



Decision of the European Court of Auditors No 6-2019 on the open data policy and the reuse of documents

THE EUROPEAN COURT OF AUDITORS

HAVING REGARD TO the Treaty on European Union, and in particular Article 11 thereof;

HAVING REGARD TO its Rules of Procedure and, in particular, Article 29 thereof;

WHEREAS new information and communication technologies have created unprecedented opportunities for aggregating and combining content from different sources;

WHEREAS 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;

WHEREAS 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;

WHEREAS the European Court of Auditors ('ECA') and other EU institutions collect, produce and disseminate a wide range of information relating to the policies and areas of activity of the Union;

WHEREAS the EU institutions hold and publish documents that could be reused in digital products and services and become a useful content resource for citizens and companies alike;

WHEREAS Directive 2003/98/EC of the European Parliament and of the Council sets out minimum rules for the reuse of public sector information in the Member States and encourages Member States to go beyond those minimum rules and to adopt open data policies;

WHEREAS following the adoption of Commission Decision 2011/833/EU (2), in 2012 the European Commission set up the European Union Open Data Portal ('EU ODP'), which aims to be a single point of access to data from the EU institutions and other bodies of the Union;

WHEREAS in its Conclusions of 29 May 2015, the Council encouraged the development of a data-friendly policy environment in the Union, which promotes interoperability, and the use and reuse of government data for research and innovation purposes while ensuring the necessary data protection;

- WHEREAS the ECA's IT Master Plan for 2018-2020¹ includes the intention to explore the publication of ECA open data as a means of connecting with our external stakeholders on the subject of our audit work²;
- WHEREAS by making available their data through the EU ODP, i.e. a single access point, the EU institutions aim to facilitate the development of tools and applications that help citizens, enterprises, the press, academic researchers and other users to search for and identify documents for reuse;
- WHEREAS the availability of ECA documents through the EU ODP would, therefore, lead to the wider use and dissemination of information about the Union, to enhanced openness and transparency and increase the accountability of the ECA as a public institution;
- WHEREAS this Decision should not apply to documents for which the ECA is not in a position to allow reuse, in view of third party intellectual property rights or access rights regimes in Member States;
- WHEREAS this Decision should be without prejudice to, and should be implemented and applied in compliance with, the rules on the protection of individuals with regard to the processing of personal data, as well as with the security rules for protecting classified EU information;
- WHEREAS the right of access to ECA documents remains regulated by Decision No 12/2005 as amended by Decision 14/2009 regarding public access to Court documents;

HAS DECIDED:

Article 1 - Scope and objectives

- 1) This Decision establishes an open data policy for the ECA ('the open data policy') by defining the principles, conditions and limits governing the reuse and practical means of facilitating the reuse of documents held and produced by the ECA, as defined in Article 2(1).
- 2) The objectives of the open data policy shall be as follows:
 - a) to improve the flow of information between the ECA and the general public; and
 - b) to facilitate the widespread reuse of information.

Article 2 - Scope

- 1) This Decision shall apply to documents held and produced by the ECA that have already been made public.

¹ IT Master plan for 2018-2020 - Fostering trust through independent audit (CA 071/17)

² Objective IT-04 under Goal 2. Connect – get clear messages to our audiences.

- 2) This Decision shall not apply to:
 - a) documents held and produced by the ECA that cannot be reused due to the intellectual property rights of third parties;
 - b) documents that, pursuant to the rules established in Decision No 12/05 of 10 March 2005, as amended by Decision No 14/2009, cannot be made available or can only be made available under specific rules governing privileged access.
- 3) This Decision shall be without prejudice to and shall be implemented and applied in accordance with:
 - a) the rules on the protection of individuals with regard to the processing of personal data, and in particular Regulation (EC) No 2018/1725 of the European Parliament and of the Council³;
 - b) ECA Decision 12/2005 as amended by Decision 14/2009 regarding public access to ECA documents;
 - c) the ECA's internal rules on information classification and security policy.

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 format or as an audio, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institutional sphere of responsibility of the ECA;
 - 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 point (1) of Article 3 of Regulation 2018/1725;
- 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 reliably identify individual statements of fact and their internal structure;

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 295, 21.11.2018, p. 39).

- 6) 'EU Open Data Portal' is the single point of access to data held by the European institutions and bodies and works created as described in Commission Decision 2011/833/EU.

Article 4 - General Principles

The ECA shall ensure that documents are made available for reuse:

- a) by all;
- b) without the need for an individual application;
- c) free of charge;
- d) for commercial or non-commercial purposes.

Article 5 - Non-discrimination and exclusive rights

- 1) All conditions applicable to the reuse of documents shall be non-discriminatory for comparable categories of reuse.
- 2) All potential actors in the market shall have the right to reuse documents. No exclusive rights shall be granted.

Article 6 - Conditions for reuse

- 1) Documents shall be made available for reuse under the following conditions:
 - a) the reuser must acknowledge the source of the documents;
 - b) the reuser must not distort the original meaning or message of the documents;
 - c) the ECA shall not be liable for any consequences of reuse.
- 2) If necessary, the ECA may apply other conditions to a particular type of document.
- 3) The ECA shall take appropriate measures to protect its rights, interests and public image in all appropriate fora.

Article 7 - Available formats

- 1) The ECA shall make documents available:
 - a) in any existing format or language version held by the ECA;
 - b) on the internet, including through the EU Open Data Portal;
 - c) where possible and appropriate, in open and machine-readable formats.
- 2) The ECA shall not be obliged to:
 - a) create, adapt or update documents;
 - b) provide extracts, if doing so would involve a disproportionate effort, going beyond a simple operation;

- c) translate documents into any official language versions other than those already available; or
- d) continue to produce certain types of documents or preserve the documents in a given format with a view to their reuse.

Done at Luxembourg, 16 April 2019

For the European Court of Auditors,

Klaus-Heiner Lehne
President