

## OPEN DATA POLICY: GREEN BOOK EXECUTIVE SUMMARY

Data is the lifeblood of economic development: it is the basis for many new products and services, driving productivity and resource efficiency gains across all sectors of the economy, allowing for more personalised products and services and enabling better policy making and upgrading government services. It is an essential resource for start-ups and small and medium-sized enterprises (SMEs) in developing products and services. The availability of data is essential for training artificial intelligence systems, with products and services rapidly moving from pattern recognition and insight generation to more sophisticated forecasting techniques and, thus, better decisions.

Addressing the challenges and attempting to capture the enormous potential benefits data-driven innovation can bring, Ukraine in 2015 enacted the Ukrainian Open Data Legislation (Law 319-VIII, 9 April 2015). The Law was in many ways ahead of EU Public Source Information “PSI” Directive (2003/98) and set the approaches provided in EU later by Open Data and the Reuse of Public Sector Information EU Directive (2019/1024). The Law provides an umbrella legal framework in Ukraine for all government-held data (public sector information) while at the same time enhancing the three key regulatory reform pillars in Ukraine: transparency, efficiency, and fair competition.

Following the EU Directive principles, the Law further, authorises public sector bodies to make as much information available for re-use as possible. The Law sanctions access to open data material held at national, regional, and local levels, such as ministries, state agencies and municipalities, as well as organisations funded mostly by or under the control of public authorities. Open data must be available free of charge.

However, this advanced legislative instrument in Ukraine lacks as of today a necessary set of implementing mechanisms that would make the execution of the Law clearly beneficial for the suppliers of data (public sectors), as well as, to the end consumers (private sector). The Law does not address the key implementing issues, (i) lack administrative mechanisms framework governing the availability of data (absence of control oversight and technical support system), (ii) inadequate level of disciplinary measures against public authorities for non-compliance with release requirements); (iii) full public access to high-value data that currently remain unattainable in open data; (iv) addressing PSI data lock-in; (v) eliminating the use of exceptions that allow public sector bodies to charge a fee for access to PSI;

BRDO, utilizing its well-developed regulatory enhancement mechanism that includes its internationally acclaimed public consultation process, in conjunction with its internal regulatory evaluation that incorporated the best international and especially EU practices, in order to improve the utility of the open data concept for business while at the same time eliminating barriers that still prevent the full re-use of public sector information, BRDO recommends the following set of regulatory enhancements:

Amending current legislation with the following corrections:

- CMU Resolution 835 (21 October 2015):
  - Clearly define legal and technical provisions that would govern the open data publishing process.
  - Based on EU Directive, clearly define high value data sets, that are documents the re-use of which is associated with important benefits for the society and economy (available via API free of charge).
- Law on PSI, the Code of Administrative Offenses, other supporting legislative acts:

- Reduce market entry barriers, in particular for SMEs, by eliminating the exceptions that allow public bodies to charge for the re-use of their data <sup>1</sup>
- Introduce adequate level of financial penalties for public authorities for refusing to make available the open data sets.
- Introduce changes that would prevent public data holders from entering into arrangements (“lock-in”) with the private sector to derive undue financial benefit from releasing data. Such lock-in scheme results in unjustifiable advantage that benefits large companies thereby limiting the number of potential re-users of the data in question.
- Minimise the risk of excessive first-mover advantage, by defining and legally requiring a more transparent process for the establishment of public–private data arrangements.

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<sup>1</sup> Under present, undefined charge environment, several public sector bodies continue to charge well above what is needed to cover legitimate costs. Such unregulated and inflated charges constitute in effect a market barrier for Small and Medium-sized Enterprises (SMEs). Getting rid of charges typically results in a surge in demand for public sector data, which translates into more innovation, more business growth and, ultimately, higher budget revenues (via taxes) for the public sector.