



REPUBLIC OF ALBANIA

LAW Nr. 33/2022

ON OPEN DATA AND THE RE-USE OF PUBLIC SECTOR INFORMATION¹

Pursuant to Articles 78, 81 paragraph 1 and article 83, paragraph 1 of the Constitution, and upon proposal of the Council of Ministers

THE PARLIAMENT

OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

This law aims at developing the legal framework promoting the use of open data in the Republic of Albania with the goal of driving innovation in the provision of products and services.

Article 2

Scope

The scope of this law is to set out rules and procedures on the right to reuse open data and documents maintained by public sector bodies or public undertakings in the Republic of Albania for the purposes of profit or non-profit.

Article 3

¹ This law is partially aligned with: Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 "On open data and reuse of public sector information", CELEX 32019L1024, Official Journal of the European Union, series L, No. 172 of 26.6.2019, pp. 56-83

Scope of application

This law applies to the reuse of:

- a) existing documents maintained by public sector bodies;
- b) existing documents maintained by public undertakings:
 - i. conducting sectorial activities according to the law on public procurement related to the provision of general interest services in the water, energy, transport and postal services sectors;
 - ii. acting as public, road, air and marine transport operators;
- c) research data such as: statistics, experiment results, measurements, observations resulting from field work, survey results, interview recordings and images, including metadata, specifications and other digital items pursuant to the provisions in article 13 of this law.

Article 4 Restrictions

1. This law does not apply to documents:

- a) the provision of which falls outside the scope of activity of the relevant public sector body;
- b) of public undertakings set out in subparagraph "b" of article 3 of this law, when these documents have been developed outside the scope of general service provision, or are not subject to procurement rules according to the legislation on public procurement;
- c) on which third parties have intellectual property rights;
- ç) containing sensitive data, including those exempted for reasons of:
 - i. national security defense, public protection or safety;
 - ii. statistical confidentiality;
 - iii. commercial or professional data confidentiality of commercial companies;
- d) access to which is excluded or restricted because of critical infrastructure that has sensitive data;
- dh) access to which is restricted according to the law on the right to information, including cases where citizens or legal persons must prove a particular interest to access documentation; e) such as: logos, crests or insignia; logos, crests or insignia;
- e) such as: logos, crests or insignia;
- ë) access to which is excluded or restricted by virtue of the access rules on grounds of protection of personal data, and parts of documents which contain personal data the re-use of which is not in line with the personal data protection legislation;
- f) of the Albanian Public Radio and Television (RTSH) of its subordinate institutions for the fulfillment of the public broadcasting service remit;
- g) cultural establishments other than libraries, including university libraries, museums and archives;

- gj) pre-university educational institutions and higher education institutions;
- h) held by research performing organizations and research funding organizations, including organizations established for the transfer of research results, with the exception of those stipulated in subparagraph "c" of article 3 of this law.

Article 5

Relation to other laws

1. This law is based on legal provisions regulating the right to document access, and does not stipulate additional rights to access to information beyond the provisions in question.
2. The provisions of the law on the right to information are not impacted by this law. The same is true for the legal obligations related to safeguarding of confidentiality.
3. This law does not infringe on the rights of individuals related to personal data processing pursuant to the provisions of the personal data protection legislation, and protection of privacy in electronic communications.
4. This law does not infringe on intellectual property rights regulated by the applicable legislation on copyright and other related rights, and international intellectual property agreements to which the Republic of Albania is a party.
5. Intellectual property rights of third parties to establish databases are not impacted by this law.
6. The rules stipulated in this law regarding reuse of public sector bodies and public undertakings documents also cover documents subject to the law on geo-spatial data.

Article 6

Definitions

For the purpose of this law, the following definitions apply:

1. "Anonymization" means the process of changing documents into anonymous documents which do not relate to an identified or identifiable individual, or the process of rendering personal data anonymous in such a manner that the data subject is not or no longer identifiable.
2. "Document" means any content whatever its medium (paper or electronic form or as a sound, visual or audiovisual recording), or any part of such content.
3. "Machine-readable format" means a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements, and their internal structure.
4. "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 the creation of value-added services and applications, new high-quality and decent jobs, and of the number of potential beneficiaries of the value-added services and applications based on those datasets.

5. "Higher education institutions" has the same definition as the one provided in the applicable legislation on higher education and scientific research.
6. "Standard license" means all predefined reuse conditions in a digital format, which are made known to the applicant at the time of the request for reuse.
7. "Metadata" means any data that provides information on other data.
8. "Application programming interface (API)" means a software interface for interaction between systems, which allows information exchanges between systems and applications.
9. "Public sector body" means any central government body performing administrative functions; any public entity body to the extent they perform administrative functions; any local government body performing administrative functions, any Armed Forces body to the extent they perform administrative functions, and any natural or legal person to whom the right to perform public administrative functions has been granted by law, secondary legislation act or any other form stipulated under the applicable legislation.
10. "Third party" means any natural or legal person other than a public sector body or a public undertaking that holds data.
11. "Reuse" means the use by natural or legal persons of documents held by public sector bodies in the framework of their public functions, or by public undertakings in the framework of the services they provide, for commercial or non-commercial purposes other than the initial purpose for which the document was produced. Document exchange between public sector bodies, or between public undertakings and public sector bodies for the purposes of completing the public tasks of the public sector bodies is not considered reuse.
12. "Public undertaking" means any undertaking active in the areas set out in subparagraph "b" of Article 3 of this law, 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. The influence of public sector bodies over public undertakings shall be presumed when public sector bodies, directly or indirectly:
 - a) hold the majority of the undertaking shares;
 - b) control a majority vote related to the shares issued in the market by the undertaking;
 - c) are able to appoint more than half of the administrative, executive, or supervisory bodies of the undertaking.
13. "Formal open standard" means a standard laid down in written form, which details specifications for ensuring computer software interoperability.
14. "Dynamic data" means digital documents subjected to frequent or real time updates, especially because of their instability or quick outdating. Sensor generated data are commonly considered as dynamic data.
15. "Open data" means a platform independent format made available to the public without any restriction that impedes the reuse of documents.
16. "Research data" means documents in a digital form, such as: statistics, experiment results, measurements, observations from field work, survey results, interview recordings or images, including metadata, other specifications and digital objects 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.

17. "Personal data" has the same definition as that stipulated in the applicable legislation in the personal data protection domain.
18. "Sensitive data" has the same definition as that stipulated in the applicable legislation in the personal data protection domain.
19. "Sectorial activities" means procurement activities in the water, energy, transport and postal services sectors, regulated by the law on public procurement.

CHAPTER II

REQUESTS FOR REUSE

Article 7

Right to reuse

1. Any person shall have the right to reuse public sector bodies existing documents for the purposes of profit or non-profit, subject to the provisions of this law.
2. When the reuse of documents libraries, including university libraries, museums and archives hold intellectual property over and of documents held by public undertakings is permitted, the reuse of such documents for profit or non-profit purposes shall be done in compliance with the provisions of this law.
3. The public sector body shall set out the list of existing documents that may be provided in an open data format, and the list shall be publicly disclosed.
4. The public sector body shall not be obligated to create, adapt or provide document extracts for the purposes of document reuse when this would require considerable additional and nonproportional efforts exceeding the normal functions of the body.

Article 8

Application handling

1. Public sector bodies shall process reuse applications by making the document available to the applicant for reuse as quickly as possible, and no later than 15 business days from the application submission. When possible and appropriate, public sector bodies shall process the reuse application by electronic means.
2. The timeframe stipulated in paragraph 1 of this article may be extended by no more than 20 business days, in case of high volume or complicated requests. In these cases, the applicants shall be informed that more time is required to process the application than the timeframe stipulated under paragraph 1 of this article.
3. The public sector body rejecting a reuse application shall inform the applicant in writing of the reasons for such rejection.
4. Public undertakings and educational institutions, research organizations and research financing organizations shall not have the obligation to comply with this article.

CHAPTER III

CONDITIONS FOR REUSE

Article 9

Document format

1. Public sector bodies and public undertakings shall make documents in the language it is held on the reuse request date and when possible and appropriate through electronic means in an open, machine readable, accessible and reusable format, along with its metadata.
2. When possible, public sector bodies and public undertakings shall develop and make available for reuse documents starting from their development and drafting stages.
3. Public sector bodies and public undertakings shall not be obligated to continue the development and maintenance of a certain type of document for the purposes or its reuse by a public or private sector institution.
4. To the extent that is technically possible, public sector bodies and public undertakings shall make data available for reuse immediately upon collection through appropriate API interfaces in a dynamic form, and when adequate as a single bulk download.
5. When dynamic data availability for reuse by the public sector body, pursuant to the provisions under paragraph 4 of this article, is not possible for technical or financial reasons, these dynamic data shall be made available for reuse within the timeframe stipulated under article 8 of this law.

Article 10

Cost of reuse

1. As a rule, the reuse of documents shall be free of charge.
2. A fee may be applied to the reuse of documents for the purposes of covering additional costs arising from reproduction, provision of document distribution, personal data anonymization, and measures taken to protect trade secret information.
3. The following shall be exempted from the provision of documents free of charge:
 - a) public sector bodies, which according to the special legislation on their functioning, generate revenue to cover a considerable portion of the costs related to the performance with their public tasks;
 - b) libraries, including university libraries, museums and archives;
 - c) public undertakings.
4. Revenue from the provision and the permission to reuse documents may not be higher than the administrative costs incurred for the collection, production, reproduction, dissemination and storage of the data, and when applicable, the costs incurred for the anonymization of personal data and other measures taken for trade secret protection.
5. Whenever fees apply, the methodology, amount and use of the fee must be stipulated by decision of the Council of Ministers. The public sector body applying fees in relation to the right of reuse shall make them public on its website and the unique open data government portal.

Article 11

Standard license

1. The reuse of documents, as a rule, shall be open and conditions shall only be put forward when justified for public interest. Conditions for reuse of documents must be objective, proportional and non-discriminatory.
2. Reuse of documents shall be open or through the application of a standard license. When standard licenses apply, the license shall be provided in electronic format in line with the template approved by joint instruction of the minister responsible and the Commissioner for the Right to Information and Personal Data Protection.
3. The standard license shall define reuse rights and restrictions, such as; printing, copying, processing of data, permission or restriction to transfer to third parties, requirements for respecting intellectual property rights and personal data protection.

Article 12

Facilitating open data search

1. The government open data portal shall be established/operated for the purposes of facilitating the search of open data provided by public sector bodies.
2. Practical rules for the facilitation of open data search shall be adopted by decision of the Council of Ministers.

Article 13

Research data

1. Publicly funded research data shall be available for reuse for profit or non-profit purposes.
2. Research data shall be made available respecting intellectual property rights, personal data and confidentiality protection, security and legitimate commercial interests.
3. The obligations stemming from this article shall apply only to research data from the time they are publicly disclosed by researchers, research organizations, or research financing organizations.

Article 14

Non-discrimination

1. All conditions in place for the reuse of documents shall be implemented equally and shall not discriminate similar reuse categories, including cross-border reuse.
2. Should documents be reused by a public sector body as material for its own commercial activities that lie beyond its public tasks, the same fees and conditions applied to other users shall also applied to the documents sought for these activities.

Article 15

Exclusive arrangements

1. Document reuse shall be open to all.

2. Other agreements and contracts between public sector bodies and public undertakings holding documents and third parties should not provide any exclusive reuse rights.
3. Paragraph 2 of this article shall not apply to cases where an exclusive right is necessary for the provision of a public interest service, and the reasons for providing such rights shall be regularly reviewed at least once in 3 years. Exclusive arrangements signed on or after the date of entry into effect of this law shall be publicly disclosed online at least 2 months before becoming effective. The final conditions for these arrangements shall be transparent and shall be publicly disclosed online.
4. When exclusive rights are related to the digitalization of cultural sources, exclusivity shall not be longer than 10 years. When it is longer than 10 years, exclusivity shall be reviewed during the 11th year, if applicable, and every 7 years thereafter.
5. Legal arrangements, which while not providing exclusive rights expressly aim at or could lead to restricted availability to reuse documents for other parties other than the third parties participating in the arrangements, shall be publicly disclosed online at least 2 months before becoming effective.
6. The effects of these legal arrangements on data availability for reuse shall be reviewed every 3 years.

CHAPTER IV HIGH VALUE DATASETS

Article 16 **Thematic categories of high value datasets**

1. High value datasets shall include data from the following domains:
 - a)* geo-spatial;
 - b)* environment and soil observation;
 - c)* meteorology;
 - c)* statistics;
 - d)* commercial companies and ownership in these companies;
 - dh)* public transport.
2. Other thematic high value dataset categories shall be added by decision of the Council of Ministers when considered necessary to reflect technological and market developments.

Article 17 **Reuse of specific high value datasets**

1. The relevant public body(ies), in coordination with the Commissioner for the Right to Information and Personal Data Protection shall define specific datasets for each high value dataset category for the economy and society.

2. Specific high value datasets must be:
 - a) available free of charge;
 - b) machine readable;
 - c) provided through APIs; and
 - d) when relevant, provided as a single download.
3. Notwithstanding the provisions of paragraph 2 of this article, the provision of high value datasets free of charge shall not apply for specific high value dataset groups held by public undertakings that lead to distortion of competition in relevant markets, and for libraries, including university libraries, museums and archives.
4. Public sector bodies may be exempted from the obligation to provide high value data free of charge for a period 2 years at most by decision of the Council of Minister, when the provision of these data free of charge would have a considerable impact on the budgets of these bodies.

CHAPTER V

ADMINISTRATIVE INFRINGEMENTS AND PENALTIES

Article 18

Administrative infringements and penalties

1. Any action or omission in violation of this law as set out below, shall be considered an administrative infringement:
 - a) refusal to make documents available for reuse in breach of the provisions of this law shall be penalized by a fine between ALL 100,000 and 1,000,000.
 - b) failure to publish fees in breach of paragraph 5 of article 10 of this law shall be penalized with a fine between ALL 50,000 (fifty thousand) and 500,000 (five hundred thousand).
 - c) failure to comply with legal requirements on conditions of reuse/standard licenses shall be penalized with a fine between ALL 50,000 (fifty thousand) and 500,000 (five hundred thousand);
 - c) failure to publish the list of existing documents that can be provided in open data format shall be penalized with a fine between ALL 50,000 (fifty thousand) and 500,000 (five hundred thousand);
 - d) failure to cooperate and failure to provide information when requested by the Commissioner for the Right to Information and Personal Data Protection regarding the performance of the tasks set out by this law shall be penalized with a fine between 50,000 (fifty thousand) and 500,000 (five hundred thousand).
2. Imposing administrative penalties against public sector bodies or public undertakings committing administrative infringements must be proportional to the infringement and damages caused.
3. In any case, the public sector body or public undertaking may file a complaint with the court within 30 calendar days from receiving the relevant notification, pursuant to the law on administrative infringements.

CHAPTER VI
COMPLAINT REVIEW COMPETENCES AND
PROCEDURES

Article 19

Competences of the Commissioner for the Right to Information and Protection of
Personal Data

1. The Commissioner for the Right to Information and Personal Data Protection shall be responsible for protecting, supervising and promoting the right to reuse documents pursuant to this law.
2. Public sector bodies must cooperate with the Commissioner for the Right to Information and Personal Data Protection providing all information requested by the Commissioner in line with its duties under this law.

Article 20

Complaint review procedures

1. Should the interested parties consider that the public sector body of public undertaking have infringed their right to reuse documents under the provisions of this law, they shall have the right to an administrative complaint with the Commissioner for the Right to Information and Personal Data Protection pursuant to this law and the Code of Administrative Procedure.
2. The administrative complaint with the Commissioner for the Right to Information and Personal Data Protection shall be brought within 30 business days when:
 - a) the applicant has been informed of the refusal to reuse documents;
 - b) the timeframe provided under this law for the provision of the document for reuse has lapsed.
3. The Commissioner for the Right to Information and Protection of Personal Data shall make any of the following decisions within 30 business days from the date the complaint is filed:
 - a) to reject the complaint when:
 - i. the deadline stipulated under paragraph 2 of this article has lapsed;
 - ii. the complaint is not submitted in writing;
 - iii. the name and address of the applicant are not provided.
 - b) to accept the complaint and order the public sector body or public undertaking to make the document available for reuse in its complete or partial form;
 - c) to partially or completely reject the complaint;
 - ç) to set a deadline by which the public sector body or public undertaking must comply with the order.
4. Should the Commissioner on the Right to Information and Protection of Personal Data not make a decision before the timeframe stipulated under paragraph 3 of this article has lapsed, the applicant shall have the right to mobilize the court.

Article 21
Complaints in the court

All parties affected by the decision of the Commissioner for the Right to Information and Personal Data Protection shall have the right to appeal the decision with the first instance administrative court in Tirana.

Article 22
Issuing of secondary legislation

1. The Council of Ministers shall be charged with adopting the secondary legislation for the implementation of article 10; paragraph 5, article 12; paragraph 2, article 16 paragraph 2; article 17 paragraph 4 of this law within 6 months from entry into effect of this law.
2. The minister responsible and the Commissioner for the Right to Information and Personal Data Protection shall be charged to issue the secondary legislation act implementing article 11, paragraph 2 of this law within 6 months of entry into effect.

Article 23
Entry into effect

The present law shall enter into effect 1 year upon its publication in the Official Gazette.

DEPUTY SPEAKER
Ermonela Felaj (Valikaj)

Adopted on 31.3.2022.