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GENERAL PROVISIONS

DEPARTMENT OF JUSTICE AND PUBLIC ADMINISTRATIONS

3841

DECREE 159/2012, of 24 July, which regulates the openness and reuse of computer applications of the public administration of the Basque Autonomous Community.

In recent years, the Public Administrations have been immersed in a modernisation process, which has included a radical cultural change based on the principles of open government: transparency, openness and collaboration. Given the current economic climate, these principles are now more essential than ever, as they not only improve the democratic health of the public institutions, but they also help to increase the degree of efficiency of the administrative operations.

One of the areas where the principles of open government have been used refers to the openness of the computer applications belonging to the Public Administrations, in the sense of the Public Administrations making the computer applications developed available to others, either directly or through third parties.

The reuse thus achieved enables a clear saving of costs in the development, maintenance and evolution of the source code. Yet principally, it fosters the development of an economy based on knowledge and innovation, and helps to develop a business ecosystem of the Information and Communication Technologies, as it enhances its competitiveness by means of encouraging cooperation between the private sector and public sector with the sole purpose of improving the public services, whose quality is based, in the majority of cases, on the wide-scale use of the information technologies.

The openness and reuse of computer applications is on the agenda of the European Union in terms of the notion of sharing, reusing and collaborating. And in Spain, this notion has been used in the framework of developing e-government. Thus, Article 45 of the Spanish Citizens Electronic Access to Public Services Act 11/2007, of 22 June, envisages that the Public Administrations may make those computers applications where they hold the intellectual property rights available to any other administrations free-of-charge and without needing to enter into a formal agreement. Furthermore, its Article 46 establishes that the Public Administrations will keep directories for the free reuse of applications pursuant to Royal Decree 4/2010, of 8 January, which regulates the Spanish Interoperability Framework in the sphere of Electronic Government.

The Spanish Interoperability Framework aims to create the necessary conditions to guarantee the appropriate level of organisational, semantic and technical interoperability of the systems and applications used by the Public Administrations, which enable the exercising of rights and compliance of duties through electronic access to the public services, while enhancing effectiveness and efficiency.

Article 16 of the aforementioned Royal Decree 4/2010 establishes the licensing conditions applicable to the reusable computer applications and which are declared as open source code or open sources. On the other hand, its Article 17 develops certain conditions applicable both to the computer application directories for their free reuse regarding their linking to equivalent instruments of other Public Administrations, along with the duty of taking into account the available solutions therein

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that may fully or partially meet the needs of new systems or services, the enhancing and updating of the ones already implemented, as well as regarding the publication of the source code of the computer applications in the aforementioned directories in order to foster sharing, reusing and collaborating aimed at great effectiveness and efficiency.

The same path is the one followed by Act 18/2011, of 5 July, regulating the use of the information and communication technologies in the Justice Administration that envisages, in its Article 55, that the Justice Administrations may make available those computer applications of which they hold intellectual property rights to any judicial institution or any Public Administration free-of-charge and without needing to enter into a formal agreement. The aforementioned computer applications may likewise be declared as an open source, in a similar way as defined in the aforementioned Article 16 of Royal Decree 4/2010, when that leads to greater transparency in the running of the Justice Administration. It likewise envisages that the reuse of the existing systems, services, infrastructures and computer applications shall be fostered in the development of the solutions for the Justice Administration, provided that the security and interoperability technology requirements so permit. Furthermore, its Article 56 likewise establishes that the Justice Administrations shall maintain updated computer application directories for their reuse, in a similar way to what is envisaged in the aforementioned Article 17 of Royal Decree 4/2010.

With this Decree, the public administration of the Basque Autonomous Community further progresses this modernisation process, by establishing the general principle of openness, not only in the framework of electronic government, but also of any computer application that it owns. And it further consolidates its commitment to the rational use of public resources by undertaking to reuse existing ones, in order to reduce the associated costs and for those resources to be able to be used in processes that contribute real value added to public management.

The Decree thus establishes the conditions applicable to openness or public availability and reuse of the computer applications of the public administration of the Basque Autonomous Community, which shall be considered as open source computer applications. In particular, common guidelines area established regarding the terms and conditions of use applicable to the acquisition, development, maintenance, configuration and evolution of any source code of computer applications, and to its openness.

All the guidelines established herein are complementary measures to the others that the Basque Government usually establish to increase both the efficiency of the resources that the members of the public administration of the Basque Autonomous Community earmark for the acquisition or procurement of the development, maintenance and evolution of computer applications, and to foster good practices that guarantee the assurance of their quality and the efficiency of their features, both between products and between the processes of the sector that are dedicated to the development and marketing of computer applications.

Therefore, at the proposal of the Basque Government Minister of Justice and Public Administration, and after due deliberation and approval of the Government Cabinet during its session held on 24 July 2012,

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I ORDER:

Article 1.- Purpose.

1.- The purpose of this Decree is to establish the openness or public availability conditions, for their reuse, of all the computer applications belonging tot any of the entities included in its sphere of application.

2.- This Decree likewise seeks to establish the prior conditions to the acquisition, development or maintenance throughout the life cycle of the computer applications by the aforementioned entities, which enable the reuse of the aforementioned computer application, irrespective of whether these activities are carried out using own resources or relevant subcontracting.

3.- The computer applications in question are those where at least part of its source code have been acquired or developed, including that resulting from any modifications that can be made throughout its life cycle, by any of the entities included in the sphere of application of the Decree.

4.- Only those part of the aforementioned computer applications show intellectual property rights are held by any of the aforementioned entities shall be affected by what is envisaged herein.

Article 2.- Sphere of application.

This Decree shall be applicable to the General Administration of the Basque Autonomous Community, to the Autonomous Bodies and Private Public Entities making up its Institutional Administration.

Article 3.- General principles.

The entities included in the sphere of application of this Decree shall comply with the following general principles:

1.- Principle of Accountability, as the entities undertake to reuse the already developed computer applications insofar as the latter may meet the requirements to be covered.

2.- Principle of Open Innovation, as the internal knowledge is combined with external knowledge in order to develop technological projects that enable continuous improvement in the public services. .

3.- Principle of Cooperation among Public Administrations, pursuant to which the public administration of the Basque Autonomous Community shall make any computer applications that it may develop available to the other Public Administrations freely, publicly and at no charge.

4.- Principle of Efficient Collaboration between the private and public sector in order to develop the economic sector linked to the Decree, based on shared knowledge.

5.- Principle of Technological Neutrality and Adaptability to the Progress of Information and Communication Technologies guaranteeing independence in the choice of technological alternatives by the entities established in Article 2, along with the freedom to develop and implement technological advances under free market conditions.. The aforementioned entities shall therefore use open standards exclusively.

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6.- Principle of Transparency, when opening the source codes of the computer applications belonging to the public administration of the Basque Autonomous Community, along with the planning in their construction and their full description.

Article 4.- Open Source Computer Application Directory.

1.- In order to facilitate the reuse of the computer applications, the Open Source Computer Application Directory of the public administration of the Basque Autonomous Community is hereby established and shall be accessed freely, publicly and at no charge through the Internet. This directory shall be managed by the directorate entrusted with the online presence of the Public Administration of the Basque Autonomous Community.

2.- This Directory shall be linked with the Computer Applications Directory for its free reuse, which is kept by the Technology Transfer Centre of the Spanish General Administration and with any other similar Directory once the authorities become aware of its online existence.

Article 5.- Conditions that enable the Reuse of the Computer Applications.

1.- The entities included in the sphere of application of this Decree shall consult the Open Source Computer Application Directory of the public administration of the Basque Autonomous Community prior to the acquisition, development or maintenance throughout the life cycle of a computer application, whether it is by their own means or by contracting the relevant services. The purpose of the consultation is to provide available solutions for their reuse, which can totally or partially meet the needs, improvements or updates to be covered and provided that the security and interoperability technological requirements so allow.

2.- Should no solution be available for its total or partial reuse, a report explain this circumstance shall be published in the Open Source Computer Applications Directory. The report shall set out the grounds for needing to proceed to develop or maintain the open source of a computer application, whether that is using own resources or contracting the relevant services. This report shall also include the relevant annexes with the following information:

A functional description of the new computer application.

b) A description of the composition or modular architecture of the resulting source code. Should the new computer application form part of another, the modular architecture of the latter shall likewise be included.

c) A description of the measures taken to facilitate its reuse, which shall include the detailed timeline of the scheduled dates for releasing each of the partial results of milestones of the modules or components affected by that development or maintenance, which has to be within six months. It shall likewise include the technological, architectural and functional characteristics of each of the planned milestones, along with the economic assessment associated to each of them.

d) Where applicable, the reasons why that procurement involves any dependency on products belonging to third-party products. In this case, details shall be given of the reference of all of them, their version and source, along with the licences applicable to each of its components and to its associated documentation. The report shall likewise include the impact on the total cost of its procurement, and note whether such dependencies are temporary or permanent and whether their elimination is

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envisaged. In the latter case, the envisaged date of the elimination shall be indicated and the total cost associated to this task for each of the aforementioned dependencies.

Should the aforementioned development or maintenance of the source code of a computer application be carried out by means of contracting the relevant services and, if as the result of the procurement process, the scope, contents, planning or the aforementioned dependencies on third-party products have to be modified, the information described in this Point shall be duly updated prior to the implementation of the aforementioned procurement. A short report shall also be included that justifies those changes.

3.- When the entities included in the sphere of application of this Degree believe that there are sufficiently good grounds and related to security or to the fact that some of the components of a computer application have become or may become part of a collaboration between the public and private sector, only a brief report needs to be published in the Open Source Computer Application Directory. This report shall contain, apart from the reasons to apply this restriction, the annexes with a brief description of the sought functionality with the computer application in question and with all the information included in Point 2.d) herein. With regard to the information contained in Points 2.b) and 2.c) herein, only the information that is not in dispute with the cause resulting in the restriction shall be published. This restriction is temporary and may be reviewed at any time. Thus, if one of the entities listed in Article 2 decide to lift the aforementioned restrictions, it shall proceed to update the information pursuant to what is contained herein.

Article 6.- Acquisition of the intellectual property rights of a Computer Application.

1.- In order to guarantee the openness or public availability process and the reuse of computer applications envisaged herein, the published specifications or contractual clauses shall envisage the acquisition by the contracting entity of the intellectual property rights of the computer applications envisaged herein.

2.- Therefore, the Directorate responsible for information and telecommunication systems shall prepare the standard clauses to be included in such procurement processes, which shall be generally applicable after their approval by the Government Cabinet and pursuant to the report by the Advisory Board of the Administrative Procurement of the Basque Autonomous Community, and their subsequent publication in the Official Gazette of the Basque Country.

Article 7.- Openness of the Computer Applications.

1.- The entities envisaged in Article 2 shall made publicly available in the Directory described in Article 4, the documents that contain the sources of each computer application as they become available at the relevant milestones, pursuant to the timeline referred to in Point 2.c.) of Article 5. The documentation associated to each milestone shall therefore be published and shall include at least part of the sources of the application in question and, along with their documentation, it shall also include reference to the licences on which they depend. Furthermore, should, once a milestone has been reached, the scope, contents, planning or the aforementioned third-party product dependency be modified with respect to what has been previously published regarding the application to which the milestone belongs, all the relevant information envisaged in Article 5 herein shall be duly updated, along with a short report justifying those changes.

2.- At the time of opening or publicly making available the sources of the computer applications, those licences shall be used that ensure that the computer applications published

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in the Directory may be considered as open source computer applications. These licences are those that enable the computer applications to:

a) be run for any purpose.

b) allow their source code to be known.

c) be modified or improved.

d) be redistributed to any Public Administration, individual or legal entity with or without changes, provided that the computer application that the licensee can create based on the original computer application or any of its modifications comply with these same four guarantees.

3.- The standards and formats of the open source computer applications published in the aforementioned Directory, along with those of the data that these process, shall comply exclusively with what is envisaged regarding standards in Article 11 of the Royal Decree 4/2010, of 8 January, regulating the Spanish Interoperability Scheme in the sphere of Electronic Administration, or any legislation that replaces it, so that they comply in nature of the computer applications and data to be processed, prioritizing the purpose for which each format was defined and always avoiding the use of close or private formats, or which have not been published as open standards and which, therefore, do not guarantee technological neutrality.

4.- In order for the entities included in the sphere of application of this Decree, as licensor, to be able to make available, free of charge and without the need for any formal agreement, to any Public Administration or any individual or legal entity, the computer applications envisaged herein, the following obligations shall be met in the terms and conditions of their licensing:

a) that the purpose of the licences is, exclusively, the use and reuse of the computer applications and their associated documentation.

b) that the licences cannot allow any third party to exclusively appropriate the computer application and their associated documentation. .

c) that the licences contemplate the licensor being held harmless due to any possible misuse of the licensee.

d) that the licensor is not obliged to provided the licensee with an maintenance or technical assistance of the computer application or of the associated documentation, envisaged herein..

e) that the licensor is not required to compensate the licensee in any way whatsoever in the case of errors in the computer application or in its associated documentation.

Article 8.- Restrictions on the openness of the Computer Applications.

1.- Should any of the entities envisaged in Article 2 deem that are sufficient grounds and related to the security or related to the fact that some of the components of a computer application have become or may become part of a collaboration between the private and public sectors, it may restrict the publication of any of the source codes of the computer application, envisaged in the previous article. In this case, a report justifying the applied restrictions shall be published in the Open Source Application Directory. The report shall include a reference to their impact in the relevant updated version of the memory described in Article 5.

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3.- These restrictions are temporary and may be reviewed at any time. Thus, if one of the entities listed in Article 2 decide to lift the aforementioned restrictions, it shall proceed to update the information pursuant to what is contained herein.

Article 9.- Analysis and use of the information of the Open Source Computer Application Directory.

1.- The Directorate responsible for computer and telecommunications shall define the indicators that enable to monitor and assess the impact of the openness and reuse of the computer applications envisaged herein.

2.- Furthermore, this Directorate shall include updated information on the sources of the computer applications published in the Directory envisaged in Article 4 in the census of Telematics and Computer Resources described in Article 10 of Decree 35/1997, of 18 February, or any legislation that replaces it. It shall annually publish a report analysing the aforementioned indicators in the above section and the use of the information contained in the Directory.

ADDITIONAL PROVISIONS

One.- In order to comply the licensing conditions expressed herein, the entities envisaged in Article 2 shall preferably use for the open source computer applications the public licence of the European Union approved by the European Commission, known by the EUPL acronym, version 1.1 or above, which shall not prevent them from using other licences that include the aforementioned licensing conditions. While they shall preferably use the Creative Commons-Attribution-ShareAlike licence, known by the CC-BY-SA acronym, version 3.0 or above, for the associated documentation.

Two.- Within three months, from the date of this Decree coming into force, the representatives of the public administration of the Basque Autonomous Community in the public corporations, foundations and consortia that form part of the public sector, pursuant to Article 7 of Decree 1/997, of 11 November, shall foster and approve the relevant agreements so that the contents of this Decree is adopted as own action criteria of each and every one of them. Moreover, the aforementioned representatives shall foster the approval of similar agreement in the equity-interest entities referred to in Act 6/2012, of 1 March.

FINAL PROVISION

This Decree shall come into force the day following its publication in the Official Gazette of the Basque Country.

Issued in Vitoria-Gasteiz, on 24 July 2012

The Lehendakari
(Basque Premier)
FRANCISCO JAVIER LÓPEZ ÁLVAREZ.

Basque Government Minister for Justice and Public Administration.
IDOIA MENDIA CUEVA.