

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	<i>Implementing act on a list of High-Value Datasets</i>
LEAD DG (RESPONSIBLE UNIT)	CNECT (G1)
LIKELY TYPE OF INITIATIVE	<i>Legislative proposal</i>
INDICATIVE PLANNING	Q1 2021
ADDITIONAL INFORMATION	https://ec.europa.eu/digital-single-market/en/open-data

A. Context, Problem definition and Subsidiarity Check

Context

Directive 2019/1024 (EU) on open data and the re-use of public sector information (Open Data Directive) replaced and enhanced the original 'PSI Directive' (2003/98/EC). It is the legislative backbone of the EU Open Data Policy, whose main goal is to increase the availability of public sector data for re-use, as raw material for innovation across all economic sectors. The Directive lays down the minimum harmonisation rules on the re-use of public sector information across the board, indirectly contributing to sectoral policy objectives (e.g. environment protection, multimodal transport, energy efficiency). Inspired by earlier EU and international policy measures (Commission PSI guidelines of 2014, G8 Open Data Charter) that called for priority release of particularly valuable data assets, the Directive introduces the concept of High Value Datasets (HVDs). These datasets are defined as documents whose re-use is associated with important benefits for the society and economy. HVDs held by public sector bodies and public undertakings shall be made available for re-use to all, free of charge (subject to exemptions) in machine-readable formats, provided via Application Programming Interfaces (APIs) and, where relevant, as bulk download. The identification of HVDs will in particular take into account their re-use potential for SMEs. Annex I to the Directive enumerates the following six categories of HVDs, largely aligned with the thematic scope of the policy measures referred to above: 1) Geospatial, 2) Earth observation and environment, 3) Meteorological, 4) Statistics, 5) Companies and company ownership, 6) Mobility.

The European Strategy for Data of 19 February 2020 incorporates the HVDs as a common data layer facilitating, in conjunction with data coming from the private sector, the rollout of sectoral data spaces in strategic areas such as manufacturing, environment, agriculture, energy, finance and mobility.

Problem the initiative aims to tackle

The Open Data Directive lays down minimum harmonisation rules designed to improve the availability of public sector data for re-use. However, it does not require all public sector information to be available as open data (data in an open format that can be freely used, re-used and shared by anyone for any purpose).

It has long been accepted and indeed advocated (e.g. G8 Open Data Charter, Commission's PSI Guidelines) that open re-use of certain categories of public datasets can lead to significant benefits for the society, the environment and the economy. Such data are, however, often subject to re-use restrictions: they may be only available against high fees, be difficult to process by machines, be subject to complex licensing agreements or be difficult to discover due to scattered data holders and poor interoperability. This can constitute a real barrier for re-use, especially for smaller market players such as start-ups, SMEs, researchers or data journalists. In consequence, the re-use potential of such data remains largely unrealised.

During the legislative process leading to the adoption of the Open Data Directive, the co-legislators therefore decided that the Commission should identify a limited and well-defined group of high value datasets, whose re-use should be free of any technical, legal or financial barriers. This initial list of datasets will focus on themes in

which public data has already demonstrated its role of a key driver of innovation (e.g., as reference data adding value to other data and facilitating the creation of digital services) and where the public sector is best positioned to act as a data provider.

The approach consisting of selecting high value datasets for thematic areas within which public data are most likely to induce innovation aims at optimising the cost/benefit ratio of the initiative: on the one hand, the society and economy will be in a position to reap the benefits associated with innovative re-use of these data. On the other hand, the limited thematic scope of the initiative alleviates the burden of regulatory adjustment by the public sector.

Basis for EU intervention (legal basis and subsidiarity check)

The legal basis for the adoption of the implementing act is the Open Data Directive, and in particular article 14 thereof. According to Article 14(1) of the Directive, the Commission shall adopt implementing acts laying down a list of specific high-value datasets belonging to the categories set out in Annex I to the Directive and held by public sector bodies and public undertakings among the documents to which this Directive applies, including research data. The Open Data Directive lays down the rules on data re-use. The implementing act may specify the arrangements for the publication and re-use of high-value datasets, which have to be compatible with open standard licences. Pursuant to its Article 1(3), the Open Data Directive builds on, and is without prejudice to, Union and national access regimes. Data excluded or restricted from access by virtue of national law or Union law will not be taken into account for the list of High Value Datasets.

The implementing act is to be adopted in accordance with the examination procedure provided in Article 5 of Regulation (EU) No 182/2011, which lays down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

B. Objectives and Policy options

The main objective of this initiative is to ensure that a common EU wide layer of public sector datasets characterised by their high social, economic and environmental potential is easily and freely available for re-use. The high value datasets will also act as reference data for other (public or private sector) data and encourage the re-use of these related data (e.g., high value public geospatial data bundled with data derived from sensors or mobile devices/cars).

The initiative has a limited range of possible policy options, in accordance with the requirements set out in the Open Data Directive. In particular, the list must take the form of a binding, implementing act and its thematic scope is limited to the areas mentioned in the Annex to the Open Data Directive.

The intervention options will therefore differ according to the range of data covered by each dataset, their granularity (e.g. spatial resolution) and the modalities of publication and dissemination (e.g. frequency of update). While a wider set of data with high granularity and strict technical requirements (e.g. in terms of metadata interoperability) would undoubtedly lead to the highest socio-economic and environmental benefits, it would also constitute a heavier burden (financial and organisational) on the public data holders. In addition, the initiative will have to take account of existing sectorial legislation which already regulates data sets, such as for example the delegated acts adopted under Directive 2010/40/EU on the deployment of Intelligent Transport Systems or the INSPIRE Directive 2007/2/EC. The preferred intervention option will therefore have to balance these key considerations.

C. Preliminary Assessment of Expected Impacts

The initiative should lead to a significant lowering of entry barriers within the European data-driven market. This should translate into an increase in the volume of the datasets re-used, leading to the generation of new digital services and the improvement of existing services or business processes. While the initiative may initially lead to additional implementation costs by the data holders, the increased availability of relevant data should gradually generate notable efficiency gains across industries and the public sector and support the implementation of EU policies in different areas (e.g. health, environment, agriculture and fisheries, transport, regional development, climate change, research and innovation). Complemented by support planned in the Digital Europe Programme, these measures should also contribute to an increased cross-sectoral interoperability of data. It is likely that the new market entrants will include many SMEs and start-ups, which are harmed disproportionately by data re-use restrictions.

Equally important are the non-economic benefits. For instance, the wide availability of climate-related datasets (to be found in the majority of the themes indicated by the legislators in the Annex to the Open Data Directive) including those not yet publicly available, will constitute a stimulus for policy-making, research and digital innovation in the fight against climate change and its impacts. Market transparency will also be greatly improved thanks to better availability of company data as will the civic oversight of government activities in all the domains covered by the initiative. Access by competent public sector bodies to high-value data sets, in full compliance with data protection legislation, will also contribute to a fairer and safer society. Moreover, by harmonising public sector data for re-use, data sharing across countries could be facilitated, thereby easing the administration burden for EU citizens to move and reside freely within the European Union. Finally, promoting the accessibility, availability and re-use of open data can play a key role to help increase public administration efficiency as well as facilitate the fight against fraud and abuse (e.g. in the field of social security).

The exact impact of the implementing act is impossible to quantify at this stage. It is, however, possible to outline the expected impact of High Value Datasets by referring to the estimated effects of opening public sector data in the EU on a broader level.

Likely economic impacts

A wide array of companies along the data value chain (e.g. developing, enriching, analysing data) in sectors such as publishing, market research, financial investment or IT are likely to benefit from an open availability of HVDS. In particular, public data is an asset sought after by innovative start-ups and SMEs, given the relatively modest initial capital investment necessary to launch a data-driven business.

The Impact Assessment underlying the adoption of the Open Data Directive (SWD(2018) 127) demonstrated that the adoption of the revised Directive together with a list of High Value Datasets would lead to a 30% increase in the economic value of public sector information to €194 billion in 2028 (up from €150 billion in the baseline scenario, i.e. the 'non-intervention option'). In addition, the number of jobs based on the re-use of open data is expected to reach 709,000, (40% above the baseline scenario), while the cost of making PSI available for re-use will be reduced to EUR 3 billion, which is 21% lower than the estimated cost under the baseline scenario. Studies have shown that the vast majority of commercial re-users are SMEs, which are therefore expected to be the main economic beneficiaries of the proposed measures.

The expected positive economic impact of the initiative is backed by a recent OECD report (Enhancing Access to and Sharing of Data, 2019) that evaluates the overall benefit of sharing government data as a contribution of up to 1.5% GDP. Finally, CapGemini (European Data Portal report on the economic impact of Open Data, 2020) estimates the size of the open data market in the EU at €184 billion currently, with a possible increase to between €199.51 and €334.21 billion in 2025. Public sector bodies will initially bear the costs of regulatory adjustment (these costs will decrease over time, e.g. once Application Programming Interfaces are integrated into the data streams). They will however also benefit from extra revenue / taxation of PSI-based goods and services and from optimised resources due to better use of data in policymaking and in the delivery of public services.

Likely social impacts

The value created by open data goes beyond solely financial benefits. The free and open availability of high value data will lead to outcomes which are difficult to quantify in terms of monetary value, but which have a noticeable effect on social interactions: enable faster access to information, better resource allocation, save time and increase the efficiency in the provision of public services or increase of public safety and security. For instance, the exact location of public defibrillators can save precious time in emergency response. Air contamination levels can help health professionals predict the dynamics of an epidemic while statistical data can help assess its economic impact. In addition, openness of public administration improves government accountability and increases the trust of citizens in their institutions.

The abovementioned CapGemini report estimates that between 54 to 202 thousand lives annually in the EU can be saved by faster emergency response thanks to a better use of openly available public data (e.g. mobility, geospatial). The outbreak of the Covid-19 clearly shows that open data and location analytics when aggregated and genuinely anonymised can also serve to better allocate resources for combating infectious diseases in full compliance with data protection legislation.

Likely environmental impacts

The majority of the thematic categories of High Value Datasets include data strongly related to EU climate action. While many such data are already available, their improved discoverability and usability, e.g. thanks to integration

in EU wide data spaces, could constitute a stimulus for policy-making, research and digital innovation in the fight against climate change and its impacts. For example, improved availability of the relevant spatial and environmental data can help companies and individuals optimise their CO₂ footprint in mobility contexts or optimise the location of wind and solar farms.

The abovementioned CapGemini report shows that the potential energy savings by EU households with the help of open data would be approximately 5.8 million tonnes of oil equivalent each year. Open data put into use can also potentially help households reduce their annual energy bills by €5.1 billion. Facilitated access to geospatial and earth observation data will allow for increased precision farming capacities and thus reduce emissions from agriculture to the environment.

Likely impacts on fundamental rights

As concerns individuals, the current safeguards in the text of the Directive (e.g. precedence of data protection rules, exclusion on the grounds of 3rd party Intellectual Property Rights) will ensure that their fundamental rights will not be affected. These safeguards apply to the Implementing Act as well. The initiative will at the same time contribute to the exercise of the freedom of expression and information and the freedom of the arts and science (Articles 11 and 13 of the EU Charter of Fundamental Rights), by making more data available for use by all.

Should the list contain datasets held by public undertakings (especially those active in competitive markets), this could affect the freedom of these public undertakings to conduct a business (Article 16 of the EU Charter of Fundamental Rights). Whether this will be the case, and if so to what extent, needs to be assessed in context of the completion of the list. The Open Data Directive provides for exceptions, allowing the public undertakings to continue charging in cases where a risk of distortion of competition would occur.

Likely impacts on simplification and/or administrative burden

While the public sector is expected to bear the costs linked to the necessary technical upgrade of data publication (Application Programming Interfaces) and the discontinuation of charges for re-use, these should be attenuated by benefits derived from better availability and usability of data within the public service and the easing of administrative burden related to the handling of re-use requests, licensing negotiations and the processing of charges. Support actions for public sector bodies under the Digital Europe Programme will also be helpful in this respect. Moreover, some public data holders will be allowed to continue charging for the re-use of their data in specific situations foreseen in Article 14 of the Open Data Directive. These regulatory/administrative costs, benefits, burden reduction and simplification potential will be identified and quantified.

D. Evidence Base, Data collection and Better Regulation Instruments

Impact assessment

An Impact assessment is being prepared for the approval of the RSB in Q4 of 2020.

Evidence base and data collection

The Impact Assessment will draw upon the evidence from an Impact Assessment study, with the additional input provided by the stakeholders. In addition, a collection of relevant evidence (national studies, reports by OECD, World Bank, Open Data Institute, academic papers) was accumulated and quoted as reference material in the Impact Assessment SWD(2018) 127 underlying the adoption of the Open Data Directive.

Finally, the European Data Portal will contribute to the process, by providing expertise on the expected socio-economic impacts of Open Data in general and high value datasets in particular, in a series of reports throughout 2020.

Consultation of citizens and stakeholders

Citizens:

Citizens have an opportunity to provide feedback via an online public consultation launched along with the adoption of the European Strategy for Data on the 19.02. 2020 and running until 31.05.2020.

Member States, representing public sector bodies (as key stakeholders):

Under Article 16 of the Directive, the Commission shall be assisted by a Committee within the meaning of Regulation (EU) No 182/2011. The Committee meets at least twice a year and holds online discussions (webinars) in between the meetings.

The existing Expert Group on PSI provides expertise and support (e.g. by identifying those datasets that are already considered, based on the available evidence or experience, as high-value datasets) and liaise for that purpose with responsible services at the Commission. The group holds biannual meetings and has already

provided written submissions on the first selection of HVDs, at the request of the Commission.

Finally, the unit in charge discusses the process of the definition of the HVDs on a bilateral basis upon request (as it was for example the case with Austria, Germany, Spain).

Other stakeholders (private sector re-users including SMEs, NGOs, academics):

In addition to the public online consultation, additional workshops, focus group discussions and a public hearing will be organised in the context of the Impact Assessment support study.

Will an Implementation plan be established?

The Commission does not foresee any Implementation Plan, given the nature and content of the act.