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THE EUROPEAN UNION**

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ADDENDUM TO "I" ITEM NOTE

from: General Secretariat of the Council

to : Coreper

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Subject: Proposal for a Directive of the European Parliament and of the Council amending
Directive 2003/98/EC on re-use of public sector information
- Approval of the final compromise text

Delegations will find in Annex the consolidated text of the draft Directive.

**DIRECTIVE 2012/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

amending Directive 2003/98/EC on *the* re-use of public sector information

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

(-1) Documents produced by public sector bodies of the Member States constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy.

(1) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information³ establishes a minimum set of rules governing the re-use and the practical means of facilitating re-use of existing documents held by public sector bodies of the Member States.

(2) Open data policies which encourage the wide availability and re-use of public sector information for private or commercial purposes, with minimal or no legal, technical or financial constraints, **and which promote the circulation of information not only for economic operators but also for the public**, can play an important role in kick-starting the development of new services based on novel ways to combine and make use of such information, **stimulate economic growth and promote social engagement**. However, this requires a level playing field at Union level in terms of whether or not the re-use of documents is authorised, which cannot be achieved by leaving it up to the different rules and practices of the Member States or the public **sector** bodies concerned.

¹ OJ C 191, 29.6.2012, p. 129.

² Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of

³ OJ L 345, 31.12.2003, p. 90.

- (3) Allowing re-use of documents held by a public sector body adds value for the re-users, for the end users and for the society in general and in many cases for the public body itself, by ***promoting transparency and accountability and*** providing feedback from re-users and end users which allows the holder to improve the quality of the information collected.
- (4) Since the first set of rules on re-use of public sector information was adopted in 2003, the amount of data in the world, including public data, has ***increased exponentially*** and new types of data are being generated and collected. In parallel, we are witnessing continuous ***evolution*** in technologies for analysis, exploitation and processing of data. This rapid technological evolution makes it possible to create new services and new applications, which are built upon the use, aggregation or combination of data. The rules adopted in 2003 no longer keep pace with these rapid changes and as a result the economic and social opportunities offered by re-use of public data risk to be missed.
- (5) At the same time, Member States have now established re-use policies under Directive 2003/98/EC and some of them have been adopting ambitious open data approaches to make re-use of accessible public data easier for citizens and businesses beyond the minimum level set up by that Directive. To prevent different rules in different Member States acting as a barrier for the cross-border offer of products and services, and to enable comparable public data sets to be re-usable for pan-European applications based on them, a minimum harmonisation is also required as to what public data is available for re-use in the internal information market, consistent with the relevant access regime.

- (6) Directive 2003/98/EC does not contain an obligation *on access to documents or an obligation to* allow re-use of documents. The decision whether or not to authorise re-use remains with the Member States or the public sector body concerned. At the same time, Directive 2003/98/EC builds on national rules on access to documents *and so allowing re-use of documents is not required under the Directive where access is restricted (for example, national rules restrict access to citizens or companies who prove a particular interest to obtain access to documents) or excluded (for example, national rules exclude access because of the sensitive nature of the documents based, inter alia, on the grounds of national security, defence, public security)*. Some Member States have expressly linked the right of re-use to this right of access, so that all generally accessible documents are re-usable. In other Member States, the link between the two sets of rules is less clear and this is a source of legal uncertainty.
- (7) Directive 2003/98/EC should therefore *be amended to* lay down a clear obligation for Member States to make all documents re-usable *unless access is restricted or excluded under national rules on access to documents and subject to the other exceptions laid down in this Directive. These amendments do not seek to define or change access regimes within Member States, which remain under the responsibility of the Member States.*
- (7a) *Taking into account the Union legislation and Member States' and Union's international obligations, notably under the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), documents on which third parties hold intellectual property rights should be excluded from the scope of Directive 2003/98/EC. If a third party was the initial owner of a document held by libraries (including university libraries), museums and archives that is still protected by intellectual property rights, that document should, for the purpose of this Directive, be considered as a document for which third parties hold intellectual property rights.*

- (7b) *Directive 2003/98/EC should apply to documents the supply of which forms part of the public task of the public sector bodies concerned, as defined by law or by other binding rules in the Member State. In the absence of such rules the public task should be defined in line with common administrative practice in the Member State, provided that the scope of the public task is transparent and subject to review. The public task could be defined generally or on a case-by-case basis for individual public sector bodies.*
- (7c) *This Directive should be implemented and applied in full compliance with the principles relating to the protection of personal data in accordance with the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁴. In particular, it is worth recalling that, according to that Directive, the Member States should determine the conditions under which the processing of personal data is lawful. Furthermore, one of the principles of that Directive is that the further processing of personal data should not be incompatible with specified, explicit and legitimate purposes established for the collection of that data.*
- (8) The application of Directive 2003/98/EC should be without prejudice to the rights, *including economic and moral intellectual property rights*, that employees of public sector bodies may enjoy under national rules.
- (9) Moreover, where any document is made available for re-use, the public sector body concerned should retain the right to exploit the document.
- (10) The scope of application of Directive 2003/98/EC *should be* extended to libraries (including university libraries), museums and archives. ■

⁴ OJ L 281, 23.11.1995, p. 31.

- (10a) One of the principal aims of the establishment of the internal market is the creation of conditions conducive to the development of Union-wide services. The libraries, museums and archives hold significant amount of valuable public sector information resources, in particular since digitisation projects have multiplied the amount of digital public domain material. These cultural heritage collections and related metadata are a potential base for digital content products and services and have a huge potential for innovative re-use in sectors such as learning and tourism. Wider possibilities of re-using public cultural material should inter alia allow European companies to exploit its potential and contribute to economic growth and job creation.*
- (10b) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public cultural resources, which constitute barriers to realising economic potential of those resources. As libraries, museums and archives continue to invest in digitisation, many already make their public domain content available for re-use and many are actively seeking out opportunities to re-use their content. However, as they operate within very different regulatory and cultural environments, practices of cultural establishments in exploiting content have developed in disparate ways.*
- (10c) Therefore minimum harmonisation of national rules and practices on the re-use of public cultural material in libraries, museums and archives should be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Union.*
- (10d) The extension of the scope of Directive 2003/98/EC should be limited to three types of cultural establishments – libraries (including university libraries), museums and archives, because their collections are and will increasingly become a valuable raw material for re-use in many products such as mobile applications. Other types of cultural establishments (such as orchestras, operas, ballets and theatres), including the archives that are part of these establishments, should remain excluded because of their "performing arts" specificity. Since almost all of their material is covered by third-party intellectual property rights and would therefore remain excluded from the scope of the Directive, including them in the scope would have little effect.*

- (10e) *Digitisation is an important means for ensuring greater access to and use of cultural material for education, work or leisure. It also offers considerable economic opportunities, allowing for an easier integration of cultural material into digital services and products, thus supporting job creation and growth. These aspects were underlined in, amongst others, the European Parliament's resolution of 5 May 2010 on "Europeana - the next steps", the Commission Recommendation 2011/711/EU of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation⁵, and the related Council conclusions of 10 May 2012. These documents define the way forward for dealing with the legal, financial and organisational aspects of digitising Europe's cultural heritage and bringing it online.*
- (11) To facilitate re-use, public sector bodies should make documents available through *open and* machine readable formats and together with their metadata, *at the best level of precision and granularity*, where possible and appropriate, in a format that ensures interoperability, e.g. by processing them in a way consistent with the principles governing the compatibility and usability requirements for spatial information under Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)⁶.
- (11a) *A document should be considered as a document in a machine readable format if it is in a file format that is structured in such a way that software applications can easily identify, recognise and extract data of interest from it. Data encoded in files that are structured in a machine-readable format are machine-readable data. Machine-readable formats can exist as formal open standards or not. Machine-readable formats can be open or proprietary; they can be formal standards or not. Documents encoded in a file format that limits such automatic processing, because the data cannot or cannot easily be extracted from these documents, should not be considered as documents in machine-readable format. Member States should when appropriate encourage the use of open, machine-readable formats.*

⁵ OJ L 283, 29.10.2011, p. 39.

⁶ OJ L 108, 25.4.2007, p. 1.

(12) Where charges are made *by public sector bodies* for the re-use of documents, *those charges* should in principle be limited to the marginal costs. *However* the necessity of not hindering the normal running of public sector bodies *that are required to generate revenue to cover* a substantial part of *their* costs relating to the performance of their public task *or of the costs relating to the collection, production, reproduction and dissemination of certain documents made available for re-use* should be taken into consideration. *In such cases, public sector bodies should be able to charge above marginal costs. The requirement to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks or of the costs relating to the collection, production, reproduction and dissemination of certain documents, does not have to be a requirement in legislation and may result, for example, from administrative practices in Member States. Such requirement should be regularly reviewed by the Member States.*

In such cases charges should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Libraries, museums and archives should also be able to charge above marginal costs also for reasons of not hindering the normal running of these public sector bodies. In the case of those public sector bodies 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, preservation and rights clearance, together with a reasonable return on investment. For the purpose of libraries, museums and archives and bearing in mind their particularities, the prices charged by the private sector for the re-use of identical or similar documents could be considered when calculating the reasonable return on investment. The upper limits for charges set in this Directive are without prejudice to the right of Member States or public sector bodies to apply lower charges or no charges at all.

- (12a) *Member States should lay down the criteria for charging above marginal costs. In this respect, Member States, for example, may lay down such criteria directly in national rules or may designate the appropriate body or appropriate bodies, other than the public sector body itself, competent to lay down such criteria. That body should be organised in accordance with the constitutional and legal systems of Member States. It could be an existing body with budgetary executive powers and under political responsibility.*
- (13) In relation to any re-use that is made of the document, public sector bodies may, where practicable, impose conditions on the re-user, such as acknowledgment of source **and acknowledgment of whether the document has been modified by the re-user in any way.** Any licences for the re-use of public sector information should in any case place as few restrictions on re-use as possible, **for example limiting them to an indication of source.** Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, **should** play an important role in this respect. Therefore, Member States should encourage the use of open licences **that in time should become common practice across the Union.**
- (14) *The Commission has supported the development of an online Public Sector Information scoreboard with relevant performance indicators for the re-use of public sector information in all the Member States. A regular update of this scoreboard will contribute to the exchange of information between the Member States and the availability of information on policies and practices across the Union.*
- (14a) *The means of redress should include the possibility of review by an impartial review body. That body could be an already existing national authority, such as the national competition authority, the national access to documents authority or the national judicial authority. That body should be organised in accordance with the constitutional and legal systems of Member States and should not prejudge any means of redress otherwise available to applicants for re-use. It should however be distinct from the Member State mechanism laying down the criteria for charging above marginal costs. The means of redress should include the possibility of review of negative decisions but also of decisions which, although permitting re-use, could still affect applicants on other grounds, notably by the charging rules applied. The review process should be swift, in line with the needs of a rapidly changing market.*

- (14b) *Competition rules should be respected when establishing the principles for re use of documents avoiding as far as possible exclusive agreements between public sector bodies and private partners. However, in order to provide a service in the public interest, an exclusive right to re use specific public sector documents may sometimes be necessary. This may be, inter alia, the case if no commercial publisher would publish the information without such an exclusive right. In order to take this concern into account Directive 2003/98/EC authorises, subject to a regular review, exclusive arrangements where an exclusive right is necessary for the provision of a service in the public interest.*
- (14c) *Following the extension of the scope of Directive 2003/98/EC to libraries (including university libraries), museums and archives, it is appropriate to take into account current divergences in the Member States with regard to digitisation of cultural recourses, which could not be effectively accommodated by current rules of that Directive on exclusive arrangements. There are numerous cooperation arrangements between libraries (including university libraries), museums, archives and private partners which involve digitisation of cultural resources granting exclusive rights to private partners. Practice has shown that such public-private partnerships can facilitate worthwhile use of cultural collections and at the same time that they accelerate access to the cultural heritage for members of the public.*

Where an exclusive right relates to digitisation of cultural resources, a certain period in time might be necessary for this exclusive right in order to give the private partner the possibility to recoup its investment. This period should, however, be limited in time and as short as possible, in order to respect the principle that public domain material should stay in the public domain once it is digitised. The period of exclusive right to digitise cultural resources should not exceed in general 10 years. The period of exclusive right longer than 10 years should be subject to review, taking into account technological, financial and administrative changes in the environment since the arrangement was entered into. In addition, any public private partnership for digitisation of cultural resources should grant the partner cultural institution full rights with respect to the post-termination use of digitised objects.

- (14d) *In order to take due account of contracts and other arrangements which grant exclusive rights and which were concluded before the entry into force of this Directive, appropriate transitional measures should be established to protect the interests of the parties concerned where their exclusive rights could not qualify for the exceptions authorised under this Directive. Those transitional measures should allow for the parties' exclusive rights to continue to exist until the end of the contract or, for open-ended contracts or contracts of a very long duration, to continue to exist for a sufficiently long period to allow the parties to take appropriate measures. Those transitional measures should not apply to contracts or other arrangements concluded after the entry into force of this Directive and before the application of national measures transposing this Directive, in order to avoid situations whereby contracts or other long-term arrangements which are not in compliance with this Directive are concluded so as to circumvent future national transposition measures to be adopted. Contracts and other arrangements concluded during the transposition period should therefore comply with this Directive as from the date of application of national measures transposing this Directive.*
- (15) Since the objectives of this Directive, namely to facilitate the creation of Union-wide information products and services based on public sector documents, to ensure the effective cross-border use of public sector documents *on the one hand* by private companies, *focusing on small and medium-sized enterprises*, for added-value information products and services, and *on the other hand by citizens to facilitate the free circulation of information and communication*, cannot be sufficiently achieved by Member States and can therefore, in view of the intrinsic pan-European scope of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the Functioning of the European Union. In accordance with the principles of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including ***the protection of personal data (Article 8) and*** the right to property (Article 17). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights.
- (17) It is necessary to ensure that the Member States report to the Commission on the extent of the re-use of public sector information, the conditions under which it is made available ***and the redress practices.***
- (18) The Commission should assist the Member States in implementing the Directive in a consistent way by ***issuing guidelines***, particularly on ***recommended standard licenses, datasets and charging for the re-use of documents***, after consulting interested parties.
- (19) In accordance with the Joint Political Declaration ***of 28 September 2011*** of Member States and the Commission on explanatory documents⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (20) Directive 2003/98/EC should therefore be amended accordingly,

⁷ ***OJ C 369, 17.12.2011, p. 14.***

HAVE ADOPTED THIS DIRECTIVE:

Article 1



Directive 2003/98/EC is amended as follows:

(1) ■ Article 1 *is amended as follows*:

(a) ■ paragraph 2 *is amended as follows*:

(i) point (a) is replaced by the following:

"(a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State ■ . *In the absence of such rules the public task shall be defined in line with common administrative practice in the Member State provided that the scope of the public task is transparent and is subject to review;*";

(ii) point (c) is replaced by the following:

"(c) documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of:

- *the protection of national security (i.e. State security), defence, or public security,*
- *statistical confidentiality,*
- *commercial confidentiality (e.g. business, professional or company secrets);"*

(iii) *the following points are inserted:*

"(ca) documents access to which is restricted by virtue of the access regimes in the Member States, including cases whereby citizens or companies have to prove a particular interest to obtain access to documents;

- (cb) *parts of documents containing only logos, crests and insignia;*
- (cc) *documents access to which is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data;"*;

(iv) point (e) is replaced by the following:

"(e) documents held by educational and research establishments, ■ including, ■ organisations established for the transfer of research results, schools and universities (except university libraries ■) and;"

(v) point (f) is replaced by the following:

"(f) documents held by cultural establishments other than libraries, museums and archives;"

(b) *paragraph 3 is replaced by the following:*

"3. This Directive builds on and is without prejudice to access regimes in the Member States.";

(c) in paragraph 4, *the word* "Community" is replaced by *the word* "Union".

(2) *The following points are added to Article 2 ■ :*

"6. 'document in machine-readable format' means a digital document in a file format ■ structured so that software applications can easily identify, recognize and extract data of interest, including individual statements of fact, and their internal structure;

- 6a. *'open formal standard' means a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;*
- 6b. *'open format' means a format that is platform independent and made available to the public without any restriction that impedes the re-use of documents;*
- 6c. *'university' means any public sector body that provides post-secondary higher education leading to academic degrees."*

(3) Article 3 is replaced by the following:

"Article 3

General principle

1. Subject to paragraph 2 Member States shall ensure that documents *to which this Directive applies in accordance with* Article 1 shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.
2. For documents for which libraries (including university libraries), museums and archives have intellectual property rights, Member States shall ensure that, where the re-use of *such* documents is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV."

(4) *In Article 4, paragraphs 3 and 4 are replaced by the following:*

- "3. *In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the basis of the relevant provisions of the access regime in that Member State or of the national provisions adopted pursuant to this Directive, in particular Article 1(2)(a), (b), (c), (ca), (cb) and (cc) or Article 3. Where a negative decision is based on Article 1(2)(b), the public sector body shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material.* However, libraries (including university libraries), museums and archives shall not be required to include such a reference.

4. *Any decision on re-use shall contain a reference to the means of redress in case the applicant wishes to appeal the decision.* The means of redress shall include the possibility of review by an *impartial review body with the appropriate expertise, such as the national competition authority, the national access to documents authority or the national judicial authority*, whose decisions are binding upon the public sector body concerned."

(5) ■ Article 5 is replaced by the following:

"Article 5

Available formats

1. *Public sector bodies shall make their documents available in any pre existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata both of which in so far as possible should comply with open, formal standards.*
- 1a. *Paragraph 1 shall not imply an obligation for public sector bodies to create or adapt documents or provide extracts in order to comply with that paragraph where this would involve disproportionate effort, going beyond a simple operation.*
2. *On the basis of this Directive, public sector bodies cannot be required to continue the production and storage of a certain type of documents with a view to the re use of such documents by a private or public sector organisation."*

(6) ■ Article 6 is replaced by the following:

"Article 6

Principles governing charging

1. Where charges are made for the re-use of documents, *those charges* shall be limited to the marginal costs incurred for their reproduction, *provision* and dissemination.
2. *Paragraph 1 shall not apply to the following:*

- (a) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public task;*
 - (b) by way of exception, documents for which the public sector body is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination. Those requirements shall be defined by law or by other binding rules in the Member State. In the absence of such rules, requirements shall be defined in line with common administrative practice in the Member State;*
 - (c) libraries (including university libraries), museums and archives.*
- 3. Public sector bodies referred to in paragraph 2(a) and (b), shall calculate the total charges according to objective, transparent and verifiable criteria to be laid down by the Member States. 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, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.*
- 4. Where charges are made by public sector bodies referred to in paragraph 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, preservation and rights clearance, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved."*

(7) **Article 7 is replaced by the following:**

"Article 7

Transparency

- 1. In case of standard charges, any applicable conditions and the actual amount of those charges for the re-use of documents held by public sector bodies, including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate.**
- 2. In case of charges other than those referred to in the previous paragraph, the public sector body in question shall indicate upfront which factors are taken into account in the calculation of those charges. Upon request, the public sector body in question shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.**
- 3. Requirements referred to in Article 6(2)(b) shall be pre-established. They shall be published by electronic means, where possible and appropriate.**
- 4. Public sector bodies shall ensure that applicants for re-use of documents are informed of available means of redress relating to decisions or practices affecting them."**

(8) **In Article 8, paragraph 1 is replaced by the following:**

- "1. Public sector bodies may allow re-use without conditions or may impose conditions, where appropriate through a licence. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition."**

(9) Article 9 is replaced by the following:

"Article 9

Practical arrangements

Member States shall **make** practical arrangements facilitating the **■** search for documents available for re-use **■**, such as asset lists of main documents with relevant metadata, accessible **where possible and appropriate** online and in machine-readable format, and portal sites that are linked to **the** asset lists. **Where possible Member States shall facilitate the cross-lingual search for documents.**"

(10) **■** Article 11 **is amended as follows:**

(a) **paragraph 2 is replaced by the following:**

"2. Notwithstanding paragraph 1, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public.

This paragraph shall not apply to digitisation of cultural resources.

2a. Notwithstanding paragraph 1, where an exclusive right relates to digitisation of cultural resources, the period of such exclusive right shall not exceed in general 10 years. In case where that period exceeds 10 years, its duration shall be subject to review during the 11th year and, if applicable, every 7 years thereafter.

The exclusive arrangements under this paragraph shall be transparent and made public. Where an exclusive right relating to digitisation of cultural resources exists, the public sector body shall be provided with a free of charge copy of the digitised cultural resources as part of that agreement. That copy shall be available for re-use at the end of the period of exclusivity."

(b) *paragraph 3 is replaced by the following:*

"3. Exclusive arrangements existing on the date of application of national measures referred to in Article 12 that do not qualify for the exceptions under Article 11(2) shall be terminated at the end of the contract or in any case not later than 31 December 2008.";

(c) *the following paragraph is added:*

"3a. Without prejudice to paragraph 3, exclusive arrangements existing on ... that do not qualify for the exceptions under paragraphs 2 and 2a shall be terminated at the end of the contract or in any case not later than ...**."*

(12) **█** Article 13 *is replaced by the following:*

"Article 13

Review

1. The Commission shall carry out a review of the application of this Directive before ... and shall communicate the results of this review, together with any proposals for modifications of the Directive, to the European Parliament and the Council.*

Member States shall submit a **█** report *every 36 months* to the Commission on the *availability of public sector information for re-use and the conditions under which it is made available and the redress practices. On the basis of this report, which shall be made public, Member States shall carry out a review of the implementation of Article 6, in particular as regards charging above marginal cost.*

* *OJ: Please insert the date of entry into force of this Directive.*

** *OJ: Please insert the date: 30 years after entry into force of this Directive.*

* *OJ: Please insert the date: five years after the entry into force of this Directive*

2. *The review, referred to in the first subparagraph of paragraph 1, shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, the interaction between data protection rules and re-use possibilities, as well as further possibilities of improving the proper functioning of the internal market and the development of the European content industry."*

Article 2

1. **By ...** * Member States shall adopt and publish ■ the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions. *The Member States shall apply those provisions from ...* *.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States in accordance with the Treaties.

Done at

For the European Parliament
The President

For the Council
The President

* *OJ: Please insert the date: 24 months after the day of entry into force of this Directive.*