

19814 LAW 37/2007 of 16 November 2007 on the re-use of public sector information

JUAN CARLOS I

KING OF SPAIN

To all who see and understand this document.
Be it known: That the Spanish Parliament has approved and I hereby sanction the following Law.

PREAMBLE

Information generated from public sources, with the potentiality afforded it by the development of the information society, is of great importance to enterprises when operating in their fields of activity, contributing to economic growth and the creation of employment, and for citizens as an element of transparency and guidance for democratic participation. In pursuit of both aspirations, Directive 2003/98/EC of 17 November 2003 of the European Parliament and of the Council, relating to the re-use of public sector information, was enacted with a view to exploiting the potential of public sector information and overcoming the barriers of a fragmented European market by establishing some uniform criteria based on fair, proportionate and non-discriminatory conditions with regard to the treatment of information capable of being re-used by individuals or corporate bodies.

The various public sector Administrations and organisations collect, produce, reproduce and disseminate documents in order to carry out the public service tasks entrusted to them. As Directive 2003/98/EC states, the use of such documents for other purposes, whether commercial or non-commercial purposes, constitutes re-use. On the one hand, the aim is to harmonise the exploitation of information in the public sector, particularly information on digital media which is compiled by the various public sector organisations in relation to numerous fields of interest such as social, economic, legal, geographical, meteorological, tourist, business, patent, educational and other information with a view to facilitating the creation of information services and products based on public sector documents, and to enhancing the effectiveness of cross-border use of these documents by citizens and private enterprises so that they may offer information services and products with added value. On the other hand, the publicising of all freely available documents held by the public sector which refer not only to political but also to legal, economic and administrative procedures is an essential instrument for the development of the right to knowledge, which is a basic principle of democracy.

These objectives are the ones pursued by this Law, which by incorporating Directive 2003/98/EC in our legal system, and taking as its starting point the diverse treatment that public sector Administrations and organisations have afforded to the exploitation of information, provides a minimum general framework for the conditions of re-use of public sector documents that accommodates the various modalities that may be adopted and arise from the great variety of information concerned. Accordingly it is intended that it will be public sector Administrations and organisations that decide to authorise or not to authorise the re-use, for commercial or non-commercial purposes, of documents or categories of documents preserved by them. It is also intended to promote the availability of documents via electronic means, to encourage the development of the information society.

This Law has some specific features distinguishing it from the general access regime referred to in Article 105 b) of the Spanish Constitution and its legislative

amplifications, mainly represented by Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure. In this connection it should be noted that the regime of access to administrative documents which is enshrined in our legal system is not modified but the right of access is afforded an added value by laying down the basic regulatory framework for the exploitation of information held by the public sector, within a framework of free competition, regulating the minimum conditions applicable to a second level of treatment of information generated from public sources.

Part I of the Law defines its scope, covering public sector Administrations and organisations within the meaning defined in its Article 2, in line with the delineation stated in the regulatory provisions on public sector contracting. With regard to its objective implementation, the Law provides a generic definition of the term “document” in keeping with the evolution of the information society and encompassing every form of presentation of acts, facts or information, and any compilation of them, irrespective of the medium (written on paper, stored in electronic form or sound, visual or audiovisual recording), preserved by public sector Administrations and organisations, and includes a negative definition of its scope by enumerating those documents or categories of documents which are not affected by the Law but are governed by different criteria. At this point it should be noted that the Law does not apply to documents covered by intellectual or industrial property rights (e.g. patents, designs and registered trademarks), particularly by third parties. For the purposes of this Law, intellectual property rights means copyright and related rights, including *sui generis* forms of protection. In this respect, the Law does not affect the existence of intellectual property rights of public sector Administrations and organisations, nor does it in any way restrict the exercise of those rights outside the limits stated in its provisions. The obligations imposed by this Law are only applicable where they are compatible with the provisions of the international agreements concerning the protection of intellectual property rights, particularly the Berne Convention for the protection of literary and artistic works (Berne Convention) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Public authorities have nevertheless to exercise their copyright in such a way as to facilitate re-use.

Part II refers to the basic aspects of the legal regime of re-use and indicates that public sector Administrations and organisations may opt to allow re-use without specific conditions or making it subject to the issue of a licence which imposes on its holder a number of conditions of re-use which must in any case be clear, fair and transparent and non-discriminatory for comparable categories of re-use, and meet the principle of public service and free competition.

To this end, the use of standard licences that may be available by electronic means is a key element in this context. It is further intended that the various Administrations and organisations should disseminate information about what documentation is capable of being re-used, by creating lists and indexes, accessible on line, of available documents, with a view to encouraging and facilitating requests for re-use. To enhance the possibilities of re-use, public sector Administrations and organisations must endeavour to offer documents by electronic means in pre-existing languages or formats.

The re-use regime guarantees full observance of the principles that enshrine the protection of personal data, as laid down in Consolidation Act 15/1999 of 13 December 1999 on the Protection of Personal Data and amplificatory provisions thereunder.

Public sector Administrations and organisations have also to conform to the competition rules and avoid exclusive agreements. The law nevertheless provides an exception to this principle where, with a view to providing a service of general economic

interest, it may be necessary to grant an exclusive right to re-use certain public sector documents.

The Law further states the principles applicable in cases where Administrations and organisations require payment of charges to facilitate the re-use of documents for commercial purposes, the amount of which must be reasonable and cost-oriented, without the resulting revenue exceeding the total costs of collecting, producing, reproducing and disseminating the documents concerned.

Part II is concerned with certain aspects of the re-use of information and states the possible conditions to which re-use may be subject, which might relate to such matters as documents being properly used, ensuring that documents are not modified and indicating their source. The required minimum content of licences is also indicated.

Part III of the Law states the procedure for assessing re-use requests, attaching particular importance to decision time limits as an essential aspect for dynamic content of information, the economic value of which depends on its being immediately available and regularly updated. There is also assurance that decisions adopted will indicate the possible ways for applicants to appeal against decisions that affect them.

Finally, the General Administration of the State is provided with a sanctioning regime for punishing any misuse of information authorised for re-use.

This Law has the character of basic legislation under the provisions of Article 149.1.18 of the Constitution, except Article 11 and sections 1 (second and third paragraphs), 3 and 8 of Article 10.

The drafting of the Law incorporated the findings of the report from the Spanish Data Protection Agency.

PART I

General provisions

Article 1. *Object*

The object of this Law is basically to regulate the legal regime applicable to the re-use of documents prepared or held in safekeeping by public sector Administrations and organisations.

The enforcement of this Law shall be without prejudice to the regime applicable to the right of access to documents and the special aspects referred to in the regulatory provisions governing it.

Article 2. *Subjective scope*

For the purposes of this Law, public sector Administrations and organisations means:

- a) The General Administration of the State, the Administrations of the Autonomous Communities and the constituent Entities of local Administration.
- b) The managing Entities and common services of Social Security.
- c) Autonomous organisations, State Agencies and any entities governed by public law which, with functional independence or with special autonomy recognised by law, have functions attributed to them of external control or regulation of a specified sector or activity.

d) Entities governed by public law which have their own legal personality and are linked to or dependent on any of the public Administrations:

1. Such entities created specifically to meet needs of general interest that are not of an industrial or commercial nature.

2. Such entities whose activity has the majority of its funding from public Administrations or other entities governed by public law, or whose management is subject to control by these latter, or whose managing, governing or supervisory bodies are more than half composed of members appointed by public Administrations or other entities governed by public law.

e) Consortia provided with their own legal personality which are referred to in Article 6 section 5 of Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure, and the legislation on local authorities.

f) Public sector foundations referred to in the legislation on foundations.

g) Associations set up by the Administrations, organisations and entities mentioned in the foregoing items a) to f).

Article 3. *Objective scope*

1. Re-use means the use of documents which are in the possession of public sector Administrations and organisations by natural or legal persons, with commercial or non-commercial aims, where such use does not constitute public administrative activity. This concept does not include the exchange of documents between public sector Administrations and organisations in the exercise of public functions attributed to them.

2. This Law applies to documents prepared or held in safekeeping by public sector Administrations and organisations that authorise their re-use.

Document means any information, whatever its physical or electronic support and whatever its form of graphic or audio expression or image used. Documents do not include computer programmes protected by specific legislation applicable to them.

3. This Law does not apply to the following documents in the possession of the public sector Administrations and organisations referred to in Article 2:

a) Documents covered by prohibitions or limitations on right of access by virtue of the provisions of Article 37 of Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure and other rules governing right of access or registration publicity of a specific nature.

b) Documents that affect national defence, State security, protection of public security, and those subject to statistical secrecy or commercial confidentiality and, in general, documents relating to activities that are subject under regulatory provisions to the duty of restriction, secrecy or confidentiality.

c) Documents to which access is subject to holding a legitimate interest or right.

d) Documents in the possession of public sector Administrations and organisations for purposes other than public service functions which are attributed to them, defined under prevailing regulatory provisions.

e) Documents covered by intellectual or industrial property rights of third parties. This Law does nevertheless not affect the existence of intellectual property rights of public sector Administrations and organisations nor their possession thereof, nor does it restrict the exercise of those rights outside the limits set by this Law. The exercise of

intellectual property rights of public sector Administrations and organisations must be conducted in such a way as to facilitate re-use thereof.

f) Documents preserved by entities that run essential sound radio and television services and their subsidiaries.

g) Documents preserved by educational and research institutions, e.g. academic centres, universities, archives, libraries and research centres, including organisations created for transfer of research results.

h) Documents preserved by cultural institutions such as museums, libraries, historical archives, orchestras, operas, ballets and theatres.

4. The provisions of this Law shall not restrict any more favourable provisions concerning access or re-use that are laid down in sectoral laws.

PART II

Legal regime of re-use

Article 4. Administrative regime of re-use

1. Documents of public sector Administrations and organisations shall be re-usable within the terms of this Law.

2. Public sector Administrations and organisations may opt for the various documents held by them to be re-usable in one or more of the following ways:

a) Re-use of documents made available to the public without being subject to conditions.

b) Re-use of documents made available to the public under conditions stated in standard licences.

c) Re-use of documents after request in accordance with the procedures stated in article 10 or, where applicable, in regulatory provisions of an Autonomous Community, which may in such cases incorporate conditions stated in a licence.

3. The conditions incorporated in licences must meet the following criteria:

a) Be clear, fair and transparent.

b) Not restrict the possibilities of re-use or limit competition.

c) Not be discriminatory for comparable categories of re-use.

4. Public sector Administrations and organisations may furnish, for the re-use of documents, standard licences that must be available in digital format and be processable electronically.

5. Public sector Administrations and organisations shall provide electronically accessible mechanisms that make it possible to search for documents available for re-use, including the creation of document management systems that enable citizens to conveniently retrieve information, such as lists, databases or indexes and portals that link with decentralised lists.

6. The re-use of documents that contain data of a personal nature shall be governed by the provisions of Consolidation Act 15/1999 of 13 December 1999 on the protection of personal data.

Article 5. Formats available for re-use

1. Public sector Administrations and organisations shall arrange that the availability of documents for re-use and the processing of re-use requests be effected by electronic means and by multi-channel platform where compatible with the technical means available to them.

2. Public sector Administrations and organisations shall provide their documents in any pre-existing language or format and endeavour to supply them by electronic means as described in the foregoing section 1. This shall not entail an obligation upon Administrations and organisations to provide extracts of documents in cases involving disproportionate effort, or to create documents, adapt them or maintain production of a particular document in order to meet a request.

3. As provided in Law 51/2003 of 2 December 2003 on equality of opportunity, non-discrimination and universal accessibility for persons with disabilities, the electronic means of making documents available referred to in section 1 of this Article shall be accessible to persons with disabilities, in accordance with the relevant technical rules.

Public sector Administrations and organisations shall also as far as possible adopt suitable measures for facilitating the availability of documents intended for persons with disabilities in formats that take into account the possibilities of re-use by those persons.

This obligation shall not apply in cases where such adaptation does not constitute a reasonable adjustment such as provided for in Article 7 of Law 51/2003.

Article 6. Barring of exclusive rights

1. The re-use of documents shall be open to all potential market actors, even in cases where one or more actors already exploit products with added value which are based on the documents concerned. Contracts or agreements of any other kind between public sector organisations that preserve documents and third parties shall not grant exclusive rights.

2. The granting of exclusive rights by public sector organisations to third parties shall not be permissible unless such exclusive rights are necessary for the provision of a service of public interest, in which case the corresponding public sector Administration or organisation shall be obliged to carry out a review periodically, and in any case every three years, of the continuing validity of the reason for granting the aforesaid exclusive right. Such exclusive agreements must be transparent and public.

Article 7. Charges

1. A fee or public price for the supply of documents for re-use may be applied within the conditions of Law 8/1989 of 13 April 1989 on Public Prices and Fees or in any regulatory provisions applicable locally or within an Autonomous Community, including taking into account in determining them the existence of public prices or fees for access.

2. The amounts of public prices or fees established shall be quantified as provided in Articles 19 and 25 of Law 8/1989 of 13 April 1989 on Public Prices and Fees or in any regulatory provisions applicable locally or within an Autonomous Community, in such a way as to cover at least the costs of the service or activity, including those relating to the collection, production, reproduction and dissemination of information.

3. In cases where a public sector Administration or organisation re-uses documents as a basis for commercial activities outside the functions attributed to it, the same public prices or fees and conditions as applicable to other users must be applied to the delivery of documents for those activities.

4. Public prices or fees differentiated by whether re-use is for commercial or non-commercial purposes may be applied.

5. Public sector Administrations and organisations shall make available to the public the list of public prices and fees applicable to re-use requests, and cases where no payment is required, by electronic means wherever compatible with their technical capabilities. The organisation concerned shall also indicate upon enquiry the calculation basis used for determining public prices or fees and the factors taken into account in calculating public prices or fees in atypical cases.

Article 8. *Conditions of re-use*

The re-use of information of public sector Administrations and organisations referred to in Article 2 of this Law may be made subject inter alia to the following general conditions:

- a) That the content of the information is not altered.
- b) That the meaning of the information is not distorted.
- c) That the source is quoted.
- d) That the date of the latest update is indicated.

Article 9. *Licences*

Any licence granted must contain at least information about the specific purpose, commercial or non-commercial, for which re-use is granted, the duration of the licence, the obligations of the beneficiary and of the grantor organisation, the responsibilities of use and financial arrangements, indicating that re-use is free of charge or stating any applicable fee or public price.

PART III

Procedure and sanctioning regime

Article 10. *Procedure for processing of re-use requests*

1. Requests for re-use of administrative documents must be addressed to the competent body, meaning that which is in possession of the documents requested for re-use. Requests shall be submitted by individuals or corporate bodies intending to re-use documents as provided in this Law.

Where the body to which the request is addressed does not possess the information required but is aware of an Administration or organisation that does possess it, it shall as soon as possible pass the request on thereto and notify the applicant.

Where this is not possible, it will directly notify the applicant of the public sector Administration or organisation which according to its knowledge it is necessary to contact in order to request the information concerned.

2. Requests must include the content required by Article 70.1 of Law 30/1992 and identify the document or documents capable of re-use and specify the purposes, commercial or non-commercial, of the re-use. Where a request is formulated imprecisely, the competent body shall require the applicant to define it more precisely and shall expressly indicate that, should he fail to do so, he will be deemed to have withdrawn his request, as provided in Article 71 of Law 30/1992.

The applicant must define his request more precisely within the time limit of ten days from the day after receiving notice of the requirement to do so. To this end, the competent body shall help the applicant to delineate the content of the information applied for.

The running of the time for a decision in response to a request for information shall be deemed suspended for the period between notification of the requirement and its being effectively met by the addressee or, failing this, for the course of the period granted, with notification to the applicant of the suspension of the decision time limit.

3. Generally speaking, the competent body shall make decisions about re-use requests within the maximum time of twenty days from the request being received by the register of the body competent to process it. Where the volume and complexity of information requested makes it impossible to meet the decision time limit, it may be extended by a further twenty days, in which case the applicant must be informed, within the maximum time of ten days, of any extension of decision time limit, and the reasons.

4. Decisions of a positive nature may authorise the re-use of documents without conditions or shall involve granting the appropriate licence for their re-use on pertinent conditions imposed by the licence. Positive decisions shall in any case entail the document becoming available within the same length of time as the decision period referred to in the foregoing section 3.

5. Any decision denying in whole or in part the re-use applied for shall be notified to the applicant with the reasons for the negative response within the times mentioned in section 3, which reasons must be based on provisions of this Law or on the prevailing legal system.

6. Should a negative decision be based on the existence of intellectual or industrial property rights in favour of third parties, the competent body must include a reference to the person or legal entity holding the rights, if known, or alternatively the transferor from whom the organisation obtained the documents.

7. Decisions adopted must in any case contain a reference to any potential means of appeal open to the applicant within the terms of Article 58.2 of Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure.

8. If no express decision is adopted within the maximum time limit for decision and notification, the applicant may regard his request as rejected.

Article 11. *Sanctioning regime*

1. Within the scope of the General Administration of the State, the following shall be deemed very serious breaches of this Law:

- a) Distortion of the meaning of information licensed for re-use;
- b) Very serious alteration of the content of information licensed for re-use.

2. The following shall be deemed serious breaches:

a) Re-use of documentation without having obtained the corresponding licence in cases where a licence is required;
b) Re-use of information for a purpose other than that for which it is granted;
c) Serious alteration of the content of information licensed for re-use;
d) Serious failure to comply with other conditions imposed in the corresponding licence or in applicable regulatory provisions.

3. The following shall be deemed minor breaches:

a) Failure to indicate the date of the latest update of information;
b) Slight alteration of the content of information licensed for re-use;
c) Failure to quote the source as required by Article 8 of this Law;
d) Minor failure to comply with other conditions imposed in the corresponding licence or in applicable regulatory provisions.

4. The following sanctions shall be imposed for committing the breaches referred to in this article:

a) Fine of 50,001 to 100,000 euros for very serious breaches;
b) Fine of 10,001 to 50,000 euros for serious breaches;
c) Fine of 1,000 to 10,000 euros for minor breaches;

In addition to sanctions a) and b) above, breaches classified as very serious or serious may be punished by barring from re-use of documents that require licensing for a period of between 1 and 5 years, and by revocation of the licence granted.

5. Sanctions will be graduated according to the nature of the information re-used, its volume, the benefits obtained, the degree of intentionality, the harm and detriment caused (particularly with regard to the protection of personal data), recurrence and any other circumstance relevant to determining the degree of illegality and culpability involved in the particular breach.

6. In every respect not provided for in this Law, the power to sanction shall be exercised as provided in Part IX of Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure. Its exercise shall be incumbent upon competent bodies to which this power is attributed by reason of subject matter.

7. The sanctioning regime provided in this Law is deemed without prejudice to any civil or criminal liability that may be incurred, which shall be enforced in accordance with the corresponding legal enactments.

First additional provision. *Plans and programmes*

The Government, on proposal from the competent Ministries, shall develop action plans and programmes intended to facilitate the re-use of public sector information with a view to promoting the growth of the digital content sector, and may establish with other public Administrations such collaboration mechanisms as are deemed pertinent for achieving that objective.

Second additional provision. *Applicability to other organisations*

1. The provisions of this Law shall be applicable to documents preserved by organisations and institutions other than those mentioned in Article 2 whose activity is subject, under the terms of the regulatory provisions governing them, to Law 30/1992 of 26 November 1992 on the Legal Regime of Public Administrations and the Common Administrative Procedure.

2. The provisions of this Law shall be applicable to judicial decisions and judgements, without prejudice to the provisions of Article 107.10 of Consolidation Act 6/1985 of 1 July 1985 on Judicial Power and specific amplifications thereof.

Single transitional provision. *Transitional regime applicable to exclusive agreements*

Existing exclusive agreements to which the exception referred to in Article 6 does not apply shall end when the contract expires and, in any case, not later than 31 December 2008.

First final provision. *Constitutional basis*

This Law has the character of basic legislation under Article 149.1.18 of the Constitution, except article 11 and sections 1 (second and third paragraphs), 3 and 8 of Article 10.

Second final provision. *Regulatory amplification*

The Government shall, within the scope of its competences, adopt whatever provisions are necessary for implementing and amplifying the provisions of this Law.

Third final provision. *Effective date*

This Law shall come into force two months from its publication in "*Boletín Oficial del Estado*".

Accordingly,
I order all Spanish individuals and authorities to comply and cause compliance with this Law.

Madrid, 16 November 2007

JUAN CARLOS R.

Prime Minister
JOSÉ LUIS RODRÍGUEZ ZAPATERO