

LAWS AND OTHER LEGISLATIVE TEXTS

LEGISLATIVE DECREE No 102 of 18 May 2015

Implementation of Directive 2013/37/EU amending Directive 2003/98/EC on the re-use of public sector information

THE PRESIDENT OF THE REPUBLIC

Having regard to Articles 76, 87 and 117 of the Constitution;
Having regard to Law No 154 of 7 October 2014, and, in particular, Article 1 and Annex A;
Having regard to Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information;
Having regard to Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information;
Having regard to Law No 633 of 22 April 1941;
Having regard to Law No 241 of 7 August 1990;
Having regard to Law No 150 of 7 June 2000;
Having regard to Legislative Decree No 267 of 18 August 2000;
Having regard to Legislative Decree No 196 of 30 June 2003;
Having regard to Article 1(370), (371) and (372) of Law No 311 of 30 December 2004;
Having regard to Legislative Decree No 82 of 7 March 2005;
Having regard to Legislative Decree No 36 of 24 January 2006;
Having sought the opinion of the Italian Data Protection Agency;
Having regard to the decision of the Council of Ministers, adopted at the meeting of 18 May 2015;
On the proposal of the Prime Minister and the Minister for Simplification and Public Administration, in agreement with the Minister of Economic Affairs and Finance, the Minister of Justice, the Minister of Cultural Heritage and Activities and Tourism and the Minister of Foreign Affairs and International Cooperation;

HEREBY ISSUES

the following Legislative Decree:

Article 1

Amendments to Legislative Decree No 36 of 24 January 2006

1. The following amendments are made to Article 1 of Legislative Decree No 36 of 24 January 2006, hereinafter referred to as 'Legislative Decree No 36/2006', :
 - (a) paragraph 2 is replaced by the following: '2. Public sector bodies and bodies governed by public law shall ensure that documents to which this Legislative Decree applies shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in this Decree, including documents in which libraries, including university libraries, museums and archives hold intellectual property rights, where the re-use of such documents is allowed in accordance with the provisions in Part II, Title II, Chapter III of Legislative Decree No 42 of 22 January 2004, and those in Part II, Title VII, Chapter II of Legislative Decree No 196 of 30 June 2003;';
 - (b) paragraph 4 is repealed.
2. The following amendments are made to Article 2(1) of Legislative Decree No 36/2006:
 - (a) after point (b), the following is inserted: '(b-bis) university: any public sector body that provides

post-secondary-school higher education leading to academic degrees;’;

(b) after point (c), the following are inserted:

‘(c-bis) machine-readable format: a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure;

(c-ter) open format: the format described in Article 68(3)(a) of Legislative Decree No 82 of 7 March 2005, as amended;

(c-quater) formal open standard: a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;’.

3. The following amendments are made to Article 3(1) of Legislative Decree No 36/2006:

(a) the following words are added to the end of point (a): ‘, provided that the scope of the public tasks is transparent and subject to review’;

(b) point (c) is replaced by the following: ‘(c) documents held by educational and research establishments, including organisations established for the transfer of research results, schools and universities, except university libraries;’;

(c) point (d) is replaced by the following: ‘(d) documents held by cultural establishments other than libraries, museums and archives;’;

(d) after point (h), the following is added:

‘(h-bis) documents, not containing public data, access to which is governed by Chapter V of Law No 241 of 7 August 1990;

(h-ter) parts of documents containing only logos, crests and insignia;

(h-quater) documents, or parts of documents, that contain personal data that are not accessible to anyone or to which access is subject to compliance with certain limits or procedures, on the basis of the laws, regulations and legislation of the European Union, and documents that contain personal data the re-use of which is incompatible with the original purposes of processing in accordance with Article 11(1)(b) of Legislative Decree No 196 of 30 June 2003 and with other relevant applicable provisions.’.

4. The following amendments are made to Article 5 of Legislative Decree No 36/2006:

(a) paragraph 1 is replaced by the following: ‘1. The data subject shall preferably take out standard open licences or provide standard personalised licences and shall make these available on its website. In cases where documents containing personal data are re-used, the data subject shall take out personalised licences, including standard licences.’;

(b) in paragraph 2 the words ‘Individuals’ are replaced by the following: ‘With reference to public data not yet made available, individuals’, and the following words are added at the end of the sentence after the word ‘measure’: ‘, notwithstanding the provisions of Article 52(1) of Legislative Decree No 82 of 7 March 2005, as amended’;

(c) the following amendments are made to paragraph 3:

(1) the words from ‘the means of redress’ to the end of the sentence are replaced by the following: ‘the grounds for refusal on the basis of the provisions of this Decree. Where a negative decision is adopted based on Article 3(1)(h), with regard to intellectual property rights, the data subject shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the data subject has obtained the material. Libraries, including university libraries, museums and archives shall not be required to include such a reference. The data subject shall also advise the applicant of the available means of redress in case the applicant wishes to appeal the decision in accordance with Legislative Decree No 104 of 2 July 2010.’;

(2) the words: ‘to produce or to continue the production’ are replaced by the following: ‘to continue the production and storage’;

(3) paragraph 4 is repealed.

5. The following amendments are made to Article 6 of Legislative Decree No 36/2006:

(d) paragraph 1 is replaced by the following: ‘1. Data subjects shall make documents available,

where possible and appropriate together with their metadata and in accordance with the procedures and formats laid down in Articles 52 and 68 of Legislative Decree No 82 of 7 March 2005, as amended, in accordance with the technical rules laid down in Article 12. Data subjects shall not have an obligation to create or adapt documents in order to comply with the request or to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.’;

(e) paragraph 2 is repealed.

6. Article 7 of Legislative Decree No 36/2006 is replaced by the following:

‘Article 7 (*Charging*). — 1. The data shall be made available free of charge or, where charges are made for the re-use of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination.

2. The *Agenzia per l’Italia Digitale* shall determine the standard charges corresponding to the actual costs described in paragraph 1 on the basis of a reasoned proposal from the data subject and shall publish those charges on its website.

3. The principle set out in paragraph 1 shall not apply in the following cases:

(a) libraries, including university libraries, museums and archives;

(b) public sector bodies and bodies governed by public law that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks;

(c) exceptional cases of documents for which the public sector body or body governed by public law concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination.

4. In the cases referred to in paragraph 3(a), a decree of the Minister of Cultural Heritage and Activities and Tourism, in agreement with the Minister of Economic Affairs and Finance and having heard the opinion of the *Agenzia per l’Italia Digitale*, to be adopted by 15 September 2015, shall determine the general criteria to be used to determine the charges and the corresponding payment procedures for the activities described in Articles 5, 6 and 9. In accordance with those criteria, museums, archives and libraries, including university libraries, shall identify the charges, and update those charges every two years, on the basis of the actual costs incurred by those institutions, including the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with, in the case of re-use for commercial purposes, a reasonable return to be determined in relation to the investment costs incurred in the preceding three-year period.

5. In the cases referred to in paragraph 3(b) and (c), decrees of the relevant Ministers, in agreement with the Minister of Economic Affairs and Finance and having heard the opinion of the *Agenzia per l’Italia Digitale*, to be adopted by 15 September 2015, shall determine the charges and the corresponding payment procedures for the activities described in Articles 5, 6 and 9. This shall apply notwithstanding the provisions laid down in Article 1(370), (371) and (372) of Law No 311 of 30 December 2004, and Article 5(4-bis) of Decree-Law No 70 of 13 May 2011, converted, with amendments, by Law No 106 of 12 July 2011. The amount of the above-mentioned charges, identified on the basis of the actual costs incurred by the public sector bodies and updated every two years, shall include the cost of collection, production, reproduction and dissemination, together with, in the case of re-use for commercial purposes, a reasonable return to be determined, by the decrees described in this paragraph, in relation to the investment costs incurred by the public sector bodies in the preceding three-year period.

6. In the case of re-use for non-commercial purposes, a differentiated charging system shall be applied, to be determined as laid down in paragraphs 4 and 5 above, in accordance with the criterion of coverage only of the actual costs incurred by the public sector bodies concerned.

7. The decrees referred to in paragraphs 4 and 5 above shall be published in the Official Gazette of the Italian Republic and on the websites of the public sector bodies concerned.

8. The revenues generated by the charges described in paragraphs 4, 5 and 6 shall be paid into the State budget, to be reallocated, in accordance with Presidential Decree No 469 of 10 November 1999, to the general budgets of the public sector bodies concerned.

9. The regional and local authorities and other public bodies and organisations, having heard the opinion of the *Agenzia per l'Italia Digitale*, shall determine, by means of their own specific provisions or decisions, the amounts of the charges and the corresponding payment procedures, on the basis of the criteria set out in paragraphs 4 and 5.’.
7. In Article 8(1) of Legislative Decree No 36/2006, the words from ‘for the re-use’ to ‘electronically and’ shall be replaced by the following: ‘referred to in Article 5(1),’.
8. Article 9 of Legislative Decree No 36/2006 shall be replaced by the following:
‘Article 9 (*Available document search tools*). — 1. Public sector bodies and bodies governed by public law shall make practical arrangements facilitating the search for documents available for re-use, including cross-linguistic search, with relevant metadata, accessible where possible and appropriate online and in machine-readable format. The portal managed by the *Agenzia per l'Italia Digitale* shall be used for searches for open-format data published by public sector bodies.’.
9. The following amendments are made to Article 11 of Legislative Decree No 36/2006:
 - (a) after paragraph 1, the following is inserted: ‘1-bis. The exclusive right for digitisation of cultural resources shall be defined by means of a decree of the Minister of Cultural Heritage and Activities and Tourism, having heard the opinion of the *Agenzia per l'Italia Digitale*, and the period of exclusivity shall not, in any case, exceed 10 years, notwithstanding the possibility of a longer duration subject to review during the 11th year and every 7 years thereafter. The arrangements for exclusive rights shall be transparent and made public on the data subject’s website. The above-mentioned arrangements shall lay down that the data subject shall be provided free of charge with a copy of the digitised cultural resources. That copy shall be available for re-use at the end of the period of exclusivity.’;
 - (b) after paragraph 2, the following is inserted: ‘2-bis. The provisions laid down in paragraph 2 shall not apply to the digitisation of cultural resources.’;
 - (c) in paragraph 3, after the word: ‘existing’, the following words are inserted: ‘on 1 July 2005’;
 - (d) after paragraph 3, the following is added: ‘3-bis. Notwithstanding the provisions laid down in paragraph 3, exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions under paragraphs 1-bis and 2 shall terminate at the end of the contract or in any event not later than 18 July 2043.’.

Article 2

Amendments to Legislative Decree No 82 of 7 March 2005

1. In Article 52(2) of Legislative Decree No 82 of 7 March 2005, after the words ‘in accordance with Article 68(3) of this Code’, the following is inserted: ‘, with the exception of cases where publication relates to personal data’.
2. In Article 52(6) of Legislative Decree No 82 of 7 March 2005, after the words ‘public information’, the following is added: ‘, and actions intended to re-use public data’.
3. The following amendments are made to Article 68(3)(b) of Legislative Decree No 82/2005:
 - (a) in 3), after the word ‘dissemination’, the following is inserted: ‘, except in the cases provided for by Article 7 of Legislative Decree No 36 of 24 January 2006, and in accordance with the charges determined according to the procedure described in that Article’;
 - (b) the words from ‘The *Agenzia per l'Italia Digitale*’ to the end of the paragraph are deleted.

Article 3

Transitional measures governing exclusive arrangements

1. The exclusive arrangements laid down in Article 1(9)(a) of this Legislative Decree concluded after 17 July 2013 shall be brought into line with the provisions of paragraph 9 within six months of the date of entry into force of that Decree. After that deadline, the duration of any such

arrangements shall be reduced to 10 years, if their duration is longer, notwithstanding the possibility of review under the second sentence of paragraph 9(a).

Article 4

Financial clause

1. The implementation of this Decree shall not entail any new or additional burden on public finances. The authorities concerned must ensure that the tasks arising from this Decree are performed using the human resources, equipment and funds available under existing legislation. This Decree, bearing the State seal, shall be included in the official collection of legislative instruments of the Italian Republic. It shall be the obligation of anyone concerned to observe it and to ensure that it is observed.

Rome, 18 May 2015

MATTARELLA

RENZI, *Prime Minister*

MADIA, *Minister for Simplification and Public Administration*

PADOAN, *Minister of Economic Affairs and Finance*

ORLANDO, *Minister of Justice*

FRANCESCHINI, *Minister of Cultural Heritage and Activities and Tourism*

GENTILONI SILVERI, *Minister of Foreign Affairs and International Cooperation*

Approved, *Minister of Justice*: ORLANDO

NOTES

ATTENTION:

— The text of the notes published here has been drafted by the relevant public sector body under Article 10(2) and (3) of the consolidated text of the provisions on the promulgation of laws, the enactment of Presidential Decrees and the official publications of the Italian Republic, approved by means of Presidential Decree No 1092 of 28 December 1985, for the sole purpose of facilitating comprehension of the provisions to which reference is made. The force and effect of the legislative texts transcribed here is unaffected.

— Details of publication in the Official Journal of the European Union (OJEU) are provided for European Union acts.

Notes on the recitals:

— Article 76 of the Italian Constitution lays down that the exercise of the legislative function may not be delegated to the Government unless principles and criteria have been established and then only for a limited time and for specified purposes.

— Article 87 of the Italian Constitution grants, *inter alia*, the President of the Republic the power to promulgate laws and issue decrees having the force of law as well as regulations.

— Article 117 of the Italian Constitution provides, *inter alia*, that legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.

— The text of Article 1 and Annex A to Law No 154 of 7 October 2014 (Law delegating authority to the Government for the transposition of European Directives and implementation of other European Union acts – European Delegation Law 2013 – second half-year) published in the Official

Gazette of the Italian Republic No 251 of 28 October 2014, states:

‘Article 1 (*Delegation of authority to the Government for the implementation of European Directives*).

1. The Government is hereby delegated the authority to adopt, according to the procedures, principles and guidelines laid down in Articles 31 and 32 of Law No 234 of 24 December 2012, the legislative decrees required to implement the Directives listed in Annexes A and B to this Law.

2. The conditions for exercising the authority described in paragraph 1 above shall be identified in accordance with Article 31(1) of Law No 234 of 24 December 2012.

3. Draft versions of legislative decrees implementing the Directives listed in Annex B and, where the application of criminal penalties is provided for, those implementing the Directives listed in Annex A, shall be sent, after the opinions required by law have been obtained, to the Chamber of Deputies and the Senate of the Republic so that a corresponding opinion can be issued by the relevant parliamentary bodies.

4. Any costs not contemplated by the applicable laws and not relating to the ordinary business of the central and regional public sector bodies may be provided for in the legislative decrees implementing the Directives listed in Annexes A and B only to the extent necessary to ensure fulfilment of the obligations in relation to implementation of those Directives. Any such costs, and any reduced revenues that may derive from implementation of the Directives, to the extent that it is not possible to cover these using the funds already allocated to the relevant public sector bodies, shall be covered by the revolving fund provided for in Article 5 of Law No 183 of 16 April 1987.’

‘Annex A

In force from 12 November 2014

(*Article 1(1) and (3)*)

— Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information (deadline for transposition: 18 July 2015);

— Council Directive 2013/61/EU of 17 December 2013 amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular.’

— Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information is published in the OJEU of 31 December 2003.

— Directive 2013/37/EU of the European Parliament and of the Council amending Directive 2003/98/EC on the re-use of public sector information (Text with EEA relevance) is published in the OJEU No L 175 of 27 June 2013.

— Law No 633 of 22 April 1941 (Protection of copyright and of other rights associated with the exercise of copyright) is published in the Official Gazette of the Italian Republic No 166 of 16 July 1941.

— Law No 241 of 7 August 1990 (New provisions governing administrative procedure and rights of access to administrative documents) is published in the Official Gazette of the Italian Republic No 192 of 18 August 1990.

— Law No 150 of 7 June 2000 (Provisions governing activities associated with provision of information and communication by public sector bodies) is published in the Official Gazette of the Italian Republic No 136 of 13 June 2000.

— Legislative Decree No 267 of 18 August 2000 (Consolidated act governing local authorities) is published in the Official Gazette of the Italian Republic No 227 (OS) of 28 September 2000.

— Legislative Decree No 196 of 30 June 2003 (Data Protection Code) is published in the Official Gazette of the Italian Republic No 174 (OS) of 29 July 2003.

— The text of Article 1(370), (371) and (372) of Law No 311 of 30 December 2004 (Provisions for drawing up the annual and multiannual State budget – Financial Law 2005), published in the Official Gazette of the Italian Republic No 306 (OS) of 31 December 2004, states:

‘370. Cadastral and mortgage documents, data and information may be re-used commercially, in accordance with the applicable data protection legislation; for the original acquisition of cadastral documents, data and information, authorised commercial re-users must pay a fixed annual amount determined by decree of the Minister of Economic Affairs and Finance; for the original acquisition of mortgage documents, data and information, authorised commercial re-users must pay the corresponding fee, plus 20 %. The fixed annual amount and the percentage increase may in any case be recalculated annually by means of a decree of the Minister of Economic Affairs and Finance, taking into account the total cost of collection, production and dissemination of data and documents incurred by the *Agenzia del Territorio*, together with an appropriate return on investment and for carrying out the corresponding recovery procedures. A decree of the Minister of Economic Affairs and Finance shall identify the categories of additional electronic services that may be provided by the *Agenzia del Territorio* exclusively to authorised commercial re-users in exchange for payment of a fee to be determined by that decree.’

‘371. Each instance of unauthorised commercial re-use shall be subject to payment of the fees payable for acquisition, including electronically, of documents, data or information directly from the offices of the *Agenzia del Territorio*.’

‘372. In addition to payment of the fee referred to in paragraph 371 above, anyone responsible for an act of unauthorised commercial re-use shall also be subject to an administrative fine amounting to between three and five times the fees payable under paragraph 370 and, in the case of data for which acquisition is not subject to the payment of fees, an administrative fine of between EUR 10 000 and EUR 50 000. The provisions of Legislative Decree No 472 of 18 December 1997, as amended, shall apply.’

— Legislative Decree No 82 of 7 March 2005 (Digital Administration Code) is published in the Official Gazette of the Italian Republic No 112 (OS) of 16 May 2005.

— Legislative Decree No 36 of 24 January 2006 (Implementation of Directive 2003/98/EC on the re-use of public sector information) is published in the Official Gazette of the Italian Republic No 37 of 14 February 2006.

Notes on Article 1:

— The text of Article 1 of Legislative Decree No 36 of 24 January 2006, cited in the notes on the recitals, as amended by this Decree, states:

1. Subject matter and scope

1. This Legislative Decree establishes the procedures governing the re-use of documents containing public data held by public sector bodies and bodies governed by public law.

2. *Public sector bodies and bodies governed by public law shall ensure that documents to which this Legislative Decree applies shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in this Decree, including documents in which libraries, including university libraries, museums and archives hold intellectual property rights, where the re-use of such documents is allowed in accordance with the provisions in Part II, Title II, Chapter III of Legislative Decree No 42 of 22 January 2004, and those in Part II, Title VII, Chapter II of Legislative Decree No 196 of 30 June 2003.*

3. This Decree shall also apply when the documents referred to in paragraph 1 have already been disseminated for re-use by the parties stated above. Equal treatment must be guaranteed in any case for all re-users, except as provided for in Article 11.

4. *(repealed)*’.

— The text of Article 2 of Legislative Decree No 36 of 24 January 2006, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 2 (*Definitions*). — 1. For the purpose of this Decree, the following definitions shall apply:

(a) public sector bodies: bodies of the State, the Regions, the autonomous provinces of Trento and Bolzano, local authorities and unions, consortia or associations thereof and other non-commercial public bodies;

(b) bodies governed by public law: bodies, with legal personality, established for the specific

purpose of meeting needs in the general interest, not having an industrial or commercial character, financed, for the most part, by the State, or regional or local authorities, or other public sector bodies or bodies governed by public law, or subject to management supervision by those bodies, or having an administrative, managerial or supervisory board, more than half of whose members are appointed by those public stakeholders. This shall not include public companies, as defined in Article 2(1)(b) of Legislative Decree No 333 of 11 November 2003;

(b-bis) university: any public sector body that provides post-secondary-school higher education leading to academic degrees;

(c) document: the representation of acts, facts and data, irrespective of medium, held by public sector bodies or bodies governed by public law. The definition of document shall not include computer programs;

(c-bis) machine-readable format: a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure;

(c-ter) open format: the format described in Article 68(3)(a) of Legislative Decree No 82 of 7 March 2005, as amended;

(c-quater) formal open standard: a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;

(d) public data: data that can be accessed by anyone;

(e) re-use: use by persons or legal entities of data held by public sector bodies or bodies governed by public law, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced;

(f) exchange of documents: transfer of documents purely in pursuit of assigned public tasks by the parties described in a) and (b);

(g) personal data: the data defined as such by Legislative Decree No 196 of 30 June 2003;

(h) standard licence for re-use: the contract, or other negotiated instrument, drafted where possible in electronic form, setting out the procedures for re-use of the documents held by public sector bodies or bodies governed by public law;

(i) data subject: public sector body or body governed by public law that originally created the document representing the data for its own use or commissioned it from another public or private body, or that currently holds it.’

— The text of Article 3 of Legislative Decree No 36 of 24 January 2006, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 3 (*Documents excluded from the scope of the Decree*).

1. The following documents are excluded from the scope of this Decree:

(a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies or bodies governed by public law, provided that the scope of the public tasks is transparent and subject to review;

(b) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

(c) documents held by educational and research establishments, including organisations established for the transfer of research results, schools and universities, except university libraries;

(d) documents held by cultural establishments other than libraries, museums and archives;

(e) documents held for any purpose by the bodies referred to in Articles 3, 4, 5 and 6 of Law No 801 of 24 October 1977;

(f) [documents relating to data on the national labour exchange (BCNL) and the employee registry and data held in respect of certification of employment contracts, governed by Legislative Decree No 276 of 10 September 2003, and the corresponding implementing measures];

(g) documents excluded from access under Article 24 of Law No 241 of 7 August 1990, or, on the grounds of protection of statistical confidentiality, those governed by Article 9 of Legislative Decree No 322 of 6 September 1989;

(h) documents for which third parties hold intellectual property rights under Law No 633 of 22 April 1941, or industrial property rights under Legislative Decree No 30 of 10 February 2005;

(h-bis) documents, not containing public data, access to which is governed by Chapter V of Law No 241 of 7 August 1990;

(h-ter) parts of documents containing only logos, crests and insignia;

(h-quater) documents, or parts of documents, that contain personal data that are not accessible to anyone or to which access is subject to compliance with certain limits or procedures, on the basis of the laws, regulations and legislation of the European Union, and documents that contain personal data the re-use of which is incompatible with the original purposes of processing in accordance with Article 11(1)(b) of Legislative Decree No 196 of 30 June 2003 and with other relevant applicable provisions.’

— The text of Article 5 of Legislative Decree No 36 of 24 January 2006, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 5 (*Request to re-use documents*)

1. The data subject shall preferably take out standard open licences or provide standard personalised licences and shall make these available on its website. In cases where documents containing personal data are re-used, the data subject shall take out personalised licences, including standard licences.

2. With reference to public data not yet made available, individuals intending to re-use data held by public sector bodies or bodies governed by public law shall submit a corresponding request according to the procedure established by the data subject by means of a specific measure, notwithstanding the provisions of Article 52(1) of Legislative Decree No 82 of 7 March 2005, as amended.

3. The data subject shall examine the requests and make the documents available to the applicant, where possible in electronic form, within a period of 30 days, which may be extended by an additional period of 30 days in the case of multiple or complex requests. In the event of a negative decision, the data subject shall advise the applicant of the grounds for refusal on the basis of the provisions of this Decree. Where a negative decision is adopted based on Article 3(1)(h), with regard to intellectual property rights, the data subject shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the data subject has obtained the material. Libraries, including university libraries, museums and archives shall not be required to include such a reference. The data subject shall also advise the applicant of the available means of redress in case the applicant wishes to appeal the decision in accordance with Legislative Decree No 104 of 2 July 2010.

4. (repealed).’

— The text of Article 6 of Legislative Decree No 36 of 24 January 2006, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 6 (*Available formats*). — 1. Data subjects shall make documents available, where possible and appropriate together with their metadata and in accordance with the procedures and formats laid down in Articles 52 and 68 of Legislative Decree No 82 of 7 March 2005, as amended, in accordance with the technical rules laid down in Article 12. Data subjects shall not have an obligation to create or adapt documents in order to comply with the request or to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

2. (repealed).’

— The text of Article 8 of Legislative Decree No 36 of 24 January 2006, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 8 (*Content of standard licences for re-use*). — 1. The versions of standard licences referred to in Article 5(1) shall contain any necessary restrictions or conditions in relation to the use of the documents, in consideration of their specific characteristics, and an indication of the avenues for appeal, on the basis of criteria identified by the data subject by means of a specific measure.

2. The conditions and restrictions imposed by the data subject in versions of standard licences shall be identified by categories of documents on the basis of criteria of proportionality and in accordance

with the provisions governing the protection of personal data, and may not constitute a barrier to competition.’.

— The text of Article 11 of Legislative Decree No 36 of 24 January 2006, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 11 (*Prohibition of exclusive arrangements*). — 1. The re-use of documents held by public sector bodies or bodies governed by public law shall be open to all potential actors on the market, even if one or more market players already exploit added-value products based on those documents. Contracts or other arrangements between the data subject holding the documents and third parties shall not grant exclusive rights, except where this is necessary for the provision of a service of public interest.

1-bis. The exclusive right for digitisation of cultural resources shall be defined by means of a decree of the Minister of Cultural Heritage and Activities and Tourism, having heard the opinion of the Agenzia per l’Italia Digitale, and the period of exclusivity shall not, in any case, exceed 10 years, notwithstanding the possibility of a longer duration subject to review during the 11th year and every 7 years thereafter. The arrangements for exclusive rights shall be transparent and made public on the data subject’s website. The above-mentioned arrangements shall lay down that the data subject shall be provided free of charge with a copy of the digitised cultural resources. That copy shall be available for re-use at the end of the period of exclusivity.

2. The validity of the reason for granting such an exclusive right shall be subject to regular review by the public sector body in question, at least every three years. Exclusive arrangements established after the entry into force of this Decree shall be made public by the data subject, where possible in electronic form on its websites.

2-bis. The provisions laid down in paragraph 2 shall not apply to the digitisation of cultural resources.

3. Exclusive arrangements existing on 1 July 2005 that do not qualify for the exception under paragraph 2 shall terminate at the end of the contract or in any case not later than 31 December 2008.

3-bis. Notwithstanding the provisions laid down in paragraph 3, exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions under paragraphs 1-bis and 2 shall terminate at the end of the contract or in any event not later than 18 July 2043.’.

Notes on Article 2:

— The text of Article 52 of Legislative Decree No 82 of 7 March 2005, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 52 (*Electronic access and re-use of data held by public sector bodies*). — 1. Electronic access to data, documents and processes and the re-use of data and documents shall be governed by the parties described in Article 2(2), according to the provisions of this Code and in accordance with the applicable legislation. Public sector bodies shall publish information on their websites, in the section entitled ‘Transparency, assessment and merit’, about the data catalogues, metadata and corresponding databanks in their possession and the regulations governing exercise of the rights associated with electronic access and re-use, with the exception of data present in the Tax Register.

2. Data and documents published by the corresponding public sector bodies, using any method, without the express use of a licence as described in Article 2(1)(h) of Legislative Decree No 36 of 24 January 2006, shall be understood as having been released as open data in accordance with Article 68(3) of this Code, *with the exception of cases where publication relates to personal data*. Any use of a licence as described in Article 2(1)(h) shall be substantiated in accordance with the national guidelines laid down in paragraph 7.

3. When defining the terms and conditions or versions of contracting documents relating to products and services that entail the collection and management of public data, the public sector bodies referred to in Article 2(2) shall provide clauses intended to permit electronic access and re-use, by natural and legal persons, of those data, metadata and data structures and corresponding databanks.

4. The activities intended to guarantee electronic access and re-use of data held by public sector bodies shall fall within the parameters for assessing management performance under Article 11(9) of

Legislative Decree No 150 of 27 October 2009.

5. The *Agenzia per l'Italia Digitale* shall promote policies designed to ensure optimal exploitation of national public information resources and shall implement the provisions laid down in Chapter V of this Code.

6. By February of each year, the *Agenzia per l'Italia Digitale* shall send the Prime Minister or the Minister responsible for technological innovation, for approval by the following month, a National Agenda defining the content and objectives of the policies designed to ensure optimal exploitation of public information resources, *and actions intended to re-use public data* and an annual report on the status of the exploitation process in Italy. The report shall be published in open format on the website of the Office of the Prime Minister.

7. The *Agenzia per l'Italia Digitale* shall define and update annually the national guidelines identifying technical standards, including a determination of the ontologies of services and data, and the procedures and methods for implementing the provisions of Chapter V of this Code, with the objective of providing a process that is uniform throughout the country, efficient and effective. The public sector bodies referred to in Article 2(2) of this Code shall comply with those guidelines.

8. The Prime Minister or the Minister responsible for technological innovation shall report to Parliament annually about the status of implementation of the provisions laid down in this Article.

9. The *Agenzia per l'Italia Digitale* shall perform the activities described in this Article using the human resources, equipment and funds available under existing legislation. .

— The text of Article 68 of Legislative Decree No 82 of 7 March 2005, cited in the notes on the recitals, as amended by this Decree, states:

‘Article 68 (*Comparative analysis of solutions*). — 1. Public sector bodies shall purchase computer programs or parts thereof in accordance with principles of cost-effectiveness and efficiency, protection of investment, re-use and technological neutrality, following a comparative technical and financial assessment of the following solutions available on the market:

- (a) software developed on behalf of public sector bodies;
- (b) re-use of software or parts thereof developed on behalf of public sector bodies;
- (c) free software or software with open source code;
- (d) software that can be used for cloud computing;
- (e) proprietary software by means of licences for use;
- (f) software that combines the above solutions.

1-bis. For this purpose, before purchasing any software and applying the procedures laid down in the Code represented by Legislative Decree No 163 of 12 April 2006, public sector bodies shall undertake a comparative assessment of the various solutions available on the basis of the following criteria:

- (a) total cost of the program or solution, including costs for purchase, implementation, maintenance and support;
- (b) degree of use of open data formats and interfaces and standards capable of ensuring interoperability and application cooperation among the various information systems used by the public sector;
- (c) guarantee from the supplier in terms of security levels, compliance with the data protection legislation and service levels, taking into account the type of software purchased.

1-ter. Where the comparative technical and financial assessment, performed on the basis of the criteria laid down in paragraph *1-bis*, shows clearly and justifiably that it is not possible to access solutions already available within the public sector body, or free software or software with open source code, in line with the requirements to be met, the purchase of proprietary computer programs by means of usage licences shall be permitted. The assessment described in this paragraph shall be performed according to the procedures and criteria defined by the *Agenzia per l'Italia Digitale*, which shall also provide an opinion at the request of the parties concerned stating that those procedures and criteria have been applied.

2. When developing or purchasing computer programs, public sector bodies shall adopt IT solutions, where possible in modular format, based on functional systems that are published in accordance with Article 70, that guarantee interoperability and application cooperation and that

enable the representation of the data and documents in a range of formats, at least one open, except where exceptional, substantiated requirements exist.

2-bis. Public sector bodies shall advise DigitPA in due time of the adoption of corresponding IT applications and technological and organisational practices, providing any appropriate information in order to ensure that comprehensive information is provided about the solutions adopted and the results obtained, with the additional objective of promoting re-use and the broadest possible dissemination of best practice.

3. For the purposes of this Legislative Decree, the following definitions shall apply:

(a) open data format: a data format made public, that is exhaustively documented and neutral in terms of the technological tools required for use of the corresponding data;

(b) open data: data that have the following characteristics:

(1) they are available according to the terms of a licence that permits their use by anyone, including for commercial purposes, in disaggregated format;

(2) they are accessible by means of information and communication technologies, including public and private electronic networks, in open formats in accordance with point (a) above, are suitable for automatic use by computer programs and are provided with the corresponding metadata;

(3) they are made available free of charge by means of information and communication technologies, including public and private electronic networks, or are made available for the marginal costs incurred for their reproduction and dissemination, *except in the cases provided for by Article 7 of Legislative Decree No 36 of 24 January 2006, and in accordance with the charges determined according to the procedure described in that Article.*

4. DigitPA reviews and updates, at least once a year, a list of open formats that can be used in public sector bodies and the procedures for transfer of formats.?

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