

Comparative report

**Open data in Italy, Austria, Estonia,
France, Ireland, Romania, and Slovenia**



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1. Introduction

The subject of this report is the comparative analysis of the **open data policy** and its implementation, with a focus on public procurement in seven Member States (MS) of the EU: Italy, Austria, Estonia, France, Ireland, Romania, and Slovenia.

There is **no common policy at EU level** on open data in general and specifically on public procurement, and the MS have reached a very different level of open data maturity. Moreover, notwithstanding the Directive on public procurement, the issue of procurement openness is not found under a common EU legal/policy umbrella.

The report not only focuses on the legal framework of the seven countries but also provides some insights on the implementation of open data at public administration level ⁽¹⁾. The annex contains a table showing the main legal provisions, giving the reader further details on each country's legal framework.



2. Definition and Context

In general, **open data is not defined by law**. However, three key elements identify open data across countries: free access and availability, free-of-charge data re-use, and the publication of data being in the public interest.

In Italy there is a legal definition ⁽²⁾ which refers to the characteristics of the data.

Accordingly, open data are data having the following characteristics:

- 1) they are **available** under the terms of a licence or a regulatory provision, allowing them to be used by anyone, even for commercial purposes, in disaggregated format;
- 2) they are **accessible** through information and communication technologies, including public and private data networks, in open forms, suitable for automatic use by computer programmes and provided with the relevant metadata;
- 3) they are made available **free of charge** through in-

formation and communication technologies, including public and private telematic networks, or they are made available with marginal costs incurred for their reproduction and dissemination.

However, as emphasised in the French report, open data is also a movement consisting of “mettre à disposition des citoyens, des acteurs de la société civile et de l'économie, les données produites, collectées ou détenues dans le cadre d'une mission de service public et d'en autoriser la réutilisation à des fins privées ou commerciales” ⁽³⁾.

The rationale of open data is related to the **transparency and accountability of the public administration**. In the words of former US President Barack Obama: “Government should be transparent. Transparency promotes accountability and provides information for citizens about what their government is doing” (Obama, 2009).

⁽¹⁾ The analysis of the implementation at public administration level does not include Ireland.

⁽²⁾ See Article 1 of the so-called Digital Administration Code, Legislative Decree 7 March 2005, no. 82

⁽³⁾ Conseil national du numérique, Avis n°2015-3 relatif au projet de loi pour une République numérique, 30 November 2015, p. 3. In English: “making available to citizens, civil society and economic actors, the data produced, collected or held as part of a public service mission and authorising their reuse for private or commercial purposes”.

The justification is, therefore, much broader than merely the fight against corruption. However, as highlighted in the most recent Communication from the Commission on Public Procurement in Europe (4): “the digital transformation, the growing wealth of data in

general and the availability of open data standards offer opportunities to create better analytics for needs driven policy-making and warning systems to signal and tackle corruption in public procurement” (5).

3. Laws and Policies

Among the studied countries, Slovenia is the youngest democracy and the only one with the right to information of public nature enshrined in its Constitution. On the opposite side, there is Austria, whose 1922 Constitution still includes *amtsgeheimnis* (official secrecy) protecting administrative and government information from disclosure. This polarisation is further confirmation that the openness of the public administration is a principle which is **still in its infancy** and, in general, open data as a principle has come across strong resistance by the public administration itself until very recently, and is today facing the **challenge of its full**

implementation.

Aside from Austria, all countries (some more explicitly, i.e. France, Italy and Estonia) have opted for the principle of open data by default and enacted a **Freedom of Information Act**.

Estonia and Romania are the forerunners, given that their Freedom of Information legislation dates back to the beginning of the century. Earlier or later, all of the studied Member States joined the **Open Government Partnership (OGP)** (6), except for Austria and Slovenia.

Promising practice

In February 2019, Romania updated its **Guide for the publication of open data for public institutions**, including a methodology for publishing open data. The Government's General Secretariat prepared the methodology on open data publishing as part of the EU co-funded project “Increasing the quality and quantity of published open data in the public sector”. The report underlines the evolution of open data initiatives in Romania. It acts as a road map for public institutions in publishing open data by explaining the terminology, reviewing the legislation, and presenting the legal obligations imposed by Romania in this domain.

It reviews the institutional procedures on publishing open data in Romania, while including sets of recommendations for local and central authorities in this area (e.g. criteria for data standards, type of data to be published, criteria to describe what kind of data should be granted publishing priority within local public entities: budget, public procurement, building permits, transport schedule, public services – nurseries, schools, parks, hospitals – authorisations, public safety and criminality, food safety, etc.). The methodology emphasises that the current trend at EU level is to prioritise data quality, not only data quantity, as they must correspond to certain rules: technical (machine-readable format and free and open source software), legal (licensed), available and easy to access, reusable and accessible for everyone, while encouraging the use of API (Application Programming Interfaces) in publishing dynamic sets of data (e.g. on air quality, pollution levels, traffic). This type of dynamics should also apply to Romania, although setbacks have occurred in recent years.

The report explains in a user-friendly way the characteristics of the Romanian open data portal, www.data.gov.ro, the process of publishing open data, the types of open data, and the characteristics of open data. Thus, the methodology also addresses the general public and civil society organisations that could monitor the implementation of open data legislation in Romania.

Unfortunately, the publication of open data for public institutions is not compulsory but it is only recommended. This could seriously hamper the implementation of this promising methodology.

Italy and France have specific rules to provide **open data on public procurement**. In Italy, most of the provisions are found in the anti-corruption and transparency

laws, while the regulations in France are found in the Public Procurement Code.

(4) 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”, COM/2017/0572 final

(5) Communication (...) “Making public procurement work in Europe”, COM (2017) 572 final, p.10.

(6) The OGP is a multilateral initiative that aims to secure concrete commitments from national and sub-national governments to promote open government, empower citizens, fight corruption, and promote new technologies to strengthen governance. It is rooted in the idea of multi-stakeholder collaboration; therefore, the steering committee, which oversees all the activities, includes representatives of governments and civil society organisations.

4. Areas of Disclosure

The open data by default principle does not mean that public entities voluntarily disclose all data. The information must be **open to access**, but not all information has to be published without request. For example, Slovenia requires all public entities to publish on the website a catalogue of public information. Ireland does not define a list of information that has to be published but encourages the publication of all data on the national data portal. Estonia has a comprehensive definition of public information: information recorded and documented in any manner and on any medium, obtained or created upon the performance of public duties. However, this does not provide an obligation to publish all public information.

Data must be **published on public administration websites** in Romania, Estonia, Slovenia, France, and Italy. In addition, Romanian and Slovenian legislation requires the publication of data on the **national data portal**. To avoid excessive fragmentation over thousands of public websites, Italy has also arranged for data to be published in national themed databases which are managed by different branches of the public administration or authorities (7). The link between these databases and the Italian national data portal is still unclear. The same risk of dispersal is found in France. For public procurement data, the Directorate General of Public Finance (DGFIP) has proposed that the local authorities automatically “feedback” the essential data to a government department which will then automatically publish this data on the national open data portal. Ireland requires publication on the national data portal but not on the websites of each public administration.

Although, in Austria, there is **no right to information**,

some data are provided to the public. Cooperation OGD Österreich has implemented a platform where data – provided by cities (Vienna, Linz, Graz, Salzburg) and the Bundeskanzleramt (Chancellor’s Office) – is coordinated and forwarded to the European Data Portal (8).

Italy and France define by law what is subject to **mandatory publication**. In Italy, public entities have a general duty to publish data on: the organisation and activity of the public administrations; the use of public resources; the performance offered and the services provided by the public administration; on particular sectors (9). Conversely, France defines the obligation to publish taking into consideration the size of the public administration, focusing on the practical feasibility of the obligation, which is completely absent in the Italian system.

Every country, except Austria, is subject to the **obligation to disclose upon request**. The national FOIAs define the exceptions provided to protect legally relevant interests, such as national security, public order, criminal investigations, regular performance of inspection activities and personal data protection. Interestingly, Slovenia (10) and France have the obligation to disclose online upon request, making the information, once requested, publicly available to everybody.

In terms of **public procurement**, the publication of information on the awarded contracts is guaranteed in all countries. Estonia, Romania, Italy, and France have specific rules that oblige to publish most or all the administrative acts enacted in a public procurement procedure (such as contract notices, contract information, names and CVs of the appointed member of the selection committee, selection committee’s decisions, etc.).

Promising practice

Romania requires the mandatory publication on SICAP – the Electronic System for Public Procurement managed by the Agency for Romania’s Digital Agenda (AADR). SICAP is an online platform allowing each Romanian contracting authority to publish bids electronically. It has replaced the old system SEAP, which had been used for the last ten years. The system is available both in Romanian and English and is based on the newest technologies and has high-performance data storage solutions.

The open-access area of the system contains a large bulk of datasets for public procurement, including:

- Data on the contracting authority;
- Data on the type of services/goods/works involved in the public procurement;
- Details on each step of the procedure and the procedure type;
- Estimated value of the contract;
- Data on the bidders;
- Details of the winning offer, name of the winning supplier and final cost of the contract.

(7) For example, the national public contracts database which is managed by the National Anticorruption Authority and the database of public administrations managed by the Ministry of Finance.

(8) The European Data Portal (www.europeandataportal.eu) is a European portal that harvests metadata from public sector portals throughout Europe as well as from the European institutions. This is a pan-European repository of PSI open for re-use in the EU

(9) See articles 37-42 legislative decree no. 33/2013.

(10) In Slovenia there is an obligation to publish online if data are requested three times.

In addition, the programme encompasses aggregated sets of data by public procurement sectors (e.g. agriculture, transport, construction, etc.) and procedure statistics by counties (the type of public procurement, the number of contracting authorities, the number of public procurements for each contracting authority, registered suppliers, etc). Thus, every citizen can easily analyse the public procurements initiated at the level of one small municipality or the total value of public procurements by sector.



Figure no. 1
Homepage of the SICAP platform.

Italy legally defines the publication obligations concerning public procurements, requiring public administrations and contracting authorities to publish on their institutional websites, in the “Transparent Administration” section, “Call for Tender and Contracts” sub-section, the following information:

- contracting authority;
- subject of the invitation to tender;
- list of operators invited to submit tenders;
- winning contractor;
- amount of the award;
- time needed to complete the work, service or supply;
- amount of sums paid;
- all deeds of the contracting authorities/entities, if not considered significant or secret, relating to:

- > planning of works, services, and supplies;
- > procedures for entrusting public contracts of services, supplies and works, of public design competitions, contests of ideas and concessions, including those between entities in the public sector framework as indicated in Article 5;

> composition of the selection committee and the curricula of its members.

- transcripts of the financial management of the contracts, once the execution has ended.

All data in the ‘Transparent Administration’ section of the website should be public, freely available in an open format and capable of being used and re-used with the only obligation being to cite the source. The practical implementation (see par.9) reveals that there is great variety across public administrations as to how data are published; this seriously hampers the openness of the data. In addition, once a year, a summary table of the contracts awarded during the year is published in an open standard digital format (so-called 190 XML).

Promising practice

In March 2019, **France** established the obligation to publish a minimum set of data on public contracts above EUR 25,000. The new provision also involves formats, standards, and nomenclatures (see next paragraph). The essential data are:

- unique identification number of the public contract;
- notification date of the public contract;
- publication date of the essential data of the initial public contract;
- name of the buyer or agent in the case of a group;
- ID number of the buyer or agent (SIRET number) in the case of a group;
- nature of the public contract corresponding to one of the following indications: contract, partnership contract, framework agreement, subsequent contract;
- subject of the public contract;
- main code of the Common Procurement Vocabulary (CPV), as envisaged by Regulation EC/213/2008;
- award procedure used, corresponding to one of the following: adapted procedure, open invitation to tender, restricted invitation to tender, procedure with negotiation, competitive dialogue, public contracts awarded without prior advertising or competition;
- name of the main place of execution;
- identifier of the main place of execution, in the form of a postal code or an INSEE code;
- duration of the initial public contract in number of months;
- fixed or estimated maximum amount excluding VAT in Euros;
- form of the public market price corresponding to one of the following: firm, firm and updatable, revisable;
- name of the holder or holders of the public contract;
- registration number(s) of the holder(s) in the Register of Companies and their establishments, envisaged by Article R. 123-220 of the French Commercial Code, failing which the intra-Community VAT number where the registered office is domiciled in a Member State of the European Union other than France or the number in force in the country where the registered office is domiciled outside the European Union;
- any amendment of public contracts with some essential information (e.g. the date and reason for the amendment; the modified duration of the contract).

5. Data Standard

Data standardisation is central to facilitating the processing and analysis of data. Unfortunately, **standardised data is not yet an obligation** in all Member States and for all documents.

The legislation in Romania and Italy does not lay down a legal obligation to standardise. In Italy, there is a general obligation to guarantee the quality of information and some operational suggestions to make the data easy to consult (e.g. the presentation in table format is suggested). At the same time, Romanian legislation recommends publishing in a standard format. In Italy, the data standard must be enacted by the National Anti-Corruption Authority. In both countries, this lack

of rules has resulted in datasets that vary significantly between public institutions and are often published in non-machine readable format.

The obligation to publish data and metadata in compliance with the best possible **open data formats**, including up-to-date versions and machine-readable formats, could be severely hampered in Estonia and Slovenia by a tiny, but very significant exception.

In Slovenia, the obligation to publish in the best available open data format is envisaged except when this requires a “disproportionate effort beyond a standard procedure” and in Estonia “only when it is possible and appropriate.”

Promising practice

The **Irish Open Data Technical Framework** sets out a planned and structured approach to the publication of datasets as Open Data on the national portal.

It provides guidance on the following five key areas:

- open data licence: data and metadata published on data.gov.ie must be associated with the Creative Commons Attribution (CC-BY) Licence, as a minimum.
- recommended formats for open data: data published on data.gov.ie must be at least machine-readable and in an open format (3-star Open Data), e.g. CSV, JSON or XML.
- recommended metadata schema for open data: data published on data.gov.ie must be compliant with DCAT-AP, - recommended standards for open data: data published on data.gov.ie should use national and international data standards, where possible.
- Unique Resource Identifiers: data published on data.gov.ie should use Unique Resource Identifiers, where possible.

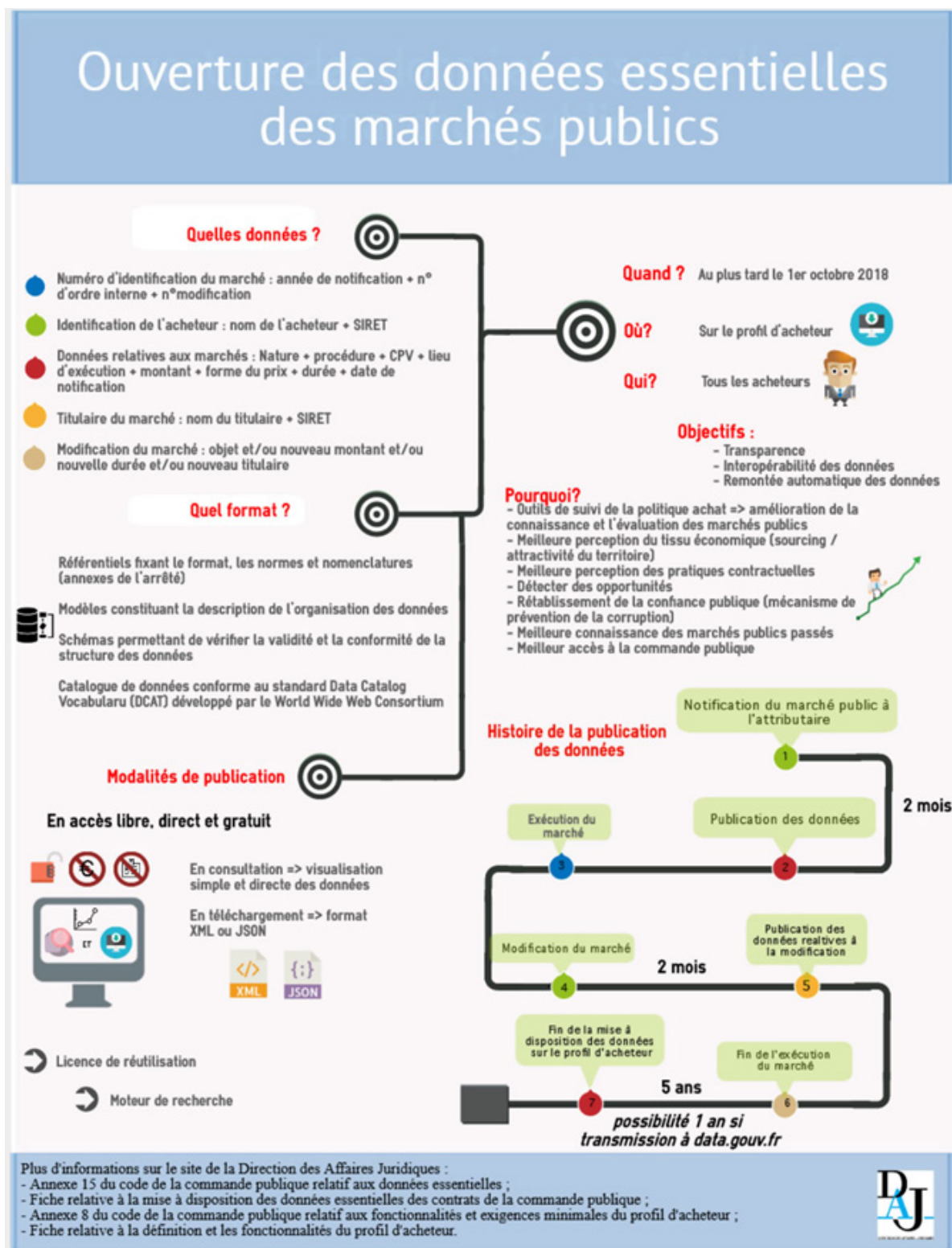
When publishing Open Data, public bodies should first try to reuse international standards and they may only use national standards if international standards are unavailable or unsuitable.

Promising practice

In March 2019, **France** established formats, standards and nomenclatures for publishing a minimum set of data related to public contracts above EUR 25,000.

They are defined in [Annex 15 of the Public Procurement Code](#).

The following infographic explains in brief which data are published, how, for how long and for what purposes.



6. Personal Data Protection

All of the studied Member States envisage the protection of personal data via **anonymisation or restriction on use**. The legislations have recently been amended to comply with the **General Data Protection Regulation (GDPR)**.

The obligation to publish and its limitations are contained in different legal texts and the legal framework

appears to be quite complex.

It will take more time to evaluate if open data and personal data protection are correctly balanced across the countries. However, data protection must not be identified as an obstacle to the openness of the public administration.

7. Supervisory Authority

All of the Member States, except Austria, have some bodies with **coordination duties**, but their role varies across the countries.

France, Ireland, and Italy ⁽¹¹⁾ have national authorities that design the open data strategy, govern it, are responsible for OGP and somehow support the implementation of open data within their countries. However, none of the MS have a fully-fledged open data authority which supervises and guarantees compliance with open data standards. France, Estonia and Slovenia have authorities which supervise and control access to public documents ⁽¹²⁾.

In Italy and Romania, open data also falls within the framework of the fight against corruption. In Italy, the National Anti-Corruption Agency controls the obligation related to transparency and access to documents.

In Romania, the National anticorruption Department does not have any control function. In addition, there is

the General Secretariat of the Government in Romania, an authority that promotes and coordinates the adoption of open data policies, but without power to guarantee compliance.

Moreover, the legislation in Romania and Italy establishes that an individual must be appointed within each administration to supervise, among other tasks, the publication of data.

With regard to **supervision on the openness of public procurement data**, the authorities are only the same in Italy and Romania, due to the partial inclusion of open data in the anti-corruption strategy. In Ireland, there is almost no interaction between the public procurement office and governance of the open data portal.

In France, the Directorate of Legal Affairs coordinates and supervises the ambitious Digital Transformation Plan for public procurement which includes, among many other aspects, the openness of public procurement.

⁽¹¹⁾ The Department of Public Expenditure and Reform in Ireland and, the Digital Agency for Italy and the General Data Administrator ("Administrateur Général des Données", AGD) in France.

⁽¹²⁾ The Data Protection Inspectorate in Estonia, the Information Commissioner in Slovenia, the Commission for Access to Administrative Documents in France.

8. Sanctions

The provision of sanctions is quite varied between the Member States. In Austria, the disclosure of open data is not compulsory but is a voluntary action of the public administration; therefore, there are no provisions for sanctions or even rewards.

Ireland and France do have compulsory publication but do not apply any sanction for breaching the publication obligation. In view of the fact that they are the countries recognised as being the most advanced in open data (13), this reveals that sanctions are not necessarily required in order to achieve compliance.

Italy, Romania, Slovenia and Estonia do apply sanctions. They are mainly **administrative sanctions** imposed for not having published or disclosed information as required. In Estonia, if a holder of public information does not comply with the provisions on access to open

data or fails to answer promptly any requests for information, the Data Protection Inspectorate may issue a warning and may issue precepts, proposals, and recommendations. A sanction may only be issued if no action is taken by the public administration.

In Romania and Italy, the power to sanction is related to the anti-corruption framework and is not seen as sanctioning the breach of open data policies in itself. According to the evaluation report of the Romanian National Anti-Corruption strategy (2012-2015), 1,271 sanctions were issued for breaches of the rules on transparency. 166 of these concerned the violation of the law on the right of access.

This not only reveals that Romania effectively uses the power to sanction but also that the country has monitoring and evaluation mechanisms in place.

9. Implementation at National and Local Level

The implementation of open data at public administration level is **still weak**. Even in countries that are committed to open data, a gap between intentions, declarations and implementation is evident. The interviews carried out with public administrations reveal the lack of common implementation within each Member State and the **need for better monitoring**.

The most significant difficulties are similar across the countries: lack of technical infrastructure, challenges in terms of data quality, misaligned organisational priorities, and lack of expertise among public officers.

On the other hand, the **policy agenda** appears to be more varied. It is focused on boosting transparency as an anti-corruption measure in Romania and Italy, while other countries see open data as a vehicle for enhancing economic growth. This dual nature of open data emerged when comparing the legal frameworks but it

became crystal clear when looking at its implementation. In all of the examined countries (14), the public administrations seem to follow their own agendas in implementing the rules; no central monitoring is currently in place to standardise the practice.

In general, public administrations **do not have internal guidelines** for implementing open data policies. Some public administrations are trendsetters: they have developed their policy and they could represent a model for other public administrations, but it seems that, across countries, this is more of an exception than a common practice. Promising examples could become a model for extending across the country (for example, in France, Romania and Italy). With a slight difference, in the smaller countries (such as Estonia, Slovenia, and Ireland) a straightforward top-down policy with an adequate monitoring system could be helpful for developing a common policy on open data. In 2018, in Esto-

(13) Ireland and France, along with Spain, are considered the trend-setters country in the 2019 [Open Data Maturity report](#)

(14) Due to the lack of legal framework, the comments do not refer to Austria unless specified.

nia, an NGO known as Open Knowledge Estonia won the procurement to identify an implementing partner for the Estonian OGD policy for the 2018-2020 period. It is obviously too early to analyse its implementation. However, Estonia is the only case in which the open data policy has been outsourced to a non-governmental community organisation, experimenting with an original not fully top-down policy.

The lack of internal guidelines means that data published by public administrations are not uniform, the publication follows different procedures, and there is no standard policy in term of publication format. The identity of the **person responsible for publishing data** is also unclear, except in France and Ireland, which have a more centralised system. Italy and Romania do have a person responsible for publishing data connected with anti-corruption policies, but this does not materialise in at least a common standard across public administrations. The biggest issue is **data cleanliness and quality**: data remains rather difficult for citizens to use.

In all of the examined countries, officers are **trained** to handle access requests, but they do not receive any specific training on open data. In particular, there is a lack of training on the rationale behind open data; data are published because there is a duty to do so, with no clear perspective on the requirements of users.

As already anticipated, Italy, France, and Romania are required to publish all **data on public tender procedures**. In France, the obligation to publish a minimum set of data with a defined standard is too new to facilitate its evaluation in terms of implementation. In Italy, data are published according to anti-corruption policies that do not establish data standards. Only a summary table of the contracts awarded is published as a defined open format, but this occurs once a year. In Romania, the SICAP platform is designed to allow

national authorities to check procurement, but it is not designed as a tool for enhancing transparency towards citizens (e.g. data are not downloadable in machine-readable format).

The connection between datasets published on the public administration websites or unpublished but available and the national data portal does not respond to standard rules. Many datasets are published and updated individually by public administrations, others are harvested daily from existing data catalogues; others are not transferred. In Italy, in particular, the proliferation of databases makes it unclear which data can be found and where. Data audits only seem to be in place in Ireland.

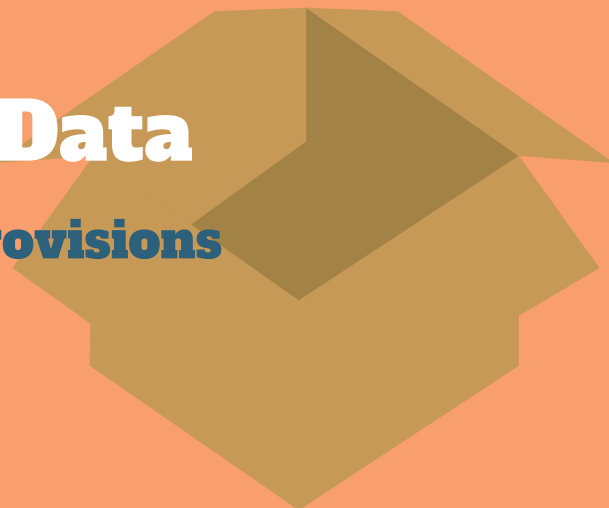
By now, in Italy, Romania, Slovenia and Estonia, public administrations respond to data requests but they are **not proactive**. When it is mandatory, data are published, but with a lack of foresight in terms of their usability. Some public administrations (e.g. that of the city of Milan in Italy) have started to be more proactive. Having learned by data requests that some data receive more attention from citizens, officers have started to consider proactively publishing this data, to respond to the interests of citizens and to reduce the number of access requests.

Quite interestingly, the advancements in e-government are not directly connected with the open data performance. Estonia is certainly one of the most advanced EU countries in e-government, but its digitalisation does not make Estonia an open data leader. For years, open data as economic leverage was not seen as economically profitable, and open data as a vehicle of transparency toward citizens seems to be perceived as unnecessary due to the highly developed digitalisation (15).

(15) For more details, see McBride et al. (2018) *Leader in e-government, laggard in open data: exploring the case of Estonia*, in *Revue française d'administration publique*, pages 613-625.

Annex 1 - Open Data

**Summary of the legal provisions
in the Member States**



Regulatory sources

ITALY

Open data law and policies fall within the scope of transparency, a central value in the fight against corruption:

Anti-Corruption Law no. 190/2012 states that administrative activity is made transparent through the publication, on institutional public administration websites, of information relating to administrative proceedings, budgets and final accounts as well as the unitary costs of carrying out of public works and producing services distributed to citizens;

Legislative Decree no. 33/2013, amended by Legislative Decree no. 97/2016, defines transparency as full accessibility to data and documents held by the administrations, which is guaranteed through publication obligations and through public access, which not only allows anyone to request information subject to mandatory publication in the event that its publication has been omitted, but also to obtain further data and documents. Documents, information and data subject to mandatory publication are published in an open and reusable format.

Digital Administration Code (Legislative Decree no. 82/2005) brings together and organises the rules concerning the computerisation of the Public Administration in relationships with citizens and businesses. In 2012, the obligation to publish open data, the so-called “open data by default principle”, was introduced into the Digital Administration Code. According to this principle, a public administration’s data and documents are released as open, unless a licence is expressly adopted.

Legislative Decree no. 36/2006 (implementation of Directive 2003/98/EC on the re-use of PSI) regulates the methods for re-using documents containing public data in the availability of public administrations and bodies governed by public law.

Almost all Regions and Autonomous Provinces have adopted regulatory measures and guidelines to enhance the wealth of public information.

The Digital Agency for Italy (AGID), established with **Legislative Decree no. 83/2012**, is the national competence centre for open data; it promotes the enhancement of public information within a programming and controlling cycle articulated around three documents: the **National Agenda**, the **Guidelines** and the **Annual Monitoring Report**. It coordinates the activities of the administrations for the use of information and communication technologies, through the drafting and control of the implementation of the **Three-Year Plan for IT in the Public Administration**.

As part of its participation in the Open Government Partnership, Italy has started drafting the **Fourth National Action Plan for the 2019-2021 Open Government**.

AUSTRIA

To protect administrative and government information from disclosure, Austria has “Amtsgeheimnis” (**official secret**) established in the constitution (B-VG Art. 20 Abs. 3). In addition, Austria has **no Freedom of Information Act**, making it the only country in Europe where citizens have no legal right to be informed.

Legally, the right to information is restricted in all areas where the statutory confidentiality obligation holds firm (Information Diligence Act §1). Additional legal regulations are found in special laws, as listed in the Information Diligence Act §6.

According to **BVergG 2018 (Federal Procurement Law 2018)** all contracting authorities and other entities required to apply the provisions of the Federal Procurement Act (§ 4 BVergG 2018) must make the so-called metadata of the key data available to www.usp.gv.at for their procurement procedures on data.gv.at starting from 1 March 2019.

The development of OGD in Austria has been strongly supported by civil society activities of IT professionals involved in OGD interest groups.

ESTONIA

Estonia has **distinct legislation** for publishing and reusing open data and for access to open data. The main aim is to ensure transparency among public institutions and authorities using public data and to regulate citizens’ right to access public data and request information. The key document is the **Estonian Public Information Act**, adopted in 2000 and subsequently amended in recent years, with the latest provisions entering into force in 2016. The 2013 revisions to the EU Directive on the re-use of public sector information were followed by new principles of “open by default” data and machine-readability of public information.

The legislation authorises the publication of open data at all institutional levels, promoting open State principles and regulating the reuse of open government data.

Estonia has also created an **online portal - Estonian Information Gateway** www.eesti.ee - a website providing access to public electronic services and to reusable information. The data of the holders’ databases must be accessible through the Estonian information gateway. Its administrator, in cooperation with information holders, ensures that the presentation of information in the gateway is organised in a user-friendly way.

Areas of disclosure

ITALY

Data accessibility has been established since the Anti-Corruption Law and is further strengthened by Legislative Decree no. 33/2013, as well as by the Digital Administration Code.

Legislative Decree no. 33/2013 defines transparency as “**total accessibility**” of data and documents held by the public administrations. This principle is divided into the obligation to publish the data (“proactive transparency”) and public access (“reactive transparency”), which is obtained in response to requests for knowledge. Legislative Decree no. 97/2016 introduced generalised public access, **which guarantees anyone the right to access data and documents other than those subject to mandatory publication**, subject to restrictions imposed due to the need to protect legally relevant interests.

There is **no general obligation to publish** all data and documents held by public administrations, but Legislative Decree no. 33/2013 lists the cases in which this duty exists: **data on the organisation and activity of the public administrations; use of public resources; data on the performance offered and the services provided; data on particular sectors.**

The documents, information and data subject to mandatory publication are published on the institutional websites of the administrations in a special section called “Transparent Administration”, organised into first and second-level subsections.

The National Anti-Corruption Authority can modulate the publication obligations and the related implementation methods regarding the nature of the subjects, their organisational dimension and the activities carried out. The data, information and documents subject to mandatory publication are published for 5 years.

Article 37, amended by Legislative Decree 25 May 2016, no. 97, regulates the publication obligations concerning **public procurements**, providing that public administrations and contracting authorities must publish on their institutional websites information on the procedures for selecting contractors for the assignment of works, supplies and services; all deeds of the contracting authorities/entities, if not considered significant or secret, concerning the planning of works, services and supplies; the procedures for granting public contracts of services, supplies and works, of public design tenders, competitions for ideas and concessions, including those between entities in the context of the public sector; the composition of the selection committee and the curricula of its members; the transcripts of financial management of the contracts at the end of their execution.

AUSTRIA

The **incompatibility and transparency law** (*Unvereinbarkeits- und Transparenz-Gesetz*) only deals with the (private) employment of public officials and no information regarding the committees’ activities or decisions is provided to the public.

A **TDBG - transparency database** was legally implemented in 2012, but not everyone appears to be reporting, and access to files is still not provided by all regional councils and authorities. There is no right of access to files but there may be an opportunity to gain access as an exception. The right to view files according to §53 StPO only applies in the case of preliminary proceedings and has no connection with the right to view public data.

Although there is no right to information, **some data is still provided to the public**. Data of individual citizens, as well as infrastructure-critical databases, are not included.

Cooperation OGD Österreich has created a platform, where data – provided by cities (Vienna, Linz, Graz, Salzburg and the Bundeskanzleramt (office of the chancellor) – are coordinated and forwarded to the European data portal.

Data must be provided in a suitable and modifiable way, free of charge (if possible to be downloaded by users). A reimbursement may be claimed for reasonable data processing costs. Furthermore, data must allow combinations with other data (interoperability) and must be reusable. Everyone may have access and **no group of users shall be discriminated against or excluded from using the data.**

ESTONIA

Access to public information and reuse of open data is free of charge. Each information holder, as detailed by the law, must offer **access to all public data held**. Two procedures:

1. **Disclosure of all public data held** > The information holders must either disclose the information on a website, or add a link to a webpage through which the information can be accessed. In addition, they can also choose to disclose it on television or radio programmes or in the printed press, by displaying the document for public examination at a local government authority or public library or in an official publication.

2. **Compliance with a request for information** in the quickest and easiest manner possible and without charge, unless the law prescribes payment for the release of that information. Any individual can request data, either in written or verbal form (by telephone), complying with a couple of requirements. The person requesting information will have access to the documents to which restrictions do not apply. With regard to **public procurement**, Estonia has distinct and specific legislation - the **Public Procurement Act (PPA)**, which transposes EC Directives 2004/17/EC, 2004/18/EC and 2007/66/EC, and governs the awarding process for goods, services, and public works contracts. The country ranks among the most advanced EU countries in terms of procurement and public spending, with **all data being publicly available**. For example, anyone can freely browse published procurements, notices, and contract information, and can review the committee’s decisions on public procurements via the Estonian Public Procurement Register.

Estonia has also created an **online portal** - Estonian Information Gateway www.eesti.ee - a website allowing access to public electronic services and to reusable information. The data of the holders’ databases must be accessible through the Estonian Information Gateway. Its administrator, in cooperation with information holders, ensures that the presentation of information in the gateway is organised in a user-friendly manner.

Data that remains unpublished, which is classified as information intended for internal use only, can be **accessed** by state and local government officials or employees in order to perform their duties. The law lays down special provisions for categorising data for internal use only. This information can also be disclosed to other individuals if the Head of the public information holder considers that it would not harm the interests of the state or of any local authority.

Data standard

ITALY

Legislative Decree no. 33/2013 requires public administrations to guarantee the **quality** of information posted on their institutional websites, ensuring its integrity, constant update, completeness, timeliness, ease of consultation, comprehensibility, homogeneity, and easy accessibility, as well as compliance with the original documents which contain an indication of its origin and of how it can be reused.

The National Anti-Corruption Authority defines the **criteria, models and standard schemes for the organisation, codification and representation of documents, information and data subject to mandatory publication**, and provides guidance on the organisation of the “Transparent Administration” section. In anticipation of the definition of publication standards on the different types of obligations to be implemented, **Resolution no. 1310/2016** of the National Anti-Corruption Authority provides some operational indications to increase the quality and simplicity of consultation of the data, documents and information published in the “Transparent Administration” section. It suggests presenting the published data in tables so as to increase the level of comprehensibility and simplicity of data consultation.

The comparability of open data is facilitated by the **dati.gov.it** portal, the national catalogue of metadata for data released in open format by Italian public administrations, which represents the search tool and access point to data in open format, as published and updated by the respective administrations. By accessing the portal, searches can be carried out for data by theme or organisation. To update the information continuously, the harvesting function has been implemented, which can automatically import the metadata of datasets displayed by the individual administrations in their catalogue.

The **Ministry of Public Administration Directive on the simplification of the language of Public Administrations** indicates some rules to simplify the reading and understanding of administrative deeds and documents, and also with regard to the drafting of institutional web pages.

AUSTRIA

The Kerndaten-VO (Key Data Regulation) regulates the requirements for core data and their provision.

According to the Open Government Data Handbook, the key principles to pursue are completeness, primary sources, timely availability, easy access, machine readability, avoidance of discrimination, use of open standards, licensing, documentation and availability worldwide. Charges for use are not planned.

The terms of use prescribe the use of Creative Commons named 4.0 international. The data are intended to contribute to the transparency and accountability of public services.

The data traffic between authorities and stakeholders is regulated by §13 AVG (General Administrative Procedure Act). Complaints and other communications may be submitted to the Authority in writing, verbally or by telephone. Anonymous written reports are seen as defective and will be rejected (§ 13 Abs 3 and 4 AVG).

No special provisions have been established for public authorities in Austria to provide data in a user-friendly and barrier-free format.

ESTONIA

Most of Estonia's public bodies publish datasets on their activity and reporting procedures, both non-financial and financial. The type of datasets published varies greatly between the bodies and does not always follow the legal framework of recommendations provided by the authorities.

The datasets, together with the meta-data, should comply with the **best possible open data formats, including up-to-date versions and machine-readable formats**: this is not a formal obligation, as the law requires these actions to be done “if possible and appropriate”. There is an obligation to make all public data not subject to valid privacy, security or privilege limitations available and to ensure: primary data (data collected at the source, with the highest possible level of granularity); timely (data made available as quick as necessary to preserve the value of the data and their relevance and to guarantee accessibility); data available to the widest possible range of users. Data must be machine readable, in order to facilitate automated processing; available to all users, with no prior registration required to access them and not subject to any licences. The Open Data Governmental Portal recommends that all open data must be published at least in 3-star format (based on the system of Five Star of Openness developed by Tim Berners-Lee in the UK), which involves making the data available in a non-proprietary open format and so that the data can be available to be used and manipulated as the user sees fit. However, there is **no legal obligation to standardise** the data provided.

The **National Open Data Portal**, available at <https://opendata.riik.ee/en/> centralises open data from all institutional levels. It is under construction and the available number of datasets is limited. It does not offer sufficient incentives for valid benchmarking. There are no separate open data sites to encompass information at different levels, except for the personal sites of the information holders. In addition, the portal encompasses an “Ask for Data” section to facilitate the process of requesting information.

Personal data protection

ITALY

If data, documents and information subject to mandatory publication include **personal data**, the National Anti-Corruption Authority, after consulting the Authority for the Protection of Personal Data, identifies those data and ensures the publication is substituted in its entirety by that of summary information, processed by aggregation. **Legislative Decree no. 33/2013** states that where the law or regulations require the publication of deeds or documents, the public administrations shall make unintelligible any personal data that are not relevant or, in the case of sensitive or judicial data, not essential.

The **2018 National Anti-Corruption Plan** clarifies that processing of personal data by public entities is only permitted if admitted by law or by regulation. In any case, the publication of data on websites for the purpose of transparency must take place in compliance with all principles applicable to personal data processing contained in article 5 of Regulation (EU) 2016/679, such as fairness, lawfulness and transparency; data minimisation (restriction to what is necessary with respect to the purposes for which personal data are processed); accuracy and updating of data; restriction of storage; integrity and confidentiality, also taking into account the principle of “responsibility” of the data controller.

The 2014 **“Guidelines on Personal Data Processing”** of the Personal Data Protection Authority define a framework of measures aimed at identifying appropriate precautions which must be applied by those subject to the publication obligations in order to prevent the fulfilment of those transparency obligations violating rights protected by the Privacy Code and guaranteed by the Constitution.

AUSTRIA

According to §23 DSG the Data Protection Authority must submit a progress report to the Federal Ministry for Constitution, Reforms, Deregulation and Justice and publish it to the public, the European Commission, the European Data Protection Board (Article 68 GDPR) and the Data Protection Council in accordance with the **official secret** (§23 DSG) every year.

ESTONIA

Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data provides the basis for the obligation of information holders to grant access to it.

If the information contains personal data, **the public use of such information can be restricted** if providing it for public use would significantly breach the inviolability of the private life of the individual. Information holders must also maintain records containing details including the purpose for which the information was provided and which information classified as internal (and containing personal data) is released.

Supervisory authority

Sanctions

ITALY

In the whole administration, the **Head of Prevention of Corruption and Transparency (HPCT)** supervises the fulfilment by the administration of the publication obligations envisaged by the legislation in force, guaranteeing completeness, clarity, and updating of published information, reporting on cases of non-fulfilment or delayed fulfilment of the publication obligations to the **Independent Evaluation Body (OIV)**, the National Anti-Corruption Authority and, in serious cases, the disciplinary office.

The Independent Evaluation Body verifies the coherence of the objectives envisaged by the Three-Year Plan for the Prevention of Corruption and the Performance Plan, evaluating the adequacy of the related indicators. The bodies in charge of evaluating the performance, and the OIV, use the information and data on the implementation of the transparency obligation to measure and evaluate both the organisational and individual performance of the manager and the person responsible for data transmission.

The **National Anti-Corruption Authority**, to carry out the supervision and control of the actual application and efficiency of the transparency measures adopted by public administrations, may order the adoption of acts or measures required by the rules on the transparency of administrative activity. The Authority can control "correct compliance with the publication obligation provided by the legislation in force, exercising its inspection powers by requesting information, deeds and documentation from the public administrations and ordering them to publish, within 30 days, data, documentation, and information in line with the provisions of this Decree, to adopt the acts or measures required by the legislation in force or to remove acts in contrast with the plans and rules on transparency".

The person responsible for Transparency can request the summary results of the control performed within the administrations. It can also request from the OIV further information on monitoring of the correct compliance with the transparency obligation envisaged by the legislation in force.

Furthermore, it can use the databases of the Presidency of the Council of Ministers - Department of the Public Function to monitor fulfilments of the publication obligations envisaged by the legislation in force. In line with their severity, the National Anti-Corruption Authority reports the offence to the discipline office of the administration involved, to the senior management of the administration, to the OIV and, if necessary, to the Court of Auditors, to activate any form of responsibility. The National Anti-Corruption Authority publishes the related decisions.

Sanctions of different nature have been envisaged.

Non-compliance with the publication obligation envisaged by Legislative Decree no. 33/2013 constitutes an **element of evaluation for managerial responsibility** and a possible cause of liability for damage to the reputation of the administration. It may also be included in the assessment for the purposes of paying performance bonuses and accessory remuneration related to the individual performance of the persons involved, unless the manager proves that the non-compliance was caused by events not attributable to him/her.

Non-compliance with the publication obligation by the person responsible for the publication or the manager responsible for disclosing the information constitutes **a disciplinary offence**.

Administrative pecuniary sanctions are also envisaged for those required to communicate specific data or to publish them (see Article 47 of Legislative Decree no. 33/2013).

AUSTRIA

No complaint or control mechanisms have been established regarding Open Data policies.

Open Data requirements are to be met on a voluntary basis; no **formal sanction regime is available**.

ESTONIA

A number of authorities monitor compliance with the Public Information Act:

- Data Protection Inspectorate: it is the main body that supervises compliance with the Public Information Act. It supervises information holders with regard to processing requests for information, publishing public data and allowing wider access to the datasets, data protection, and the protection of information intended for internal use and personal databases. It can also initiate supervision proceedings, conduct investigations or issue coercive measures.

- Estonian Information System Authority: it supervises the application of security measures for information systems.

- Statistics Estonia: it coordinates the data governance area.

If a public information holder fails to comply with the provisions stipulated by law on access to open data or to provide a timely response to requests for information, the Data Protection Inspectorate may initially issue a **warning, followed by a sanction and legal actions** against the public information holder.

The law also envisages sanctions for violating the requirements for the disclosure and release of public information. As such, the release of incorrect public information or disclosure or release of information intended only for internal use is punishable by **a fine of up to 300 fine units**. The Data Protection Inspectorate conducts the proceedings in matters of misdemeanours.

If access to information is restricted, a complaint may be lodged with one of the authorities that monitor compliance with the Public Information Act or an action may be brought before an administrative court, either personally or through a representative. If the Data Protection Inspectorate refuses to satisfy the complaint, an action may be brought before an administrative court against the information holder.

Regulatory sources

FRANCE

The **Law for a Digital Republic of 7 October 2016 (LRN)** is the “flagship law” in terms of opening up public data in France.

The “open data” component involves opening public data by default; the creation of a public data service; the opening of data of general interest; free access to public research and data use.

In 2015 a series of regulatory texts were adopted to make open data applicable to public procurement:

- the **Decree of 25 June 2015 on the free re-use of economic databases of the Directorate of Legal and Administrative Information (DILA)**;
- the **Order No. 2015-899 of 23 July 2015 on public procurement**, which transposes into French law the European Directives of 26 February 2014 on public procurement in the so-called “traditional sectors” and “special sectors”.
- The open data of public procurement is currently envisaged by **Articles L. 2196-2 (public procurement) and L. 3131-1 (concession contracts)** of the legislative part of the Public Procurement Code; and by **Articles R.2196-1 (public procurement) and R. 3131-1 (concession contracts)** of the regulatory part of the Public Procurement Code;
- The “**Order (“arrêté”) of 22 March 2019 on essential data in public procurement**”, annexed to the public procurement code is the reference text on the matter.

IRELAND

The Irish government has adopted a national ‘**Open Data**’ strategy to make data held by public bodies available and easily accessible online. There are several sources of legislation which support the ‘Open Data’ strategy.

One of the key sources of open data legislation is EU Directive 2003/98/EC on the re-use of public sector information, its amendment EU Directive 2013/37/EC, which was transposed by the **Irish Statutory Instruments S.I. no. 279/2005, S.I. no. 103/2008, and S.I. no. 525/2015**.

Additional protections are set out in the **Data Protection Legislation and Freedom of Information Legislation**.

ROMANIA

Standalone legislation for publishing, reuse and access to open data, the aim of which is to ensure transparency between public institutions and authorities using public data (including SOEs or autonomous bodies). The authorities are obliged to publish certain information about their activities, while any individual has the right to request data from the public bodies.

The principle of reuse of public data addressed in Directive no. 2003/98/EC was transposed in Romania by **Law no. 109/2007 on the reuse of information in public institutions**, amended by Law no. 29/2015.

In 2015, a guide for the publication of open data for public institutions, designed by the Chancellery of the Prime Minister and the Open Data Coalition, was made public. An updated version appeared in 2019, including a **methodology for publishing open data**.

Emergency Ordinance no. 41/2016 on the establishment of simplification measures at central public administration level and amending and completing some normative acts imposing new conditions for the publication of datasets. Thus, public institutions and specialist bodies of the central public administration are obliged to publish datasets of public interest on the portal www.data.gov.ro - including the naming, description and length of time recommended to update the datasets. The procedure for publishing and updating these datasets is established by Government Decision.

Romania also has a **standalone law regulating access to information of public interest - Law no. 544/2001**: any person has the right to obtain information about the activity of any public authority or institution, including other entities using public resources, such as autonomous institutions or state-owned companies.

SLOVENIA

Access to open data (information of public nature) is primarily regulated in a separate legal act, the **Public Information Access Act (PIAA)**, which governs proactive transparency as well as the procedure which ensures everyone has free access to and can re-use public information held by the public sector (entities of public law/public service contractors/businesses under the prevailing influence of public law entities)

This right to information of public nature is enshrined in the **Slovenian Constitution**, Article 39: except in such cases as are provided by law, everyone has the right to obtain information of public nature in which he has a well-founded legal interest under law.

The provisions on the structure, competences and powers of the supervisory body deciding on the appeal against the decision by which the applicant’s request for access is refused or dismissed or where the right to access or re-use of public information is violated in some other way is regulated in the **Information Commissioner Act**.

There are special provisions on access to information of public nature by the mass media in Article 45 of the **Mass Media Act**.

Some additional provisions on access to information of public nature concerning public procurement are contained in the **Public Procurement Act** > Article 35 states that all documents relating to the award of a contract are public after the final decision on the award if they do not contain trade secrets, confidential information or personal information.

The **Integrity and Prevention of Corruption Act** does not regulate access to open data; it merely restricts access to information of public nature to protect the whistleblower when he or she decides to report corruption to the Commission for the prevention of corruption.

There are **many other sector-based regulations** which contain various provisions on open data.

Areas of disclosure

FRANCE

After the adoption of the **Law of 7 October 2016** for a Digital Republic (LRN), **any document produced or received by the administration must now be open to access**. However, right of access does not mean right of disclosure; in other words, the obligation to communicate does not mean the obligation to publish documents online, except where the obligation to publish online is expressly envisaged.

According to the Code for Relations between the Public and the Administration (CRPA) any document which is allowed to be communicated under the CRPA can also be “opened” or “disclosed” upon request. Moreover, the CRPA provides for **online disclosure by default in some cases**: for administrations employing more than fifty people in full-time equivalents; for documents they communicate in accordance with the procedures envisaged by the CRPA, as well as their updated versions; documents that appear in the directories of public information (RIP) maintained by different administrations; databases, updated on a regular basis, they produce or receive and that are not otherwise publicly disseminated; data, updated on a regular basis, whose publication is of economic, social, health or environmental interest. This provision does not apply to local authorities with a population of less than 3,500.

Administrations employing at least 50 staff members must publish online the rules defining the main **algorithmic processing operations** used in the performance of their tasks when these operations form the basis of individual decisions.

There are also publication **obligations provided by special regulatory instruments applied to specific sectors** (transparency, health, communication services, energy etc.). **Compulsory disclosure in the field of public procurement open data** consist of: tender notices or contract notices identifying the public purchaser's requirement; award notices to identify the final choice made by the public purchaser or the awarding authority; presentation reports on contracts awarded with a value equal to or greater than the European thresholds; inventory sheets of contracts worth more than 90,000€ excluding VAT for the public accountant and the Economic Observatory of Public Procurement as well as of the “essential” (minimum) data of all public contracts (including framework agreements) **equal to or greater than 25,000€ excluding VAT**.

IRELAND

Data gathered by public bodies are considered to be ‘**open by default**’ and should routinely be made transparent and easily accessible for citizens. Public bodies are encouraged to publish data on the national Open Data portal. If a public body withholds data, it must publish the reasons for the non-disclosure. The Open Data Portal aims to ensure interoperability by applying proportionate standards, formats, metadata and licences.

The Government Reform Unit of the Department of Public Expenditure and Reform manages the ‘**Data.gov.ie**’ **Open Data Portal** which provides easy access to public datasets. The information, published by Government Departments and Public Bodies, is free to use, reuse and redistribute.

Public bodies can submit a request to the Open Data Unit of the Department of Public Expenditure and Reform to publish the data on the Portal. The public body is firstly tasked with completing an internal data audit to identify the reliability and requirement of the data offered. The Open Data Unit has designed a universal data audit method which can be easily used by all forms of public bodies.

Public procurement: the publication of contract information is used by the OGP (Office of Government Procurement) to analyse procurement spending and tender techniques. The OGP routinely publishes analysis papers, which have yet to be published on the Open Data Portal. Limited information on public procurement is currently available on the Portal.

Irish contracting authorities are encouraged to advertise call for competition notices and contract award notices on the ‘eTenders’ national advertisement platform. Contracting authorities are requested to publish all services and supplies contracts with a value of 25,000€ and above and works contracts with a value of 50,000€ and above on the website.

ROMANIA

Publishing datasets is **compulsory** in Romania, for central and local authorities, including state-owned companies or independent or autonomous authorities. However, public institutions are not obliged to create or adapt documents or provide extracts from documents if this would require disproportionate costs going beyond the scope of a simple operation. The data sets that must be provided are highlighted separately in the legislation, taking into account the type of public body.

Most public bodies publish the relevant datasets on their own websites. Public institutions must also publish the documents on the governmental **data portal www.data.gov.ro**, along with the relevant metadata, in compliance with the rules for its use.

There are **three phases for disclosing public data** (upon request) and each institution usually has a designated person or department to fulfil this task: 1) Identification of the dataset 2) Evaluation of the data to be disclosed and 3) Disclosure.

If fees are charged for the reuse of the information, they are limited to the marginal costs associated with document delivery.

All **public tenders** in Romania are mandatorily published on **SICAP** – the Electronic System for Public Procurement. The system's open access area contains a large bulk of datasets for public procurement including: data on the contracting authority; data on the type of services/goods/works part of the public procurement; details on each step of the procedure and the type of procedure; the estimated value of the contract; data on the bidders; details about the winning offer, the name of the winning supplier and the final cost of the contract.

In addition, the programme encompasses aggregated datasets by public procurement topic and procedure statistics by counties.

SLOVENIA

Each public sector body is obliged to regularly **maintain and appropriately make public a catalogue of public information**. Each public sector body, except businesses subject to the prevailing influence of public law, is obliged to regularly maintain and make public on the website a list of other documents (e.g. documents relating to public procurement and tender calls for allocating funds; information on administrative, judicial and other services provided by the entity; all public information requested by the applicants at least three times and others).

Furthermore, PIAA contains special provisions on **proactive data transparency** on public finances: information on the account balance and payment transactions executed is collected by the Public Payments Administration which then makes this data available to the public.

Alongside the information that must be published online in the form of the catalogue of public information, any other existing information must be disclosed by public sector bodies if anyone demands that these data be handed over. There are, however, some exceptions to this rule. In specific cases, the demand to access information of public nature can be declined.

Article 35 of the **Public Procurement** provides that all documents relating to the award of a contract are public after the final decision on the award, if they do not contain trade secrets, confidential information or personal information. In addition to the electronic copy of the contract, the following information must be added: details of the contracting authority; the subject-matter of the public contract; the contract itself; the tenderer to whom the contract is awarded.

The place of publication, as well as its scope and format, are more precisely regulated in the **Regulation on the publishing of public procurement contracts, concessions and public-private partnerships**.

Contracts on public procurement, concession or public-private partnership must be published on the national procurement portal *E-Narocanje*.

Data standard

FRANCE

The data standardisation requirement is central. It allows for the harmonisation, comparison, aggregation and easy processing of data. It is reflected in the **principle of interoperability**.

Article L 300-4 CRPA provides that “Any provision made in electronic form pursuant to this book shall be made in an open standard, easily reusable and usable format by an automated processing system”.

Article 11 of Order No. 2005-1516 of 8 December 2005 provides that “A general interoperability reference framework shall lay down the technical rules for ensuring the interoperability of information systems. In particular, it determines the data directories, norms and standards that must be used by administrative authorities. The conditions for the preparation, approval, modification and publication of these standards are set by decree. The Interministerial Directorate of Digital and the State Information and Communication System has published a **General Interoperability Reference Framework (RGI)**. The **Open Data Protocol** is proposed.

In the field of **public procurement**: **Annex 15 of the Public Procurement Code introduced by the Order (“arrêté”) of 22 March 2019** sets out the **formats, standards and nomenclatures** in which these data must be published and the **procedures for their publication**. It contains the standards for **public contracts data** (annexe 1) and those for **concession contracts data**. Finally, **Annexe 7** of the Public Procurement Code sets out the technical, **accessibility and safety** requirements that buyer profiles must meet by referring to Order No. 2005-1516 of 8 December 2005.

IRELAND

The ‘**Open Data Technical Framework**’ sets out a planned and structured approach to the publication of datasets as Open Data on the national portal. It provides guidance on the following five key areas:

- **Open Data Licence**: Data and metadata published on data.gov.ie must be associated with the Creative Commons Attribution (CC-BY) Licence, as a minimum.

- **Recommended Formats** for Open Data: Data published on data.gov.ie must be machine-readable and in an open format (3-star Open Data), e.g. CSV, JSON or XML.

- **Recommended Metadata Schema** for Open Data: Data published on data.gov.ie must be compliant with DCAT-AP, the international Open Data metadata standard.

- **Recommended Standards** for Open Data: Data published on data.gov.ie should use national and international data standards, where possible.

- **Unique Resource Identifiers**: Data published on data.gov.ie should use Unique Resource Identifiers, where possible.

When publishing Open Data, public bodies should first try to reuse international standards defined by reputable standards organisations, such as ISO, the European Commission, W3C, IETF, OGC and OASIS. If international standards are unavailable or unsuitable, they may use national standards.

ROMANIA

The datasets should comply with formal open standards, but **there is no legal obligation to standardise the data provided by the institutions. The type of published datasets varies greatly** between institutions and public bodies and does not always follow the legal framework.

Most of them are scanned documents, not editable, and do not fit into the general framework of easily accessible open data. The datasets which are part of data.gov.ro are usually in editable form, but due to the high number of public bodies and institutions (especially at local level), the portal only includes a small number of datasets.

The financial reports and public spending of the bodies obliged to disclose public data are the most common datasets published on websites and data.gov.ro. For local public authorities, for example, there are a series of recommendations on the prioritisation of key datasets such as budget, budget execution, public procurement, building permits, transportation timetables, public services - nurseries, schools, parks, hospitals, etc. - company licences, public safety and crime, food safety, etc.

The **online portal data.gov.ro** currently has 1,500 datasets from 99 central and local institutions on a wide range of topics, referring to both financial and non-financial reports.

The recommendation to provide specific directors/names/information on the datasets by each authority is rarely fulfilled. Both central and local authorities disclose public data in various formats and under registration numbers, thus making it difficult for a third party to access that specific data with any prior description.

At the level of the previous implementation period of the Annual Plan (2016-2018), it was also attempted to create a pilot programme for automatic data publishing on data.gov.ro in the areas of public procurement, tax records and air quality. The programme still appears as “Not Started”.

SLOVENIA

The PIIA establishes that, as a general rule, entities should enable the re-use of public information and open databases by publishing them on the world wide web in open formats that comply with the **formal open standards, in machine-readable form**, including metadata, except when this would involve a disproportionate effort beyond a standard procedure.

The **national open data portal of the public sector** contains a list of all databases within the competence of public entities, including metadata, and open databases or links to the websites on which open databases are published. Slovenia is still attempting to achieve the standard of providing a complete national open data portal. Many databases can, however, be accessed online, mostly in machine-readable form.

Personal data protection

FRANCE

Documents containing personal data are subject to anonymisation and compliance with the obligations arising from the GDPR.

However, there are **three hypotheses in which this dissemination can take place without anonymisation**: if a **“contrary legislative provision”** authorises such publication without anonymisation; if the persons concerned have given their free, specific, informed and unequivocal **consent** (Article 4 GDPR); if the documents to be published **fall within the categories of administrative documents** that may be made public without prior anonymisation listed in Article **D. 312-1-3 CRPA**.

The administrations responsible for disclosure must comply with the applicable rules on the subject resulting from the GDPR and allow the effective exercise of individuals' rights, which include: information to data subjects, right of objection; accuracy of personal data.

Data of which it is considered that the public must be aware, either as part of the organisation of the public service or in order to be able to fully exercise its right of appeal, are therefore subject to the disclosure obligation.

IRELAND

Data protection legislation applies to all organisations (both public and private sector) that control data (as defined in the legislation). **GDPR** applies by default to the majority of personal data processing and came into force on 25 May 2018.

The Data Protection Act 2018 was signed into law on 24 May 2018 amending the Data Protection Acts 1988 and 2003 to comply with the new GDPR; it replaced the Data Protection Authority with a new Data Protection Commission, which is the Irish supervisory authority responsible for monitoring the application of the GDPR.

The **processing of personal data** is prohibited unless permission has been given by the data subject. In carrying out their duties, processors or controllers must uphold the principles of fairness; purpose limitation; data minimisation, accuracy; storage limitation, and security. Processors and controllers must be able to show that only data necessary to carry out a set activity were used, monitored and correctly disposed of when the action was completed.

ROMANIA

Romania regulates the categories of personal data and special regime data that cannot be published as open data: **Law no. 190/2018** on measures for the implementation of Regulation (EU) 2016/679 of the EU Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), respectively Decision no. 174 of October 18, 2018 regarding the list of operations for which National Authority Supervision for Personal Data Protection is required to carry out the impact assessment on personal data protection.

Romanian legislation regulates the different grounds on which public administration authorities, acting as data operators, publish their personal data as follows → processing is necessary to fulfil a legal obligation by the operator; it is necessary to perform a task in the public interest or resulting from the exercise of the public authority with which the operator is invested; it is necessary for the legitimate interests pursued by the operator or by a third party, unless the interests or fundamental rights and freedoms of the data subject that requires the protection of personal data prevail, particularly where the data subject is a child.

SLOVENIA

The applicant's request to access information may be denied when its disclosure could constitute a breach of personal data protection in accordance with the **PPA**.

There are cases where a document contains sensitive data which cannot be released to the public, but where the sensitive data can nonetheless be excluded from the document without jeopardising its confidentiality. If this is possible, an authorised person of the entity excludes such information from the document and refers the modified content to the applicant.

In public procurement: PPA declares that the contracting authority must guarantee the protection of personal data in accordance with the PDPA and protection of confidential information in accordance with the CIA. However, this rule does not apply to data relating to a) specifications of the goods, services or construction, b) the amounts provided in those specifications, c) the price per unit, d) the value of each item, e) the total value of the tender, f) other data that influenced the ranking of the tender in the context of additional criteria. This data may, therefore, be considered as public information even when it contains personal data or confidential information.

There is, however, an additional restriction: all documents relating to the award of a contract are made public only after the final decision on the award of a public contract if they do not contain trade secrets, confidential information or personal information. Before this date, the provisions of PIAA on access to information of public nature do not apply.

Supervisory authority

Sanctions

FRANCE

France has a General Data Administrator and a multitude of other administrative entities responsible for promoting open data. Nevertheless, the Court of Auditors (Cour des comptes) has recently pointed out the shortcomings in the management of open data.

General Data Administrator (AGD): coordinates the actions of administrations in terms of inventory, governance, production, circulation and use of data by administrations. It is therefore not a control authority in the strict sense but an authority which supports the implementation and operation of open data in France. It organises, with due respect for the protection of personal data and secrets protected by law, the best use of data held by public authorities and their widest circulation. The AGD submits an annual public report to the Prime Minister on the inventory, management, production and use of data by administrations.

The Court of Auditors is an independent authority that may monitor indirectly the effectiveness of data opening.

The Directorate of Legal Affairs coordinates the Digital Transformation Plan for Public Procurement.

The Interministerial Directorate of Digital and State Information and Communication System is a department of the Prime Minister in charge of the performance of the State's unified information system and the digital transformation of public action.

While the opening of public procurement data is an obligation for buyers, there are **currently no sanctions** against administrations or local authorities that have not opened their essential data relating to public procurement.

Penalties are applicable under Article L. 326-1 CRPA if public information is re-used in violation of the CRPA. Thus, fines are applied in the case of reuse leading to alteration or distortion of public data or in the case of reuse without a licence or in violation of a licence. The CADA is responsible for imposing these penalties.

Finally, the law penalises, with criminal sanctions, the disclosure of information covered by secrets.

IRELAND

Public bodies' actions or non-actions are subject to **review by an impartial body capable of making binding decisions**. A 're-user' may take a review action against a public body in circumstances where a public body refuses to allow a requester to re-use a document; refuses to grant an exclusive right to a requester to re-use a document; allows the re-use of a document but subject to a proposed fee being paid which the requester believes does not accord with the requirements of the Regulations in setting the amount of the proposed fee; allows the re-use of a document subject to imposing conditions.

A re-user may appeal against the public body's decision to the appointed Minister in writing. The appeal should be made no later than four weeks after the notification of the public body's decision. The Minister, upon receiving the request, may decide to appoint an Appeals Commission. If an Appeals Commission is appointed to hear that appeal, the Commission will have the power to affirm or vary the decision or may annul the decision and recommend a decision which it considers adequate.

Public bodies are individually responsible for ensuring compliance with the legislation and policies.

There are no specific sanctions for non-compliance with open data legislation.

ROMANIA

There is not a specific authority on open data. However, **the General Secretariat of the Government** ensures the coordination of the process of opening public data in Romania and administers the national portal data.gov.ro, the central access point for open datasets published by the Romanian public administration authorities and institutions and the point of contact with the European Commission (europeandataportal.eu). According to Government Decision no. 245/2015 for the approval of the National Strategy for the Digital Agenda for Romania 2020, the General Secretariat of the Government is the coordinator of three key strategies: 1) Development Strategies. Open Data - Providing accessible, reusable and redistributable data 2) Standardisation of procedures and 3) Open data provided by public institutions should be concentrated on a single platform at national level.

There are no sanctions according to open data legislation. However, non-disclosure or partial disclosures of public data are subject to sanctions according to transparency law. **Administrative sanctions** are used most frequently.

If the applicant considers the response received from the public institution to be partially complete or the authority refuses to disclose public data, he or she may file a criminal complaint and appear before a Court. If the Court agrees with the applicant, the public authority will be obliged to reveal the requested datasets.

SLOVENIA

The supervisory body in proceedings concerning access to information of public nature is the **Information Commissioner**, an independent state entity responsible for deciding on an appeal against a decision by which the public entity has dismissed or refused the request or otherwise violated the right to access or re-use public information and in the context of the second stage of the proceedings for supervising the implementation of the PIAA, and on regulations issued pursuant thereto.

If the information commissioner denies access to requested public information, judicial control over the conduct of public bodies can be demanded. This means that special administrative proceedings can take place which are partly regulated in PIAA and partly in the Administrative Dispute Act.

There are no **criminal offences** in the Slovene Criminal Code aimed specifically at conduct relating to access to information of public nature. There are, however, some offences which could be committed by public officials who do not want to disclose public information on purpose or change the document before they disclose it, for example, abuse of office or official duties; misfeasance in office; forging documents; forgery or destruction of an official paper, book, file or historical archives. Alongside criminal offences, there are many other minor offences regarding conduct related to information of public nature, according to the PIAA, ICA and MMA.

