I assent.

(L.S.) **GEORGE VELLA**
President

2nd July, 2021

ACT No. XXXV of 2021

AN ACT to amend the Re-Use of Public Sector Information Act, Cap. 546.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

Short title.

1. The short title of this Act is the Re-Use of Public Sector Information (Amendment) Act, 2021 and this Act shall be read and construed as one with the Re-Use of Public Sector Information Act, hereinafter referred to as "the principal Act".

Cap. 546.

Amendment of article 1 of the principal Act.

2. Sub-article (2) of article 1 of the principal Act shall be substituted by the following new sub-article:

"(2) The purpose of this Act is to implement the provisions of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast).".

Amendment of article 2 of the principal Act.

3. Article 2 of the principal Act shall be amended as follows:

(a) immediately before the definition "document" there shall be added the following new definitions:

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" "anonymisation" means the process of changing documents into anonymous documents which do not relate to an identified or identifiable natural person, or the process of rendering personal data anonymous in such a manner that the data subject is not or no longer identifiable;

"application program interface" or "API" means a set of automated functions and protocols that enable machine-to-machine communications for the exchange and consumption of data in a dynamic environment. Such APIs shall follow a registration process prior to be authorised and included in the national data portal;";

(b) immediately after the definition "document" there shall be added the following new definitions:

" "dynamic data" means 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;

"high-value datasets" means documents the re-use of which is associated with important benefits for society, the environment and the economy, in particular because of their suitability for the creation of value-added services, applications and new, high-quality and decent jobs, and of the number of potential beneficiaries of the value-added services and applications based on those datasets;";

(c) immediately after the definition "public sector entity" there shall be added the following new definitions:

" "public undertaking" means any undertaking:

(a) active in the areas defined in Directive 2014/25/EU;

(b) acting as public service operator pursuant to Article 2 of Regulation (EC) No. 1370/2007;

(c) acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No. 1008/2008; or

(d) acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Regulation (EEC) No. 3577/92 over which the public sector bodies may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public sector bodies shall be presumed in any of the following cases in which those bodies, directly or indirectly:

(i) hold the majority of the undertaking's subscribed capital;

(ii) control the majority of the votes attaching to shares issued by the undertaking;

(iii) can appoint more than half of the undertaking's administrative, management or supervisory body;

"research data" means documents in a digital form, other than scientific publications, which are collected or produced in the course of scientific research activities and are used as evidence in the research process, or are commonly accepted in the research community as necessary to validate research findings and results;";

(d) the definition "re-use of documents" shall be substituted by the following new definition:

" "re-use of documents" means the use by a person, public sector body, or legal entity of a document held by:

(a) the public sector body or another public sector body, as the case may be, for commercial or non-commercial purposes, other than the initial purpose within that public sector body’s public task for which the document was produced, except for the exchange of documents between public sector bodies purely in pursuit of their public tasks; or

(b) public undertakings, for commercial or non-commercial purposes, other than for the initial purpose of providing services in the general interest for which the documents were produced, except for the exchange of documents between public undertakings and public sector bodies purely in pursuit of the public tasks of public sector bodies."

and immediately thereafter there shall be added the following new definition:

" "standard licence" means a set of predefined re-use conditions in a digital format, preferably compatible with standardised public licenses available online.".

Amendment of article 3 of the principal Act.

4. Article 3 of the principal Act shall be amended as follows:

(a) paragraph (h) thereof shall be substituted by the following new paragraph:

"(h) documents held by educational establishments of secondary level and below, research establishments, research performing organisations and research funding organisations, including organisations established for the transfer of research results, as well as research units within public sector bodies, schools and universities, except university libraries, and, in the case of all other educational establishments, documents other than those referred to in paragraph (b);"; and

(b) immediately after paragraph (i) thereof there shall be added the following new paragraphs:

"(j) documents held by public undertakings:

(i) produced outside the scope of the provision of services in the general interest as defined by law or other binding rules;

(ii) related to activities directly exposed to competition, under regulation 24 of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sector Regulations, and therefore not subject to procurement rules;

S.L. 601. 05.

(k) documents access to which is excluded or restricted on grounds of sensitive critical infrastructure protection related information as defined in article 2 of the Critical Infrastructures and European Critical Infrastructures (Identification, Designation and Protection) Order;".

S.L. 460. 24.

Amendment of article 6 of the principal Act.

5. In article 6 of the principal Act the words "shall prevail." shall be substituted by the words "shall prevail:" and immediately thereafter

there shall be added the following new proviso:

"Provided that the right for the maker of a database provided for in article 25 of the Copyright Act shall not be exercised by public sector bodies in order to prevent the re-use of documents or to restrict re-use beyond the limits set by this Act.".

Cap. 415.

6. Immediately after article 8 of the principal Act there shall be added the following new article:

Addition of new article to the principal Act.

"Research data.

8A. (1) Without prejudice to paragraph (b) of article 3, research data shall be re-usable for commercial or non-commercial purposes in accordance with articles 13 to 23 (both articles included), insofar as they are publicly funded and researchers, research performing organisations or research funding organisations have already made them publicly available through an institutional or subject-based repository. In that context, legitimate commercial interests, knowledge transfer activities and pre-existing intellectual property rights shall be taken into account.

(2) The Minister responsible for public sector information may adopt national policies and relevant actions aimed at making publicly funded research data openly available, following the principle of open by default and the FAIR principles.

(3) Concerns relating to intellectual property rights, personal data protection and confidentiality, security and legitimate commercial interests, shall be taken into account in accordance with the principle of "as open as possible, as closed as necessary". Open access policies shall be addressed to research performing organisations and research funding organisations.".

7. Article 9 of the principal Act shall be renumbered as sub-article (1) and immediately thereafter there shall be added the following new sub-article:

Amendment of article 9 of the principal Act.

"(2) Where no time limits or other rules regulating the timely provision of documents have been established, public sector bodies shall process the request and shall deliver the documents for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant as soon as possible, and in any event within twenty (20) working days of receipt. That time frame may be extended by a further twenty (20) working days in the case of

extensive or complex requests. In such cases, the applicant shall be notified as soon as possible, and in any event within three weeks of the initial request, that more time is needed to process the request and the reasons why:

Provided that any licence involved shall be in accordance with the provisions of article 17.".

Amendment of article 10 of the principal Act.

8. Sub-article(4) of article 10 of the principal Act shall be substituted by the following new sub-article:

"(4) The following entities shall not be required to comply with the requirements of this article:

(a) public undertakings;

(b) educational establishments, research performing organisations and research funding organisations.".

Amendment of article 13 of the principal Act.

9. Article 13 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) Without prejudice to the Schedule, public sector bodies and public undertakings shall make their documents available in any pre-existing format or language and, where possible and appropriate, by electronic means, in formats that are open, machine-readable, accessible, findable and re-usable, together with their metadata. Both the format and the metadata shall, where possible, comply with formal open standards."; and

(b) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

"(3) Sub-article (1) shall apply to existing documents held by public undertakings which are available for re-use.

(4) The high-value datasets, as listed in accordance with the Schedule, shall be made available for re-use in machine-readable format, via suitable APIs and, where relevant, as a bulk download.".

Addition of new article to the principal Act.

10. Immediately after article 13 of the principal Act there shall be

added the following new article:

"Dynamic data.

13A. (1) Public sector bodies shall make dynamic data available for re-use immediately after collection, via suitable APIs and, where relevant, as a bulk download.

(2) Where making dynamic data available for re-use immediately after collection, as referred to in sub-article (1), would exceed the financial and technical capacities of the public sector body, thereby imposing a disproportionate effort, those dynamic data shall be made available for re-use within a time frame or with temporary technical restrictions that do not unduly impair the exploitation of their economic and social potential.

(3) The provisions of this article shall apply to existing documents held by public undertakings which are available for re-use.".

Amendment of article 15 of the principal Act.

11. Article 15 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) The re-use of documents shall be free of charge:

Provided that the recovery of marginal costs incurred for the reproduction, provision and dissemination of documents as well as for anonymisation of personal data and measures taken to protect commercially confidential information may be allowed.";

(b) paragraph (b) of sub-article (2) thereof shall be substituted by the following new paragraph:

"(b) public undertakings;";

(c) sub-article (3) thereof shall be substituted by the following new sub-article:

"(3) In the cases referred to in sub-article (2)(a) and (b), the public sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria as set out in the rules issued under this Act.

The total income of those bodies from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination and data storage, together with a reasonable return on investment, and, where applicable, the anonymisation of personal data and measures taken to protect commercially confidential information.

Charges shall be calculated in line with the accounting principles applicable.";

(d) sub-article (4) thereof shall be substituted by the following new sub-article:

"(4) Where charges are made by the public sector bodies referred to in sub-article (2)(c), the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, data storage, preservation and rights clearance, and where applicable the anonymisation of personal data and measures taken to protect commercially confidential information, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable."; and

(e) immediately after sub-article (7) thereof there shall be added the following new sub-article:

"(8) The re-use of the following shall be free of charge for the user:

(a) subject to the Schedule, the high-value datasets, as listed in accordance with item 1 of that Schedule;

(b) research data referred to in article 8A.".

Amendment of article 17 of the principal Act.

12. Sub-article (1) of article 17 of the principal Act shall be substituted by the following:

"(1) The re-use of documents shall not be subject to conditions, unless such conditions are objective, proportionate, non-discriminatory and justified on grounds of a public interest objective.

When re-use is subject to conditions, those conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.

Where it is deemed appropriate by the public sector body that conditions on re-use are imposed, such conditions shall be imposed through a licence. These conditions shall not be discriminatory for comparable categories of re-use, nor shall they be such as to unnecessarily restrict the way in which a document can be re-used including restrictions in competition and such conditions shall be objective, proportionate and justified on grounds of a public interest objective.".

Amendment of article 18 of the principal Act.

13. Article 18 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof the words "the asset lists; and" shall be substituted by the words "the asset lists;"; and

(b) in paragraph (b) thereof the words "search for documents." shall be substituted by the words "search for documents; and" and immediately thereafter there shall be added the following new paragraph:

"(c) continue efforts to simplify access to datasets by providing a single point of access and making available suitable datasets held by public sector bodies with regard to documents to which this Act applies, in formats that are accessible, readily findable and re-usable by electronic means.".

Amendment of article 19 of the principal Act.

14. Article 19 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof immediately after the words "public sector bodies" there shall be added the words "or public undertakings";

(b) in sub-article (2) thereof the words "27 June 2013" shall be substituted by the words "16 July 2019"; and

(c) immediately after sub-article (3) thereof there shall be added the following new sub-articles:

"(4) Legal or practical arrangements that, without expressly granting an exclusive right, aim at, or could reasonably be expected to lead to, a restricted availability for the re-use of documents by entities other than the third party participating in the arrangement, shall be made publicly available online at least two (2) months before their coming into effect.

(5) The effect of such legal or practical arrangements on the availability of data for re-use shall be subject to regular reviews and shall, in any event, be reviewed every three (3) years. The final terms of such arrangements shall be transparent and made publicly available online.".

Substitution of article 23 of the principal Act.

15. Article 23 of the principal Act shall be substituted by the following new article:

"23. (a) Without prejudice to article 22, exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions under sub-articles (2) and (3) of article 19 and that were entered into by public sector bodies, shall be terminated at the end of the contract and in any event not later than 18 July 2043.

(b) Exclusive arrangements existing on 16 July 2019 that do not qualify for the exceptions under sub-articles (2) and (3) of article 19, and that were entered into by public undertakings, shall be terminated at the end of the contract and in any event not later than on 17 July 2049.".

Addition of new Schedule to the principal Act.

16. Immediately after article 25 of the principal Act there shall be added the following new Schedule:

"SCHEDULE

1. The provisions of this Act shall apply to the following thematic categories of high-value datasets:

(a) geospatial;

(b) earth observation and environment;

(c) meteorological;

(d) statistics;

(e) companies and company ownership;

(f) mobility.

2. The specific high-value datasets belonging to the categories in item 1, as may be adopted in terms of Directive 2019/1024/EU, shall be:

(a) available free of charge, subject to the provisions of item 3;

(b) machine readable;

(c) provided via APIs; and

(d) provided as a bulk download, where relevant.

3. The requirement for high-value datasets to be available free of charge shall not apply to:

(a) libraries, including university libraries, museums and archives;

(b) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks and complying with the requirement to make datasets free of charge would lead to a substantial impact on the budget of the bodies involved. Provided that this exemption shall be limited to a period of not more than two (2) years following the entry into force of the relevant implementing act adopted in terms of Directive 2019/1024/EU.".

Passed by the House of Representatives at Sitting No. 480 of the 28th June, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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