THE EU OPEN DATA DIRECTIVE CRITICALLY ASSESSED

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TU Delft, Knowledge Centre Open Data

CONTENT

- Introduction

- Open data legislation developments at the European level

- Specific OD Directive issues assessed

- Conclusion

WHAT PSI/OD DIRECTIVE ACTUALLY DOES?

- gradual development to umbrella legislation for all kind of 'OPEN' information, documents, results of work of public sector

- extending scope, removing barriers and incentivising availability and quality

- EU governance system as a critical factor of the open data success

- EU Directive's usual limitation as a legislative tool

- Lack of the connection to the access to information regimes; from open governance towards digital market

- Intense regulation of the exceptions (GDPR, copyright, critical infrastructure, etc.)

- Complex relationship with other legislation and specific sectors

- Challenges in ensuring implementation (effective monitoring; costs; reconfiguration of the market)

1990s	• Non biding guidelines, collaboration private & public sector; USA developments
2003 PSI Directive (→2015)	• Directive on the reuse of public sector information (EC/2003/98) • First legislative piece (15 MS+EEA) – 'ensure reuse' of the public sector information; • 1.5.2018; review by 2008
2013 PSI Directive Amendments (→ 2015)	• Directive EU/2013/37 (27 MS+EEA) • Extension of scope, strengthening protection, liberalisation of licences, restrictions on charging and exclusive rights, greater transparency, practical arrangements, reporting; • 18.7.2015 ; 17 infringements; review by 2018
Guidelines 2014; Benchmarking 2014; Portal 2015	• EC Guidelines on recommended standard licences, datasets, and charging on the re-use of public sector information 2014 • European data portal November 2015 (240.000 datasets); 81 catalogues from 36 countries • Open data landscape / maturity assessment launched 2015
OD PSI DIRECTIVE 2019 (→2021)	• **Directive on open data and reuse of public sector information (EU/2019/1024)** • Extension of scope, strengthening protection, liberalisation of licences, restrictions on charging and exclusive rights, greater transparency, portals, reporting • 17.7.2021; review by 17.7.2025.

EXTENDING SCOPE OF APPLICATION …

SCOPE (PUBLIC BODIES)

- 2003 PSI Directive – public sector bodies information

- public sector body + bodies governed by public law

+ extension well above what is considered public sector information in traditional terms to public service documents – but in specific regimes

- 2013 – cultural institutions (libraries, museums, archives)

- 2019 – research data – publicly funded research (FAIR, open by default; open science policies) + public undertakings (PP directive; high value datasets)

- What's next? Public broadcasters?

EXCEPTIONS

- Outside public task

- Outside provision of SOGI (for public undertakings)

- Intellectual property rights

- Sensitive data (national or public security, statistical confidentiality, commercial confidentiality)

- Sensitive critical infrastructure

- Legal interest

- Logos, crests, insignia

- Personal data protection

- Public service broadcasters

- Cultural other than libraries, museums, archives

- Secondary education and below plus other except research data

- Research performing other than publicly funded

ENHANCING THE QUALITY AND AVAILABILITY OF DATA

FORMATS

- Document vs. information /

- Machine readable + open formats + open source

- 2019 incentive to use Application Programming interfaces – API // 'dynamic data' - documents in a digital form, subject to frequent or real-time updates, in particular because of their volatility or rapid obsolescence; data generated by sensors are typically considered to be dynamic data;

TYPES OF DATA

- Guidelines 2014 – datasets from specific areas

- *High value datasets* – documents the reuse of which is associated with significant benefits for society and economy

- Geospatial

- Earth observation

- Meteorological

- Statistics

- Companies and company ownership (pd)

IMPROVING THE RIGHTS OF THE USERS

PROTECTION OF RIGHT

- 'Right to reuse'?
- 2003 – only obligation to ensure, and redress mechanism (not necessarily binding decision)
- 2013 - binding decision on the appeal (competition, access to information authorities)
- 2019 - exceptions (universities, cultural institutions, undertakings)
- Problem of deepening vs widening – greater scope, diverse types, more restrictive, more exemptions – protection challenged
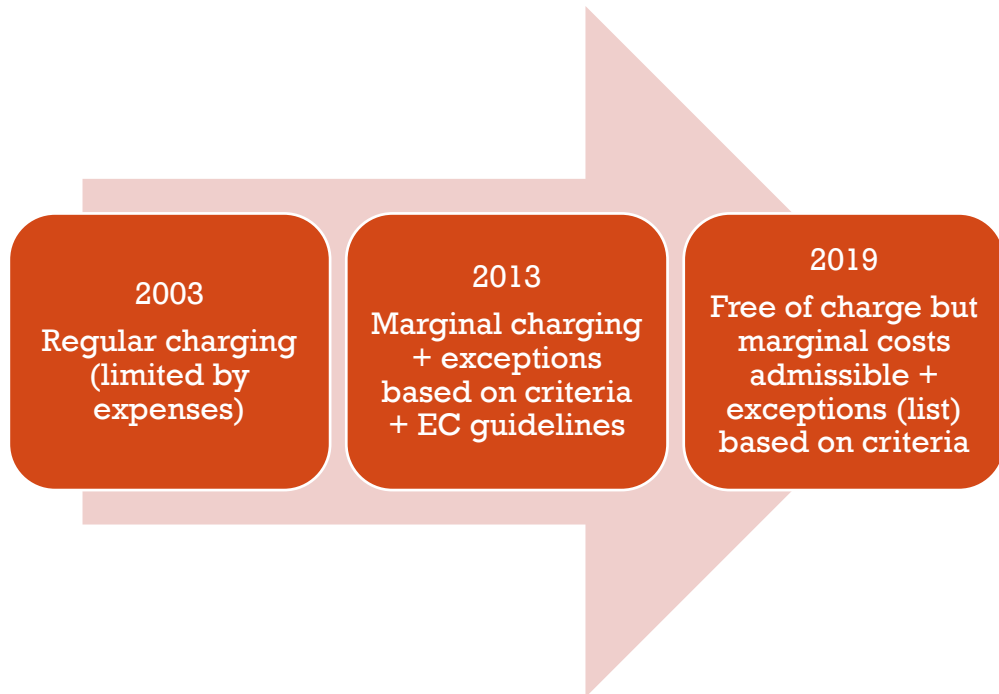
LICENCES

- 2013 – may allow without or may impose
  - Standard licences – Creative Commons (collision of legal traditions)
  - National licences – Ger, UK, Ita, Fra, …
- 2019 – no conditions, but if posed than standard licences + not restrictive + transparent

REMOVING THE OBSTACLES

CHARGING RULES

2003
Regular charging (limited by expenses)

2013
Marginal charging + exceptions based on criteria + EC guidelines

2019
Free of charge but marginal costs admissible + exceptions (list) based on criteria

EXCLUSIVE RIGHTS

- Exclusive right to reuse a dataset / agreements, PPP
- Restrictions
- Only in order to provide SOGI

- Transparency
- Practical problem – detection of such arrangements
- Valid until 2043 (!)

REPORTING, MONITORING, IMPLEMENTATION

TRANSPOSITION, REPORTING, MONITORING

- Transposition - July 2021

- EC – power to adopt delegated acts

- Committee on OD and reuse of PSI

- Reporting to the Commission abandoned (only once 2017)

- Evaluation - precise indicators (increase of reuse, APIs, DP rules, high value datasets, etc.)
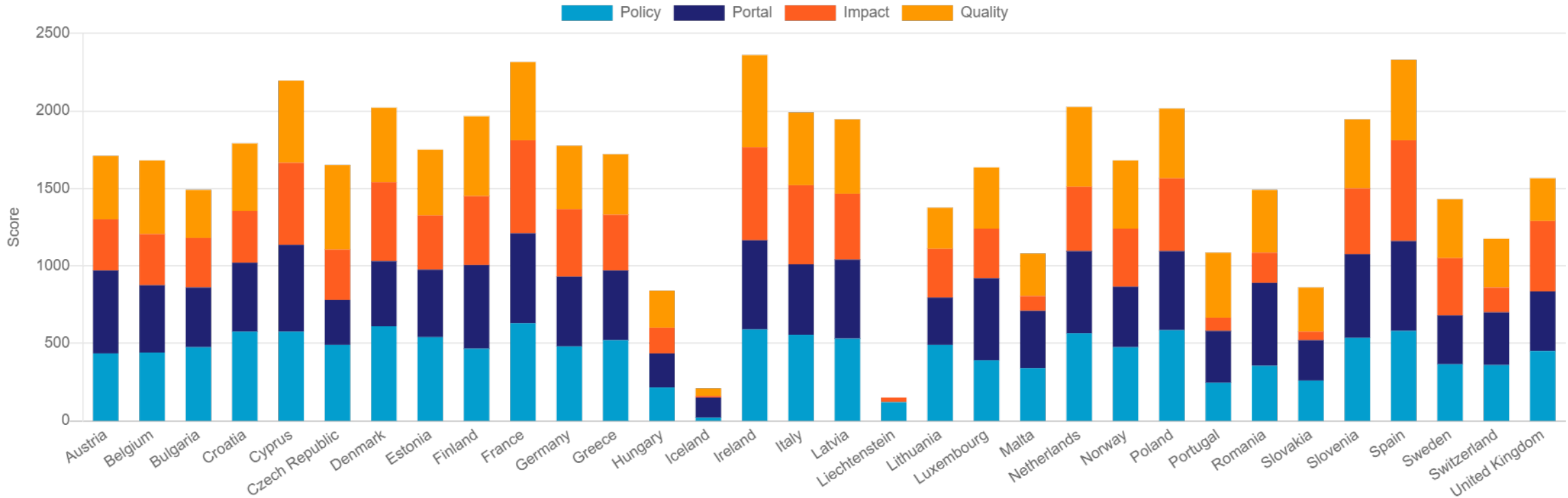
BENCHMARKING

- Open data maturity, DESI

- Changes in methodology – tracking

- Data reliability, data availability, size of the country, federal etc.

OPEN DATA MATURITY 2019

HTTPS://WWW.EUROPEANDATAPORTAL.EU/EN/DASHBOARD/2019#INTRO