



D2.1 – OPEN DATA – EU INITIATIVES

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OPEN DATA – EU INITIATIVES

Public sector information (PSI) refers to all information that public bodies produce, collect or purchase. PSI may include geographical data, statistics, weather information, data from publicly-funded research projects, and digitised books from libraries. “Open public data” are PSI that is readily and widely accessible and can be re-used, sometimes under non-restrictive conditions.

Access and re-use of data can be made difficult by public authorities due to several barriers:

- A lack of information that specific data exists and are available;
- A lack of clarity regarding which public authority holds the data and on the terms of re-use;
- Data made available only in formats that are difficult or expensive to use;
- Complicated licensing procedures or prohibitive fees;
- Exclusive re-use agreements with one commercial entity or re-use restricted to a government-owned company.

Opening up governmental data for re-use can have significant benefits for citizens, businesses, society, and governments themselves:

- New businesses can be built on the basis of these data;
- Transparency in public administration is increased, improving the visibility of previously inaccessible information, informing citizens and business on policies, public spending and outcomes;
- Evidence-based policy making and administrative efficiency.

Not all data are re-usable: personal data (e.g. medical data), data protected under existing privacy protection or accessibility rules (e.g. protection of national and public security) and data protected by intellectual property rights of third parties are excluded from re-use.

Public bodies should make their data available for re-use as freely as possible. However, there may be conditions on re-use, such as the requirement to indicate a source reference, but they should not unnecessarily restrict how the information can be reused or limit competition. On the other hand, every type of re-use is allowed irrespective of its purpose, commercial or non-commercial.

Studies conducted on behalf of the European Commission show that industries and citizens still face difficulties in finding and re-using PSI. In response, from December 2011, the Commission adopted a package of measures to overcome barriers to re-use, and to reduce the fragmentation of data markets. The key element was Directive 2013/37/EU amending Directive 2003/98/EC on the re-use of public sector information.

Directive 2003/98/EC of the European Parliament and the Council on the re-use of public sector information, 17 November 2003

The Directive (amended in 2013 and currently being revised) aimed to facilitate the re-use of PSI throughout the EU by harmonising the primary conditions for reuse and by removing significant



barriers to re-use in the internal market. It was based on two pillars of the internal market: transparency and fair competition, and it applied to all public sector bodies, who were obliged to:

- be transparent on conditions for re-use;
- avoid any form of discrimination between re-users;
- deal with applications for re-use within a set maximum time;
- not enter into exclusive arrangements other than in exceptional circumstances.

The Directive established the regulatory bases for the start of the processes of opening data and public documents in the different administrations of the Member States to favour their re-use by anyone for any purpose, establishing minimum rules on access, licenses, standards of non-discrimination between re-users, and pricing principles and transparency.

Communication from the Commission on Open Data: *Open data: An engine for innovation, growth and transparent governance*, 12 December 2011

The Commission observed firstly that public data have significant and untapped potential for re-use in new products and services and that the overall economic gains resulting from the opening of this resource could amount to 40 billion Euros per year in the EU, not to mention the increased participation by citizens in political and social life.

In December 2011 the Commission presented a package of measures to overcome existing barriers and fragmentation¹ across the EU on the opening of public data which consists of three mutually reinforcing strands:

- Adapting the legal framework for data re-use, including legal, soft law and policy measures.
 - Proposal for a revised Directive on the re-use of PSI, December 2011;
 - Revised Commission Decision on the re-use of Commission information, December 2011; Work to expand the regime to other European Institutions and Agencies, 2012;
 - Open data to be taken up in sector-based legislative and policy initiatives.
- Mobilising financing instruments in support of open data, and deployment actions, such as the creation of European data portals,
 - Portal giving access to Commission data and data from other EU institutions and agencies, spring 2012;
 - Launch of a pan-European data portal, providing access to datasets from across the EU, spring 2013, following preparatory work with the Member States from 2011;

¹ At point 3.1 the Commission observed that the degree of initiative and the awareness of open data issues were uneven among the Member States. It acknowledged that the impetus towards open data was taking place in several Member States for reasons of transparency, administrative efficiency and the economic potential of re-use. The Member States support open government through legislation and practical measures, such as the production of data in machine-readable formats and the creation of data portals: the UK has set up the *data.gov.uk* portal, which brings together data from government organisations at all levels; France has set up *etalab*. There are also regional data portals, such as *dadesobertes.gencat.cat* in Catalonia and *dati.piemonte.it* in Piedmont (Italy). However, despite the minimum harmonisation in 2003 through the Directive on the re-use of PSI, the Commission acknowledged continuing significant differences in national rules and practices. This leads to fragmentation of the internal information market and hinders the creation of cross-border information services. The differences are the most striking in relation to charging, with cost recovery practised in some cases and re-use free or practically free in others.



- Co-funding of the European e-service infrastructure for open data through the Connecting Europe Facility 2014-2020.
- Facilitating coordination and experience sharing across the Member States.
 - Formulation and implementation of open public data policies in all Member States by early 2013.
 - 1/3 of all available structured government data in the Member States searchable through the pan-European data portal by 2015.

The Commission invited the Member States to contribute to the real openness of data through the rapid adoption, transposition and application of the revised directive on the re-use of PSI, to define and apply open data policies, adopting the examples of good practices used in the EU and to contribute to the development of a pan-European data portal.

The Commission also invited the European Parliament and the Council, in their respective areas of competence, to create the correct framework conditions for the re-use of PSI within the EU and to support projects and infrastructures that can transform Europe's public data bodies into a driver for innovation, growth and transparency.

Update of the Commission's decision on the re-use of Commission documents, 12 December 2011

This decision replaces Decision 2006/291/EC, Euratom of 7 April 2006, on the re-use of Commission information, to make the re-use regime of Commission documents more effective.

As a default rule, the Commission states that re-use must be allowed for non-commercial and commercial purposes without:

- the need for an individual application;
- charging the re-user;
- applying conditions on re-use;
- discriminating between re-users.

Each of these features is subject only to limited, duly justified exceptions.

The decision does not apply to:

- software or documents covered by industrial property rights (such as patents, trademarks, etc.);
- documents for which the Commission is not in a position to allow re-use in view of the intellectual property rights of third parties;
- documents made accessible to a party under specific rules governing privileged access to documents.

This Decision determined the conditions for the re-use of documents² held by the Commission or on its behalf by the EU Publications Office to facilitate more extensive re-use of information, to enhance the image of openness of the Commission, and to avoid unnecessary administrative burdens for re-users and the Commission services alike.

Article 4 states a general principle that

² Article 2 describes the scope of application of the decision. It applies to public documents produced by the Commission or by public and private entities on its behalf which have been published by the Commission or by the Publications Office on its behalf through publications, websites or dissemination tools, or which have not been published for economic or other practical reasons, such as studies, reports and other data. The decision should not apply to documents for which the Commission is not in a position to allow their re-use, e.g. in view of third party intellectual property rights or if the documents have been received from the other Institutions.



- **all documents** must be available for re-use, for commercial or non-commercial purposes, under the conditions laid down in Article 6;
- without charge, subject to the provisions laid down in Article 9: in exceptional cases, marginal costs incurred for the reproduction and dissemination of documents could be recovered.
- without the need to make an individual application, unless otherwise provided in Article 7. If an individual application for re-use is required, the Commission services would indicate this in the relevant document or notice highlighting the same and providing an address to which the application should be submitted.

To facilitate linking and re-use for commercial and non-commercial purposes, the Commission has set up a data portal as a single point of access to its structured data.

Article 10, entitled “transparency”, states that any applicable conditions and standard charges for the documents available for re-use should be pre-established and published, through electronic means, where possible and appropriate.

The Commission states that the re-use of documents should be opened to all potential players on the market. However, exclusive rights may be granted to publishers of scientific and scholarly journals for articles based on the work of Commission officials for a limited period.

Directive 2013/37/EU amending Directive 2003/98/EC on the re-use of PSI

In July 2013 Directive 2013/37/EU amended Directive 2003/98/EC, to encourage the Member States to make as much material held by public sector bodies available for re-use as possible.

The change was made necessary by the exponential increase in data and constant evolution of technologies for data analysis, exploitation and processing.

Furthermore, due to the ambitious approaches of some Member States in implementing the 2003 Directive, which exceeded the minimum level set by the latter, minimum harmonisation was necessary to determine the type of public data available for re-use on the internal market of information, to prevent different rules adopted by different Member States from hindering the cross-border supply of products and services and to allow comparable sets of public data to be re-used to create pan-European applications based on such data.

The most significant changes were:

- the expansion of the scope of the Directive to include libraries, archives, museums and university libraries (which hold a considerable amount of valuable PSI resources, particularly since digitisation projects have multiplied the amount of digital public domain material), albeit in a way that limits the possible financial effects and does not impose a significant administrative burden on these institutions;
- the obligation to allow the re-use for commercial and non-commercial purposes of generally accessible public data that are not explicitly covered by one of the exceptions;
- data should be made available in machine-readable formats where possible (recital 21);
- a default charging rule limited to the marginal cost of reproduction, provision and dissemination of the information. This provision does not apply to public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks (recital 22; article 6);
- the obligation for public sector bodies to be more transparent regarding the charging rules and conditions they apply;
- in relation to any re-use that is made of the document, public sector bodies may impose conditions, where appropriate through a licence, such as acknowledgment of source and of whether the re-user has modified the document in any way (recital 26);



- the means of redress should include the possibility of review by an impartial review body which should be organised by the constitutional and legal systems of the Member States and should not prejudice any means of redress otherwise available to applicants for re-use. It should, however, be distinct from the Member State mechanism laying down the criteria for charging above marginal costs. The means of redress should include the possibility of reviewing adverse decisions but also decisions which, although permitting re-use, could still affect applicants on other grounds, notably by the charging rules applied. The review process should be swift, due to the needs of a rapidly changing market (recital 28);
- prohibition on cross-subsidies: if public sector bodies re-use their documents to offer added-value information services in competition with other re-users, equal charges and other conditions must apply to them all. Prohibition on exclusive arrangements: public sector bodies may not enter into exclusive agreements with individual re-users, excluding others. Two exceptions apply: exclusive rights may be authorised in exceptional circumstances if they are necessary to provide services in the public interest; or in the context of digitisation of cultural resources.

Recital number 20 states: *To facilitate re-use, public sector bodies should, where possible and appropriate, make documents available through open and machine-readable formats and together with their metadata, at the best level of precision and granularity, in a form that ensures interoperability, e.g. by processing them in a way consistent with the principles governing the compatibility and usability requirements for spatial information under Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).*

The amended Directive calls on the Commission to help the Member States implement the new rules by issuing guidelines on recommended standard licences, datasets and charging for the re-use of documents.

Commission Notice: Guidelines on recommended standard licences, datasets and charging for the re-use of documents, 24 July 2014.

The purpose of the Commission Notice is to provide non-binding guidance on best practices within three subject areas of particular relevance for the re-use of public sector information in Europe: recommended standard licences, datasets and charging. The guidance document is targeted at national administrations to guide them in transposing the 2013 PSI Directive and to encourage practices that increase the role of PSI in the digital market.

- As for licenses, the Commission recommends not imposing limits on the possibility of re-using information, but to define precise conditions for personal data protection. Re-users must be made aware of the rules on personal data processing from the beginning (for example, by including a relevant clause in the licence). Among other things, it also recommends the use of standard and already widespread licensing solutions. Finally, it specifies that, in most cases, for data re-use, it is sufficient to respect the requirement of explicit citation of the source.
- With regard to datasets, the document indicates the five types of information considered of most significant interest to businesses and other potential users. These are geographical, environmental, transport, statistical and data related to business registers and their accounting and management documents. It also recommends that data sets are:
 - published online in their original form, to facilitate their timeliness;
 - edited and updated at the highest level of granularity, to ensure their completeness;



- published in a machine-readable and open format, to improve accessibility;
 - described by appropriate metadata and classified according to standard vocabularies, to facilitate research and interoperability;
 - subject to feedback from re-users, to maintain quality over time and to promote the involvement of civil society.
- In relation to costs, the Commission asks the public administrations to ensure that data downloading is always free or, at the very least, limited to the marginal cost of reproduction, supply and distribution.

Commission Communication: *Towards a thriving Data-Driven Economy*, 21 January 2015

The communication calls for the establishment in the EU of a thriving data-driven economy and thus a digital economy using information technologies. The coordinated action plan must help to realise the objectives of the Digital Agenda for Europe.

The European Commission communication highlights the need to create the conditions to facilitate cloud computing and a high-performance computing (HPC) infrastructure. According to the Commission, another critical element is data-driven innovation (DDI), i.e. the ability of businesses and governments to use creatively information derived from in-depth data analysis, including public information made available for re-use.

The Commission emphasises that this will require highly skilled specialists, broad application of open data and the creation of an appropriate legal framework on data ownership, data protection and the means of making data available. The Commission will use various methods to support digital entrepreneurship in Europe, not least by promoting open access to data, facilitating access to cloud computing, fostering links and cooperation between local data incubators, as well as developing digital skills and competencies, including based on the Grand Coalition for Digital Jobs.

According to the Commission, a thriving data-driven economy will have the following characteristics:

- Availability of good quality, reliable and interoperable datasets and enabling infrastructure;
- Improved framework conditions that facilitate value generation from datasets;
- A range of application areas where improved big data handling can make a difference.

Progress towards a thriving data-driven economy requires community building and the correct framework conditions. In the Commission's view, strategic cooperation through a contractual Public-Private Partnership (cPPP) can play an essential role in developing a data community and encouraging the exchange of best practices.

The Commission states that to optimise data storage, transfer, processing and analysis, the EU must use **public procurement** to bring the results of data technologies to the market.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the regions: *Towards a common European data space*, 25 April 2018

Building on the data protection legislation in force, the Commission proposed a package of measures as a key step towards achieving a common data space in the EU, a seamless digital area on a scale that will enable the development of new data-based products and services. The measures put forward along with this Communication include:

- a proposal for a review of the Directive on the re-use of PSI;



- an update of the 2012 Recommendation on access to and preservation of scientific information;
- guidance on sharing private sector data among companies and with public sector bodies for public interest purposes.

The envisaged measures cover different types of data and therefore have different levels of intensity. At the same time, they all work towards the broader goal of bringing together data, as a key source of innovation and growth, from different sectors, countries and disciplines, into a common data space. These initiatives are linked to the *Regulation on the free flow of non-personal data in the EU* (14 November 2018) which will ensure, once it enters into force in May 2019, that no barriers, such as data localisation restrictions, will impede the development of the European data economy.

Revision on the PSI Directive: Proposal for a Directive of the European Parliament and the Council, 25 April 2018

On 25 April 2018, the Commission adopted the 2018 Data Package, addressing for the first time different types of data (public, private, scientific) within a coherent policy framework, making use of different policy instruments. As part of this package, building on the results of a public consultation³, together with an extensive evaluation⁴ of the Directive and an impact assessment, the European Commission adopted a proposal for a revision of the PSI Directive, which was presented as part of a package of measures aiming to facilitate the creation of a common data space in the EU.

The Proposal updates the framework setting out the conditions under which public sector data should be made available for re-use, with a particular focus on the increasing amounts of high-value data that are now available.

The proposal aims to overcome the barriers that still prevent the full re-use of PSI, which, according to the impact assessment, include the following:

- data generated by utilities, transport and publicly-funded research have tremendous re-use potential, but are not covered by the current rules, even though much of this research is wholly or partly financed by public funds;
- providing real-time access to dynamic data held by public sector entities, for example, using APIs (Application Programming Interface), is rare, although dynamic data are one of the most commercially valid data types;

³ The overall conclusion from the consultation held between June 2017 and late January 2018 was that although, on the whole, the PSI Directive works well, there are areas which should be reviewed, such as the availability of dynamic data, charging rules, and the broader availability of high-value PSI, including research data and data generated in the context of the provision of a public task.

⁴ The evaluation report has confirmed that, overall, the PSI Directive works well: it continues to contribute to the achievement of its main policy objectives, which are to stimulate the digital content market for PSI-based products and services, to stimulate cross-border exploitation of PSI and to prevent distortions of competition on the EU market. At the same time, it has had a favourable impact on transparency, citizen empowerment, and public sector efficiency. However, the report also indicates that there are a number of issues that would need to be addressed in order to fully exploit the potential of PSI for the European economy and society: provision of real-time access to dynamic data via adequate technical means, reducing restrictions, including financial barriers, on the re-use of high-value public data, acknowledging that relevant data are often generated in the context of the provision of certain services of general economic interest by public undertakings and by publicly-funded research rather than by the public sector as such, the existence of new forms of exclusive arrangements, the use of exceptions to the principle of charging the marginal cost, and the relationship between the PSI Directive and specific related legal instruments.



- several public sector bodies continue to charge well above what is needed to cover reproduction and dissemination costs for the re-use of public sector data. Such charges constitute a market barrier for Small and Medium-sized Enterprises (SMEs);
- public data holders sometimes enter into arrangements with the private sector to derive extra value from their data. This creates the risk of lock-in of public sector data, benefiting large companies and thereby limiting the number of potential re-users of the data in question.

In respect of the continued existence of these barriers, the proposed changes are to:

- reduce market entry barriers, particularly for SMEs, by limiting the exceptions that allow public bodies to charge more for the re-use of their data than the marginal costs of dissemination;
- increase the availability of data by bringing new types of public and publicly-funded data into the scope of the Directive, such as data held by public undertakings in the utilities and transport sectors and research data resulting from public funding;
- minimise the risk of excessive first-mover advantage, which benefits large companies and thereby limits the number of potential re-users of the data in question, by requiring a more transparent process for the establishment of public–private data arrangements;
- increase business opportunities by encouraging the dissemination of dynamic data via application programming interfaces (APIs).

With the revision, the **scope** of application of the Directive shall be extended to

- documents held by public undertakings active in the areas defined in Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and by public undertakings acting as public service operators under Regulation (EC) no. 1370/2007 insofar as they were produced as part of the provision of services in the general interest, as defined by law or other binding rules in the Member State.
- a specific category of documents produced as part of scientific research, namely results of the scientific fact-finding process (experiments, surveys and similar) that are at the basis of the scientific process, while publications in scientific journals continue to be excluded from the scope as they pose additional challenges in terms of rights management.

On 22 January 2019, negotiators from the European Parliament, the EU Council and the Commission reached an **agreement** on the revision proposed by the Commission. The European Parliament and the EU Council will now need to adopt formally the revised rules. The Member States will then have to implement them within two years before they become effective.

Once adopted, the Directive would be renamed the *Open Data and Public Sector Information Directive* and will make public sector and publicly-funded data re-usable.

Non-legislative measures

The European Commission also works to overcome barriers limiting the re-use of PSI through non-legislative measures:

- it engages with Member States' experts in the PSI expert group (PSI Group);
- it funds an Open Data incubator assisting small and medium-sized enterprises in building sustainable business ideas based on Open Data;
- it supports the Legal Aspects of Public Sector Information (LAPSI) – a thematic network of lawyers specialising on PSI re-use, including academics and practitioners;
- it commissions studies on the following issues:



- presence of exclusive agreements in the Member States;
- economic potential of PSI re-use;
- it develops an Open Data Portal for its documents and a pan-European digital service infrastructure, aggregating content of existing open data portals inside the EU.
- it contributes to the G8 process on opening up government information, also for re-use, leading to the adoption of a *G8 Open Data Charter*⁵.

Open Data Portals

Open data portals facilitate access to and re-use of PSI. They are an essential element of most open data initiatives and are mainly used by public administrations at European, national and local level in the Member States. Notable examples of Open Data portals maintained by public administrations in Europe are *opendata.paris.fr*, *data.gouv.fr*, *dati.piemonte.it*, *dati.gov.it*, *data.overheid.nl* and *data.gov.uk*.

The **EU Open Data portal** (*www.open-data.europa.eu*, now *https://data.europa.eu/euodp/en/home*) was set up in 2012, following European Commission Decision 2011/833/EU on the re-use of Commission documents, allowing access to open data published by EU institutions and bodies. All data available on this portal are **free** to use and reuse for commercial or non-commercial purposes, with no copyright restrictions, except for a small number of data subject to specific conditions on re-use, most of which concern the protection of third party intellectual property rights.

The data concerned include geographic, geopolitical and financial data, statistics, election results, legal acts, data on crime, health, the environment, transport and scientific research.

Only EU institutions, agencies and bodies can provide data for the EU Open Data Portal. The portal's structure is decentralised, which means the data remain on the data provider's website and the provider is responsible for their quality and availability.

Data on public procurement conducted according to EU rules have been made available **on the EU Open Data Portal**. These data, which reveal how over €400 billion of EU citizens' money is being spent every year, are provided in a format accessible to NGOs, academics, companies and journalists.

The portal includes information on who is buying what from whom, for how much, and which procedure and award criteria were used. Analysing the data will support transparency in public spending, as well as helping companies to make more informed business decisions when applying for government contracts.

⁵ G8 leaders signed the *Open Data Charter* on 18 June 2013. It provides a globally shared definition of Open Data, meaning "digital data made available thanks to technical and legal characteristics that make them freely usable, reusable and redistributable by anyone, always and everywhere". The charter stresses the need to make data freely and openly re-usable both for humans and machines. The *Open Data Charter* sets out five strategic principles that all G8 members will act on. These include an expectation that all government data will be published openly by default, alongside principles to increase the quality, quantity and re-use of the data that is released. G8 members have also identified 14 high-value areas – from education to transport, and from health to crime and justice – in which they will release data. These will help to unlock the economic potential of open data, support innovation and provide greater accountability.



In the coming years, open data covering all EU public procurement should be gathered, published, and enriched by citizens through social media within the Digital Whistleblower project financed by Horizon 2020.

Tenders Electronic Daily (TED, <https://ted.europa.eu/>) is the online version of the '*Supplement to the Official Journal*' of the EU, dedicated to European public procurement. It publishes 520,000 procurement notices a year, including 210,000 calls for tenders which are worth approximately €420 billion. TED provides **free** access to business opportunities from the EU, the European Economic Area and beyond.

Every day, from Monday to Friday about 2,000 public procurement notices are published on TED.

Procurement notices can be browsed, searched and sorted by country, region, business sector and more. Information on every procurement document is published in the 24 official EU languages.

In 2015, the European Commission established the **European Data Portal** (www.europeandataportal.eu), bringing together data from different Member States as well as from the European institutions. This is a pan-European repository of PSI open for re-use in the EU. This portal also offers a training centre on how to re-use open data and a database of success stories from European and international re-users. The principal function of the European Data Portal is to provide a single point of access in all 24 EU official languages for data published by public administrations at all levels of government in Europe (EU countries, countries of the European Economic Area and certain other European countries).

The difference between the Open Data Portal (ODP) and European Data Portal (EDP) is that ODP is the Open Data portal of the European Union containing datasets that are collected and published by the European Institutions. EDP is a European portal that harvests metadata from public sector portals throughout Europe. Therefore, EDP focuses on data made available by European countries. Besides, EDP also harvests metadata from ODP. The European Commission is currently exploring how to bring those two portals closer together.



OPEN DATA & PUBLIC PROCUREMENT

At present, there is no law or policy at EU level that adequately addresses open data in Public Procurement, except for some Directives and Communications that highlight the need and importance of opening data in this sector to strengthen transparency and combat corruption.

However, there are some recommendations and indications by some international organisations.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: *Making Public Procurement work in and for Europe*, 3 October 2017

This Communication presents a public procurement strategy which sets out the overall policy framework and defines clear priorities for improving procurement in practice and supporting investment within the EU. Three concrete initiatives are presented alongside this strategy:

- communication on a mechanism for large infrastructure projects to provide clarity and guidance to public authorities on public procurement;
- a Recommendation to professionalise public buyers as a skilled workforce is essential for effective implementation;
- a targeted consultation on draft guidance on public procurement of innovation, to support the breakthrough of new and more sustainable solutions for our societies.

The Commission has identified six priority areas, where clear and concrete actions can transform public procurement into a powerful instrument in each Member State's economic policy toolbox, leading to substantial benefits in procurement outcomes. It indicates its commitment to deliver by 2018 the following specific actions:

- ensuring a wider uptake of strategic public procurement;
- professionalising public buyers;
- improving access to procurement markets;
- increasing transparency, integrity and better data. The Commission states that better and more accessible data on procurement should be made available as they open a wide range of opportunities to assess, on a more informed basis, the performance of procurement policies, to optimise the interaction between public procurement systems, and to shape future strategic decisions. The Commission recommends setting up publically accessible contract registers providing transparency on awarded contracts and their amendments. It also states that enabling the reporting of corruption by setting up effective reporting mechanisms and by protecting whistleblowers against retaliation can also contribute to improving the transparency of public procurement and saving public money;
- boosting the digital transformation of procurement;
- cooperating to procure together.

OECD 2016 - *Preventing Corruption in Public Procurement*

Public procurement is one of the government activities most vulnerable to corruption. Various types of corrupt acts may exploit these vulnerabilities, such as embezzlement, undue influence in the needs assessment, bribery of public officials involved in the award process, or fraud in bid evaluations, invoices or contract obligations. In many OECD countries, significant corruption may arise from a



conflict of interest in decision-making, which may distort the allocation of resources through public procurement.

The direct costs of corruption include losses of public funds through misallocations or higher expenses and lower quality of goods, services and works. In terms of indirect costs, corruption in public procurement leads to the distortion of competition, limited market access and reduced business appetite for foreign investors.

Integrity risks may occur at every stage of the procurement process, from the needs assessment to the bidding phase to the contract execution and payment. For this reason, a holistic approach to risk mitigation and corruption prevention is required.

The OECD *Recommendation on Public Procurement* highlights several mutually supportive principles which may, directly or indirectly, prevent corruption and stimulate good governance and accountability in public procurement. These principles include:

- Integrity;
- Transparency;
- Stakeholder participation;
- Accessibility;
- E-procurement;
- Supervision and control.

It seems appropriate to focus on the principle of **transparency**:

- The 2015 OECD *Recommendation on Public Procurement* recommends that the adhering countries ensure a fair degree of transparency of the public procurement system in all stages of the procurement cycle.
- The OECD *Recommendation on Public Integrity* supports the adherents in safeguarding integrity and public interest at all stages of the policy process, particularly by promoting transparency and open government, including actively ensuring full access to information and open data, along with effective and timely responses to requests for information.

For citizens and civil society organisations to be able to fulfil a supervisory role, data availability needs to be coupled with timeliness, data quality, processing capacity, effective reporting and whistleblower channels.

As a minimum, adequate and timely information must be provided on upcoming contracts as well as on contract notices and information on the status of ongoing procurement processes. Additional information, such as the average procurement duration, justification of exceptions and specific overview records by type of bidding procedure, may further enable external parties to scrutinise public procurement practices. Transparency can also be further enhanced by guaranteeing the visibility of flows of public funds throughout the public financial management cycle.



DIGIWHIST

DIGIWHIST is a European project that aims to gather, format and make readily available data on public procurement from 35 European countries and from the EU institutions themselves. Digiwhist's objective is to provide politicians, journalists and civil society representatives with tools allowing them to follow the trail of public money using big data made available by public bodies and to enable public bodies to improve their procedures and to combat corruption. The Digiwhist project has created three tools:

- EuroPAM (European Public Accountability Mechanism), a system for monitoring efforts in, and the degree of, transparency, as well as the level of accountability on the part of civil servants, across the 35 countries plus the EU institutions;
- OpenTender, which allows users to search and analyse data on public procurement across 35 jurisdictions and the European institutions). The database contains almost 17.5 million public contracts, covering the period from 2003 to 2017;
- MET, not yet operational.

DIGIWHIST - Recommendations for the Implementation of Open Public Procurement Data.

In May 2017, DIGIWHIST presented the main data challenges in public procurement and proposed recommendations to improve the state of data and data use for better outcomes. *It set up an implementer's guide for open public procurement data concerning publication format and location, regulatory scope and data coverage, data depth, quality and use.*

The study behind this recommendation has shown that most countries surveyed in the DIGIWHIST research fail to publish their procurement data at an acceptable minimum standard. Many well-governed countries, such as Sweden or Germany, only publish the offers regulated by EU directives in a transparent and data-rich way (TED is the most reliable resource for open public procurement data). This is in stark contrast with Eastern European countries, such as Romania or Croatia, which have introduced low reporting thresholds of only a couple of thousand Euros.

In addition to the lack of publicised information on the entire offer cycle (including the implementation of the award), the sources on which procurement data is published can vary greatly and may even require the payment of a fee, making it very difficult for citizens to obtain the information in which they are interested. In addition, on TED, some of the required fields are not filled in or are not compiled in a standardised way, which sometimes makes it impossible to locate a particular offer and to compare different offers. All of these obstacles create an opaque environment where procurement professionals, bidders and citizens are located.

Recommendations:

1. Governments should set up a comprehensive central public procurement platform. Providing complete public procurement information free of charge in an easy-to-use format to all interested parties is expected to increase market transparency, decrease transaction costs, and facilitate government accountability. Hence, a well-functioning central public procurement platform should contribute to achieving value for money in public procurement as well as increasing integrity throughout the public sector.



2. Governments should commit to publishing procurement data by default in an open and easy-to-understand data format. Publishing public procurement data in a timely, simple, and easy-to-understand format and publishing information as machine-readable data are essential for lowering the barriers to data use and re-use by all stakeholders. The number of data publication forms should be kept to the very minimum to minimise complexity, facilitating stakeholder engagement with the data. To ensure data format and accessibility meet user needs, governments should establish a monitoring, evaluation, and learning process involving data users as well as data producers.

3. Governments should require low reporting thresholds with the same regulatory framework for all public bodies and spending areas. Ideally, monetary thresholds should be between €0 and €5,000 so that most public spending through public procurement systems is transparently published and regulated. To carefully balance the demand for transparency and the associated administrative burden, a more lenient regime could be applied to the smallest value contracts, with full procedural and transparency rules applied for higher value contracts starting from about €30-40,000.

4. Governments should increase the depth of procurement data published, in particular, publishing contract implementation data, reliable data on corrected and failed tenders, and organisational IDs by default. As public procurement typically implies a highly structured and complicated procedure, there are many variables or pieces of information that should be reported at each stage to provide sufficient information to interested bidders and civil society.

In particular, they recommend that governments:

- publish public procurement data relating to the whole procurement cycle on existing public procurement platforms, including, as a minimum: call for tenders, contract awards, and contract completion/implementation announcements;
- publish information on amendments, modifications, and failed tenders in a structured and reliable format so that up-to-date information is available on all tenders;
- publish at least a minimum set of variables essential for government accountability and transparency of biddings, such as the description of the purchase, information on bidders and subcontractors, final payments, contract performance, and unique organisational identifiers.

5. Governments should facilitate the link between public procurement data and further datasets describing corporate behaviour and performance using common organisational and contract IDs throughout different data systems, such as public procurement, payments, company registry, and court rulings.

6. Governments should link public procurement announcements to all original procurement documents by default. Those should include the full tender documentation and maps, plans, etc. Ideally, signed contracts should also be linked and readily available. Here, information on subcontractors as well as contract amendments, invoices, and completion reports submitted should be linked to the dataset. Submitted bids, or at least parts of them, may be exempt from these stringent transparency rules to protect commercially sensitive information or privacy of individuals.

7. Governments should introduce centralised control mechanisms to ensure data quality is maintained, along with penalties for non-compliance. Punishment of non-compliance in extreme cases may include the freezing of the tender or the interruption of payments until records are corrected and practices employed. More subtle enforcement may also produce the desired data quality, such as sending automatic clarifying questions back to the reporting public bodies until all missing information and inconsistencies are resolved.

8. Governments should lessen the bureaucratic burden by linking publication systems to tender, contract and payment management systems. If administrative datasets are linked, the officially



verified (and supposedly correct) information should be automatically added to public procurement records to lessen the administrative burden of public procurement administrators as well as to minimise the risk of erroneous data entry.

9. Governments should encourage the regular use of public procurement data both inside and outside governments. Governments, which are the principal data guardians, should promote the use of public procurement data within government and facilitate data re-use by non-governmental stakeholders, such as civil society watchdogs and data provider firms. The use of public procurement data should be facilitated firstly by creating direct feedback mechanisms throughout the entire procurement process cycle (i.e. planning, tendering, awarding, implementation) involving all stakeholders from within and outside government. Secondly, governments should support non-governmental organisations which monitor, analyse, and investigate issues in the process as a friendly ally to both procuring entities and monitoring bodies, such as prosecutors.