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CULT 158
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NOTE

from: Presidency
to: Delegations

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No. prev.doc. 16660/12 TELECOM 225 PI 152 COMPET 727 AUDIO 121 CULT 152
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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
- Progress report

The present report has been drawn up under the responsibility of the Cyprus Presidency and is without prejudice to particular points of interest and more detailed comments of individual delegations. It sets out the work done so far in the Council's preparatory bodies and gives an account on the state of play in the examination of the above mentioned proposal.

Coreper/Council are invited to take note of this report.

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1. INTRODUCTION

1. The Commission adopted its proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on re-use of public sector information on 12 December 2011 on the basis of Article 114 TFEU. The Commission's amending proposal is the result of the second review of Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information adopted in 2003. The main new elements in the amending proposal are the extension of the scope of the Directive to also cover certain cultural institutions (namely museums, libraries and archives), the obligation to allow the re-use of existing accessible documents held by public sector bodies and the charging rules for re-use.
2. The Council Working Party on Telecommunications and the Information Society ('WP TELE') started its examination of the amending proposal under the Danish Presidency that presented a first progress report (document 10403/12) at the TTE Council on 8 June 2012. Under the Cyprus Presidency, the WP TELE examined the proposal in a number meetings. On the basis of the discussions and delegations' comments, the Cyprus Presidency put together the present progress report.
3. The Economic and Social Committee and the Committee of the Regions were consulted on the current amending proposal and delivered their opinions on 25 April 2012 and 10 October 2012 respectively.
4. In the European Parliament, Mr. Ivailo KALFIN (ITRE committee) is the rapporteur for this file and IMCO, CULT and JURI are the committees for opinion. On 29 November ITRE voted the draft report, together with tabled amendments. The vote included a mandate for the Rapporteur and Shadows, in consultation with the ITRE Chair, to enter into inter-institutional negotiations with a view to reaching agreement on the file.

5. Since the examination by the WP TELE has led to a fair amount of convergence among the views of delegations, the Presidency has started negotiations with the European Parliament. The first triilogue meeting is scheduled for 17 December and oral information on the outcome of this meeting might be given at Council.

2. STATE OF PLAY

1. After a series of discussions in WP TELE, most delegations have come to support the latest Presidency's text (document 16660/12), however, some provisions, in particular those on charging, are still being fine-tuned. The following points provide information on the state of play of the main issues discussed in the WP TELE.
2. With regard to the scope of the Directive, many delegations expressed the wish to exclude certain additional document types, not suitable for re-use, from its application. A number of modifications have been made to the original Commission's proposal and it seems that the respective provision is now acceptable for most Member States.
3. Most delegations now appear to be in favour of marginal costs as a general rule for charging for re-use, although few delegations have expressed doubts about the exact wording of the respective provision. One or two delegations fear that the application of the principle of marginal cost might lead to competition problems.

4. The main issue, with regard to which delegations initially expressed very diverging views, was the issue of charging above marginal costs. On the one hand, many delegations were in favour of stricter limits and rules in order to maintain the level of ambition of the proposal. On the other hand, many others argued that the specific situation of certain public sector bodies needed to be adequately reflected in the text by providing for more flexibility. The Presidency managed to bring those diverging views closer together. As a result, the latest text contains a closed list of exceptions where charging above marginal cost is allowed: 1) for public sector bodies that are required to generate substantial part of their costs relating to the performance of their public tasks or the performance of specific public tasks giving rise to the documents for which charges are made and 2) for libraries, museum and archives. Whereas the charging rules for the former category build on the rules set out in the current PSI Directive, the latter category is provided with further flexibility. The Presidency believes that the latest text strikes a delicate balance and is supported by most Member States.
5. The new Commission provision on the burden of proof has been removed from the text as some delegations felt that the rule would be too burdensome and some other delegations pointed out that similar obligations were already set out in other provisions of the Directive.
6. Many discussions in the WP TELE focused on the rules on exclusive arrangements. Delegations had concerns about the allowed duration of exclusive arrangements relating to digitisation of cultural resources. They argued that for companies to be able to generate an appropriate return on investment from digitisation projects (and therefore to have an incentive to invest in such projects) a longer period of time was necessary. The Presidency text now clarifies that the duration of exclusive arrangements relating to digitisation of cultural resources shall not exceed in general 10 years. In addition, a non-retroactivity clause has been introduced and therefore, these provisions should not apply to exclusive arrangements existing before the amending Directive is transposed into national legislation.

7. With regard to other areas of the text, discussions touched upon provisions concerning, among others, reporting, redress procedure, and the possibility of the Commission to adopt guidelines. Text amendments suggesting broader reporting obligations were not taken on board as they were not supported by the majority of Member States. The Presidency's text simplifies the rules on the redress procedure and makes clear that the redress mechanism is applicable not only to negative decisions but also to decisions affecting applicants on other grounds, notably by the charging rules applied. Furthermore, several provisions concerning Commission guidelines on recommended standard licences and datasets have been amended to emphasize the non-binding nature of the guidelines and the need to involve Member States in the process. The Commission may now also provide such guidance on charging.

8. Substantial work has also been done on the preamble of the amending proposal. The recitals will need to be aligned with the articles once an agreement on the latter has been reached.
