

Legislative Decree No 36 of 24 January 2006

IMPLEMENTATION OF DIRECTIVE 2003/98/EC ON THE RE-USE OF PUBLIC SECTOR INFORMATION

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THE PRESIDENT OF THE REPUBLIC,

Having regard to Articles 76 and 87 of the Constitution,

Having regard to Article 117 of the Constitution,

Having regard to Law No 62 of 18 April 2005, and in particular Article 1 and Annex A thereof,

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 Law No 633 of 22 April 1941,

Having regard to Law No 801 of 24 October 1977,

Having regard to Law No 241 of 7 August 1990,

Having regard to Legislative Decree No 157 of 17 March 1995,

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 Legislative Decree No 333 of 11 November 2003,

Having regard to Law No 311 of 30 December 2004,

Having regard to Legislative Decree No 82 of 7 March 2005,

Given the opinion of the Personal Data Protection Supervisor,

Having regard to the decision adopted by the Council of Ministers sitting on 28 October 2005,

As proposed by the Minister for EU Affairs and the Minister for Innovation and Technology, together with the Ministers of Foreign Affairs, Justice, Economy and Finance, and the Civil Service,

ISSUES THE FOLLOWING DECREE:

Article 1

Subject matter and scope

1. This Legislative Decree governs the arrangements for re-using documents containing public data held by public sector bodies and bodies governed by public law.
2. The public sector bodies and bodies governed by public law are not obliged to grant the re-use of documents as referred to in paragraph 1. The decision as to whether or not to grant such re-use rests with the body or body concerned, except where specific laws or regulations apply.
3. This Decree also applies when documents as referred to in paragraph 1 have already been disseminated for re-use by the parties indicated above. In any event, without prejudice to Article 11, all re-users shall be treated equally.
4. In exercising their power of discretion under paragraph 2, the public sector bodies and bodies governed by public law shall seek to make re-usable as much data as possible, on the basis of rules ensuring fair, proportionate and non-discriminatory treatment.

Article 2

Definitions

1. For the purposes of this Decree the following definitions shall apply:
 - a) public sector bodies: administrative bodies of the State, the regions, the autonomous provinces of Trento and Bolzano, the local authorities and their unions, consortia or associations and other non-economic public entities;
 - b) bodies governed by public law: bodies with a legal personality established for specific purposes of meeting needs in the general interest, not having an industrial or commercial

character, whose activity is financed for the most part by the State, regional or local authorities, other public bodies or organisations governed by public law, and subject to their management supervision, or having an administrative, managerial or supervisory board, more than half of whose members are appointed by those public entities. This excludes public undertakings as defined in Article 2(1)(b) of Legislative Decree No 333 of 11 November 2003;

- c) document: the presentation of acts, facts and information in whatever form, held by a public sector body or body governed by public law. This definition does not include computer programmes;
- d) public data: data that is accessible by anyone;
- e) re-use: the use by persons or legal entities of data owned by a public sector body or a body governed by public law, for commercial or non-commercial purposes, other than the initial purpose within the public task for which the document was produced;
- f) exchange of documents: the transfer of documents exclusively for carrying out of institutional tasks by the bodies referred to under (a) and (b) above;
- g) personal data: data as defined by Legislative Decree No 196 of 30 June 2003;
- h) standard re-use licence: the contract, or other legal instrument, produced if possible in electronic form, in which the public sector body or body governed by public law sets out the conditions applying to the re-use of documents;
- i) owner of the data: the public sector body or body governed by public law which originally created the document containing the data for its own use, or commissioned it from another public or private entity.

Article 3

Documents excluded from the application of this Decree

1. The following documents shall be excluded from the application of this Decree:
 - a) those held for purposes outside the institutional remit of the public sector body or body governed by public law;

- b) those 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) those held by educational and research establishments, such as schools, universities, archives, libraries and research facilities, including organisations established for the transfer of research results;
- d) those held by cultural establishments such as museums, libraries, archives, orchestras, operas, ballets and theatres;
- e) those held for whatever reason by the bodies referred to in Articles 3, 4, 5 and 6 of Law No 801 of 24 October 1977;
- f) those relating to data on the online national employment exchange, on the employee register and that used for the certification of employment contracts, covered by Legislative Decree No 276 of 10 September 2003 and its implementing provisions;
- g) those to which access is withheld under Article 24 of Law No 241 of 7 August 1990;
- h) those 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.

Article 4

Safeguard provisions

1. This Decree is without prejudice to provisions on:
 - a) the protection of personal data (Legislative Decree No 196 of 30 June 2003);
 - b) the protection of authors' rights (Law No 633 of 22 April 1941). The obligations imposed by this Decree shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works (1886), ratified by Law No 399 of 20 June 1978, and the Agreement on Trade-related Intellectual Property Rights (TRIPS 1994), ratified by Law No 747 of 29 December 1994;
 - c) access to administrative documents (Chapter V of Law No 241 of 7 August 1990);

- d) the commercial re-use of documents, data, and cadastral and mortgage information, (cf. Article 1(367) to (373) of Law No 311 of 30 December 2004);
- e) industrial property (Legislative Decree No 30 of 10 February 2005);
- f) the national statistics system (Legislative Decree No 322 of 6 September 1989); access to individual data (Article 8 of Law No 681 of 31 December 1996).

Article 5

Requests for the re-use of documents

1. The owner of the data shall prepare a standard re-use licence and make it available, if possible in electronic form on its own official website.
2. The parties intending to re-use data of public sector bodies or bodies governed by public law shall present an appropriate request according to the arrangements provided for by the owner of the data.
3. The owner of the data shall examine the requests and make the documents available to the requester, if possible in electronic form, within a period of thirty days, which may be extended by a further thirty days in the event of numerous and complex requests. The owner of the data is not obliged to produce, or continue to produce, documents for the sole purpose of their re-use by a private or public entity.
4. The authority and rights regarding re-use concern only the owner of the data.

Article 6

Available formats

1. The owner of the data shall make the requested documents available in the form in which they were produced.
2. The owner of the data shall provide the documents, if possible in electronic form, in accordance with the technical rules in Article 11, and is not obliged to adapt or create documents in order to comply with the request, nor to provide extracts from documents, where this would involve going beyond a simple operation.

Article 7

Charges

1. Decrees of the competent Ministers, together with the Minister of Economy and Finance, to be adopted within ninety days of the date of entry into force of this Decree, shall fix, on the basis of paragraphs 2 and 3 below, the charges and payment arrangements relating to actions under Articles 5, 6 and 9.
2. The level of the charges referred to in paragraph 1, calculated on the basis of the costs actually incurred by the body and updated every two years, shall cover the costs of collection, production, duplication and dissemination, together (in the case of re-use for commercial purposes) with a supplement, to be determined by the Decrees referred to in paragraph 1 on the basis of the body's investment outlay in the previous three years.
3. In cases of re-use for non-commercial purposes, a differentiated charge shall be fixed, as outlined in paragraphs 1 and 2, to cover only the costs actually incurred by the body in question.
4. The decrees referred to in paragraph 1 shall be published in the Italian Official Gazette and otherwise made public by the competent body, if possible in electronic form on its own official website.
5. Receipts of the charges referred to in paragraph 1 shall be paid in as State revenue, to be assigned, under Article 4(2) of Law No 62 of 18 April 2005, to the budget forecast of the body in question.
6. The regional and local authorities and other public entities and bodies shall fix, according to their own provisions or decision-making procedures, the levels of the charges and payment arrangements, on the basis of the criteria in paragraphs 2 and 3.

Article 8

Contents of standard re-use licences

1. Model standard re-use licences shall be prepared by the owner of the data, if possible in electronic format and made available on its official website. The models shall be such that they can be filled in electronically and contain any restrictions or conditions on the use of the documents, in view of their particular characteristics, as well as information on means of redress, according to criteria specified by the owner itself.

2. The conditions and restrictions included on the standard licence models by the owner of the data shall be specific to document categories so as to ensure proportionality and compliance with rules on the protection of personal data; they may not constitute an obstacle to competition.

Article 9

Means of searching for available documents

1. Public sector bodies and bodies governed by public law shall encourage suitable forms of official information and communication as regards documents that may be re-used, including by means of their official websites, and shall take practical measures to make it easier to find those documents, e.g. through directories, portals and inventories linking decentralised directories.

Article 10

Re-use of documents for commercial purposes by public sector bodies

1. The exchange of documents, as defined in Article 2(1)(f), does not constitute re-use.
2. In cases where a public sector body re-uses documents of another public sector body for commercial purposes, the arrangements for re-use (including economic) of this Decree shall apply.

Article 11

Prohibition of exclusive arrangements

1. Documents of public sector bodies and bodies governed by public law may be re-used by all potential actors in the market, even if one or more parties is already exploiting added-value products based on the documents. Contracts or other arrangements between the owner of the data which holds the documents and third parties shall not grant exclusive rights, except where such rights are necessary for the provision of a service in the public interest.
2. The validity of the reason for granting an exclusive right shall be subject to regular review by the 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 owner of the data, if possible in electronic form on its official website.

3. Existing exclusive arrangements that do not qualify for the exception under paragraph 2 shall be terminated as from their date of expiry or in any case not later than 31 December 2008.

Article 12

Technical rules

1. The provision of documents under Article 5(3) shall comply with the technical rules on the public system of connectivity under Article 16 of Legislative Decree No 42 of 28 February 2005, the rules on technical discipline in Annex B to Legislative Decree No 196 of 30 June 2003, and Article 70 of Legislative Decree No 82 of 7 March 2005.
2. Any further technical rules shall be adopted, with advance notice to the European Commission under Legislative Decree No 427 of 23 November 2000, by decree of the President of the Council of Ministers or of the Minister for Innovation and Technology, together with the Minister for the Civil Service.

Article 13

Financial provisions

1. Implementation of this Decree may not result in new or greater expenditure, nor reduced revenue, for the public purse.