately higher budget revenues (via taxes) for the public sector.
3. **Scope of the PSI Directive:** Data generated by the utilities and transport sectors is valuable and has tremendous re-use potential. However, entities active in these sectors are not covered by the PSI Directive. The same is true for research data resulting from public funding, which is another valuable source of data.
4. **Lock-in of public sector data:** Public data holders sometimes enter into arrangements with the private sector to derive extra value from their data. This creates the risk of excessive first-mover advantage, benefitting large companies and thereby limiting the number of potential re-users of the data in question.

#### What is this initiative expected to achieve?

The overall aim of this initiative is to enhance the already positive effect of the PSI Directive. This will be done by strengthening specific provisions and bringing them up-to-date in order to increase the amount of public sector data available for re-use. In particular, the initiative will strengthen the position of SMEs in the data market by ensuring that they are not faced with market barriers that prevent them from re-using public data for commercial purposes.

#### What is the value added of action at EU level?

Measures at EU level are necessary to guarantee comparable conditions of data supply and ensure that they are suitable for further re-use. Public data with a comparable thematic scope should be made consistently available for re-use across Member States to make it easier to develop services and products based on data sourced from different EU countries under similar conditions.

The proposed changes will create further incentives for businesses to use the scale of the single market in order to produce information products and services that cover different countries. At the same time, the changes will ensure that commercial re-users of different sizes and investment capacities will have similar opportunities in terms of access to public data.

### B. Solutions

#### What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

A number of policy options have been considered, both legislative and non-legislative. Some options were rejected at an early stage, while the options retained for an in-depth assessment were two packages of legislative and non-legislative

<sup>1</sup> SWD(2018) 127.

measures — one consisting of measures of higher intensity, and one of lower intensity measures. The preferred choice is the package with a lower intensity of intervention, based on the following elements:

- **Dynamic data/APIs:** A 'soft' obligation for Member States to make dynamic data available in a timely manner and to introduce APIs. For a limited number of fundamental high-value datasets (to be adopted by means of a Delegated Act), there will be a hard obligation to do so.
- **Charging:** Tighten the rules for invoking the exceptions to the general rule whereby public sector bodies cannot charge more than marginal costs for dissemination. Create a list of fundamental high-value datasets that should be freely available in all Member States (same datasets as above, to be adopted by means of a Delegated Act).
- **Data in the transport and utilities sectors:** Only public undertakings will be covered, and a limited set of obligations will apply. Public undertakings can charge prices higher than marginal costs for dissemination and are under no obligation to release data. If they do release data, they will be covered by transparency, non-discrimination and non-exclusivity requirements.
- **Research data:** Member States will be obliged to develop policies for open access to research data resulting from publicly funded research. However, they will be free to decide on how to implement these policies. The PSI Directive will also cover research data that has already been made accessible as a result of open access mandates, focusing on re-usability aspects.
- **Non-exclusivity:** Transparency requirements for public-private agreements involving public sector information (prior check, possibly by national competition authorities, and openness of the actual agreement).

These measures will be combined with an update of the recommendation on access to and preservation of scientific information<sup>2</sup> and clarification of the interaction between the PSI Directive and the Database and INSPIRE Directives.

**Who supports which option?**

The PSI Directive broadly affects two sets of stakeholders: public sector bodies on the one hand and re-users on the other. Given the proposed extension of the scope of the Directive, the first group will also include public research bodies and public undertakings from the transport and utility sectors.

The group of re-users includes commercial entities (in particular many SMEs) and non-commercial entities (researchers, individuals) that re-use data generated by the public sector. As the main addressee of the proposed measures, the public sector would be more supportive of maintaining the status quo or the lower-intensity intervention. Many re-users, on the other hand, would favour more far-reaching changes (higher-intensity scenario). In the area of research, legislative intervention is likely to be supported by re-users as it is fully in line with policy developments in the areas of open access and open science.

It should be noted that while the Directive places obligations only on the public sector, it creates economic benefits across the board — both for re-users and the public sector itself.

**C. Impacts of the preferred option**

**What are the benefits of the preferred option (if any, otherwise the main ones)?**

The changes proposed in the preferred option will make a real difference by making more data more available for re-use by businesses (especially SMEs), governments, researchers and individuals. Re-use of public sector data will be cheaper, and some data that is already available (research data) will be easier to re-use. At the same time, the preferred option has a realistic level of ambition that would be acceptable for the stakeholders and Member States. In general, the measures of the preferred option will lead to significantly higher economic value and job creation compared to the baseline scenario (30 % more direct economic value and 40 % more jobs than in the baseline scenario).

**What are the costs of the preferred option (if any, otherwise the main ones)?**

The costs associated with the preferred option are mainly related to the necessary update to the digital infrastructure of the public sector. This is needed to enable efficient dissemination of data, in particular dynamic data. The key element is the cost of implementing and maintaining APIs, which make it easier for re-users to access dynamic data. Some other costs will be initially borne by a limited number of public sector bodies that still charge for data. They will lose some revenue — in certain cases, they will no longer be able to continue charging for the re-use of their data. Finally, there will be some legal and/or administrative costs linked to the new requirements for public undertakings and research establishments. However, all these costs will be offset by the benefits that will affect the whole economy, including the public sector bodies themselves, thanks to increased efficiency and extra budget revenue generated by taxation.

**How will businesses, SMEs and micro-enterprises be affected?**

SMEs and businesses are the main beneficiaries of the preferred option. Studies show that the bulk of commercial re-use of public data is carried out by start-ups and companies that employ fewer than 10 people. A stronger supply of data that is cheaper and easier to re-use will enable more data-based innovation across all economic sectors, with SMEs and micro-

<sup>2</sup> C(2018) 2375.

enterprises benefiting the most from lower barriers to access public sector data.
<b>Will there be a significant impact on national budgets and administrations?</b>
This intervention will enhance the ongoing process of opening up public sector data. In the short term, it will create limited compliance costs for public administrations. However, in the long run it will increase cost savings thanks to increased efficiency and will generate additional government revenue.
<b>Will there be other significant impacts?</b>
Apart from the overall estimated economic benefits of opening up public sector data, the preferred option is also expected to significantly increase the current societal impact of the re-use of public sector information.
<b>D. Follow-up</b>
<b>When will the policy be reviewed?</b>
The policy will be monitored on an annual basis thanks to the 'landscaping' exercise carried out by the European Data Portal. This will lead to the publication of Open Data Maturity Reports. The review clause of the Directive will be modified to allow for the next evaluation 6 years after the adoption date of the amending Directive.