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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	8627/17
Subject:	Draft Council Decision on open data and the reuse of Council documents

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Delegations will find attached the draft Council Decision on open data and the reuse of Council documents in the light of the discussions held at the Working Party on Information on 13 July 2017.

This document is identical to document 11545/17.

The draft Decision will be reviewed by the legal-linguistic experts of the Council and then submitted to Coreper in September 2017 and then to the Council for adoption.

**DRAFT**

**COUNCIL DECISION No. /17**

**on open data and the reuse of Council documents**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 240 thereof,

Having regard to the European Council Conclusions of 24/25 October 2013 on the Digital Economy, Innovation and Services,<sup>1</sup> and in particular paragraph 9 thereof,

Having regard to the Council Conclusions on the Single Market Policy of 2 March 2015,<sup>2</sup> and in particular paragraph 26 thereof,

Having regard to the Council conclusions on open, data-intensive and networked research as a driver for faster and wider innovation of 29 May 2015,<sup>3</sup> and in particular paragraph 12 thereof,

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<sup>1</sup> EUCO 169/13

<sup>2</sup> 6197/15

<sup>3</sup> 9360/15

Whereas:

- (1) New information and communication technologies have created unprecedented opportunities for aggregating and combining content from different sources. The trend towards an information and knowledge society influences the life of all citizens across the Union by enabling them to gain new ways of accessing and acquiring knowledge.
- (2) Public sector information is an important source of knowledge and innovation in the private sector, supporting the creation of better digital services for citizens and companies across Europe.
- (3) The Council and other EU institutions collect, produce and disseminate a wide range of information relating to the policies and areas of activity of the European Union (EU). The institutions themselves hold documents which could be reused in digital products and services and which could become a useful content resource for citizens and companies alike.
- (4) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information,<sup>4</sup> as amended by Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013,<sup>5</sup> sets minimum rules for the reuse of public sector information in the Member States. In its recitals, it encourages Member States to go beyond the minimum rules laid down and to adopt open data policies.
- (5) In December 2011, the European Commission adopted a Decision on the reuse of its documents<sup>6</sup> and, in April 2013, the Commission set up an EU Open Data Portal which aims to be a single point of access to data from the institutions and other bodies of the EU.
- (6) In June 2013, the EU endorsed the G8 Data Charter and undertook to implement a number of open data activities identified in the G8's Collective Action Plan.

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<sup>4</sup> OJ L 345, 31.12.2003, p. 90

<sup>5</sup> OJ L 175, 27.06.2013, p. 1

<sup>6</sup> OJ L 330, 14.12/2011, p.39

- (7) In October 2013, the European Council identified open data as "an untapped resource with a huge potential for building stronger, more interconnected societies that better meet the needs of the citizens" and called for the active promotion of the "reuse of public sector information".<sup>7</sup>
- (8) The EU Open Data Portal currently contains a large number of data sets and links to Open Data Portals of the Member States. The Council has participated in the EU Data Portal since 2015 with the following three datasets: metadata of the Council's Public Register, metadata of requests for public access to Council documents and the Council's votes on legislative acts.
- (9) To date, the Council has participated in the EU Portal through pilot projects. While those initiatives have shown a successful outcome, an open data policy for Council documents is needed to capitalise on and maximise the experience gained so far and to allow the GSC to define the conditions governing the publication and reuse of its documents.
- (10) An open data policy for Council documents would improve the flow of information between the General Secretariat and the general public; it would lead to the wider use and spread of information about the Union; it would enhance the Council's reputation for openness and transparency; and it would strengthen the accountability of this public institution, which is a basic principle of democracy.
- (11) The open data policy for Council documents should promote the development of tools and applications that help users search for and identify documents for reuse.
- (12) The right to access to Council documents remains regulated through Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.<sup>8</sup>

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<sup>7</sup> EUCO 169/13, paragraph 9.

<sup>8</sup> OJ L 145, 31.05.2001, p.43.

- (13) This Decision should be implemented and applied in full compliance with the principles relating to the protection of personal data in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.<sup>9</sup>
- (14) This Decision should be implemented and applied in full compliance with the principles of security for protecting EU classified information in accordance with Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information.<sup>10</sup>
- (15) This Decision should not apply to documents for which the Council is not in a position to allow reuse in view of third party intellectual property rights, access rights regimes in the Member States and those provided for in Regulation 1049/2001 on access to documents and the respective Council implementing rules and in view of the security rules for protecting EU classified information.

HAS DECIDED AS FOLLOWS:

*Article 1*

**Subject matter**

1. This Decision establishes an open data policy by defining the principles, conditions and limits governing the reuse and the practical means of facilitating the reuse of documents held and produced by the Council, as defined in Article 2(1).
2. The open data policy of the General Secretariat has the following aims:
  - (a) to improve the flow of information between the General Secretariat of the Council and the general public;
  - (b) to facilitate the wide reuse of information;

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<sup>9</sup> OJ L 8, 12.01.2001, p. 1.

<sup>10</sup> OJ L 274, 15.10.2013, p. 1–50

## *Article 2*

### **Scope**

1. This Decision applies to documents held and produced by the Council which have been made public by the Council.
2. This Decision shall not apply:
  - (a) to documents for which the Council is not in a position to allow reuse in view of intellectual property rights of third parties;
  - (b) to documents for which the Council is not in a position to allow reuse in view of access rights regimes in the Member States.
3. This Decision shall be implemented with full respect for the rules on the protection of individuals with regard to the processing of personal data, and in particular Regulation 45/2001.
4. This Decision shall be implemented with full respect for the rules on access to documents of the Council, and in particular Regulation 1049/2001.
5. This Decision shall be implemented with full respect for the security rules for protecting EUCI, and in particular Decision 2013/488.

### *Article 3*

#### **Definitions**

For the purposes of this Decision, the following definitions shall apply:

1. 'document' means:
  - (a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institutional sphere of responsibility of the Council.
  - (b) any part of such content;
2. 'reuse' means the use by persons or legal entities of documents for commercial or non-commercial purposes other than the initial purpose for which the document was produced.
3. 'personal data' means data as defined in Article 2(a) of Regulation (EC) No 45/2001;
4. 'open format' means a file format that is platform-independent and made available to the public without any restriction that impedes the reuse of documents;
5. 'machine-readable format' means a format structured for software applications to identify reliably individual statements of fact and their internal structure.

### *Article 4*

#### **General principles**

The General Secretariat shall ensure that documents to which this Decision applies in accordance with Article 1 shall be made available for reuse:

- (a) by all, without the need to make an individual application;
- (b) free of charge;
- (c) for commercial and non-commercial purposes.

*Article 5*

**Non discrimination and exclusive rights**

1. The General Secretariat shall not grant exclusive rights to documents to which this Decision applies.
2. The applicable conditions for the reuse of documents as provided for in Article 6 shall be non-discriminatory.

*Article 6*

**Conditions for reuse**

1. Documents to which this Decision applies in accordance with Article 1 shall be made available for reuse under the following conditions:
  - (a) the obligation to acknowledge the source of the document;
  - (b) the obligation not to distort the original meaning or message of the document;
  - (c) the non-liability of the General Secretariat of the Council for any consequence stemming from the reuse.
2. If necessary, the General Secretariat may apply other conditions to a particular type of document.
3. The General Secretariat of the Council shall take appropriate measures to protect its rights, interests and public image in all the appropriate fora.

## *Article 7*

### **Available formats**

1. Documents shall be made available in any existing format or language version, on the web and, where possible and appropriate, in open and machine-readable format.
2. This Decision shall not imply an obligation for the General Secretariat to create, adapt or update documents, or to provide extracts where that would involve a disproportionate effort, going beyond a simple operation.
3. This Decision does not create any obligation for the General Secretariat to translate documents into any official language versions other than those already available.
4. This Decision shall not imply an obligation for the General Secretariat to continue to produce certain types of documents or to preserve the documents in a given format with a view to their reuse.

## *Article 8*

### **Review**

No later than five years after the adoption of this Decision, the General Secretariat will submit a report on the application of this decision including the implementing actions taken by the General Secretariat in order to make documents available for reuse in open and machine readable format.

## *Article 9*

### **Entry into force**

This Decision shall enter into force on the date of its publication in the Official Journal.

Done at Brussels, on [*insert date*]

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