

Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast)

CHAPTER IV

NON-DISCRIMINATION AND FAIR TRADING

Article 11

Non-discrimination

- 1 Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use, including for cross-border re-use.
- 2 If documents are re-used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

Article 12

Exclusive arrangements

- 1 The re-use of documents shall be open to all potential actors in the market, even if one or more market actors already exploit added-value products based on those documents. Contracts or other arrangements between the public sector bodies or public undertakings holding the documents and third parties shall not grant exclusive rights.
- 2 However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established on or after 16 July 2019 shall be made publicly available online at least two months before they come into effect. The final terms of such arrangements shall be transparent and shall be made publicly available online.

This paragraph shall not apply to digitisation of cultural resources.

- 3 Notwithstanding paragraph 1, where an exclusive right relates to the digitisation of cultural resources, the period of exclusivity shall in general not exceed 10 years. Where that period exceeds 10 years, its duration shall be subject to review during the 11th year and, if applicable, every seven years thereafter.

The arrangements granting exclusive rights referred to in the first subparagraph shall be transparent and made public.

In the case of an exclusive right referred to in the first subparagraph, the public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. That copy shall be available for re-use at the end of the period of exclusivity.

- 4 Legal or practical arrangements that, without expressly granting an exclusive right, aim at, or could reasonably be expected to lead to, a restricted availability for the re-use of documents by entities other than the third party participating in the arrangement, shall be made

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publicly available online at least two months before their coming into effect. The effect of such legal or practical arrangements on the availability of data for re-use shall be subject to regular reviews and shall, in any event, be reviewed every three years. The final terms of such arrangements shall be transparent and made publicly available online.

5 Exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions set out in paragraphs 2 and 3 and that were entered into by public sector bodies shall be terminated at the end of the contract and in any event not later than on 18 July 2043.

Exclusive arrangements existing on 16 July 2019 that do not qualify for the exceptions set out in paragraphs 2 and 3, and that were entered into by public undertakings, shall be terminated at the end of the contract and in any event not later than on 17 July 2049.