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from: General Secretariat
to: Permanent Representatives Committee/Council

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
– Outcome of the European Parliament's first reading
(Strasbourg, 10 to 13 June 2013)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Mr. Ivailo Kalfin (S&D, BG), presented a compromise amendment (amendment 56) to the proposal for Directive, on behalf of the Committee on Industry, Research and Energy. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 13 June 2012, the plenary adopted one amendment (amendment 56) to the proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto¹.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Re-use of public sector information *I**

European Parliament legislative resolution of 13 June 2013 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/98/EC on re-use of public sector information (COM(2011)0877 – C7-0502/2011 – 2011/0430(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0877),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0502/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 25 April 2012¹,
 - having regard to the undertaking given by the Council representative by letter of 19 April 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education and the Committee on Legal Affairs (A7-0404/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 191, 29.6.2012, p. 129.

P7_TC1-COD(2011)0430

Position of the European Parliament adopted at first reading on 13 June 2013 with a view to the adoption of Directive 2013/.../EU of the European Parliament and of the Council 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.***
- (2) 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.

¹ OJ C 191, 29.6.2012, p. 129.

² Position of the European Parliament of 13 June 2013 .

³ OJ L 345, 31.12.2003, p. 90.

- (3) 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 subject to the different rules and practices of the Member States or the public ***sector*** bodies concerned.

- (4) Allowing re-use of documents held by a public sector body adds value for the re-users, for the end users and for 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 ***public sector body concerned*** to improve the quality of the information collected.
- (5) 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 a 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 being missed.

- (6) 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 companies beyond the minimum level set by that Directive. To prevent different rules in different Member States acting as a barrier to 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 required to determine what public data are available for re-use in the internal information market, consistent with the relevant access regime.

- (7) Directive 2003/98/EC does not contain an obligation *concerning 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 allowing re-use of documents is therefore not required under that Directive where access is restricted (for example, national rules restrict access to citizens or companies who prove a particular interest in obtaining access to documents) or excluded (for example, national rules exclude access because of the sensitive nature of the documents based, inter alia, on grounds of national security, defence, public security)*. Some Member States have expressly linked the right of re-use to a 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.

- (8) 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. The amendments made by this Directive do not seek to define or to change access regimes in Member States, which remain their responsibility.***
- (9) ***Taking into account Union law and the international obligations of Member States and of the Union, particularly under the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights, documents for 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 the intellectual property right for a document held by libraries, including university libraries, museums and archives and the term of protection of those rights has not expired, that document should, for the purpose of this Directive, be considered as a document for which third parties hold intellectual property rights.***

- (10) *Directive 2003/98/EC should apply to documents the supply of which forms part of the public tasks of the public sector bodies concerned, as defined by law or by other binding rules in the Member States. In the absence of such rules the public tasks should be defined in accordance with common administrative practice in the Member States, provided that the scope of the public tasks is transparent and subject to review. The public tasks could be defined generally or on a case-by-case basis for individual public sector bodies.*
- (11) *This Directive should be implemented and applied in full compliance with the principles relating to the protection of personal data in accordance with 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 data¹. In particular, it is worth noting 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 personal data must not be processed further to collection in a way incompatible with the specified, explicit and legitimate purposes for which those data were collected.*

¹ OJ L 281, 23.11.1995, p. 31.

- (12) Directive 2003/98/EC should be without prejudice to the rights, *including economic and moral rights* that employees of public sector bodies may enjoy under national rules.
- (13) Moreover, where any document is made available for re-use, the public sector body concerned should retain the right to exploit the document.
- (14) The scope of Directive 2003/98/EC *should be* extended to libraries, including university libraries, museums and archives. ■

(15) *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. Libraries, museums and archives hold a 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 for re-using public cultural material should inter alia allow Union companies to exploit its potential and contribute to economic growth and job creation.*

- (16) *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 in very different regulatory and cultural environments, the practices of cultural establishments in exploiting content have developed in disparate ways.*
- (17) *Since the differences in national rules 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, minimum harmonisation of national rules and practices on the re-use of public cultural material in libraries, museums and archives should be undertaken.*

(18) *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 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 those establishments, should remain outside the scope because of their "performing arts" specificity. Since almost all of their material is covered by third-party intellectual property rights and would therefore remain outside the scope of that Directive, including them within the scope would have little effect.*

(19) Digitisation is an important means of ensuring greater access to and re-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"¹, the Commission Recommendation 2011/711/EU of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation², and the Council conclusions of 10 May 2012 on the digitisation and online accessibility of cultural material and digital preservation³. 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.

¹ OJ C 81E, 15.3.2011, p.16

² OJ L 283, 29.10.2011, p. 39.

³ OJ C 169, 15.6.2012, p. 5.

- (20) To facilitate re-use, public sector bodies should, *where possible and appropriate*, make documents available through *open and* machine-readable formats and together with their metadata, *at the best level of precision and granularity*, 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)¹.

¹ OJ L 108, 25.4.2007, p. 1.

(21) *A document should be considered to be 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 specific data from it. Data encoded in files that are structured in a machine-readable format are machine-readable data. Machine-readable formats can be open or proprietary; they can be formal standards or not. Documents encoded in a file format that limits automatic processing, because the data cannot, or cannot easily, be extracted from them, should not be considered to be in a machine-readable format. Member States should where appropriate encourage the use of open, machine-readable formats.*

- (22) 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 tasks *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. Those 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. The requirement to generate revenue to cover a substantial part of the public sector bodies' 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 legal requirement and may stem, for example, from administrative practices in Member States. Such a requirement should be regularly reviewed by the Member States.*

- (23) *Libraries, museums and archives should also be able to charge above marginal costs in order not to hinder their normal running. In the case of such public sector bodies the total income from supplying and allowing re-use of documents over the appropriate accounting period should 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 a reasonable return on investment.*
- (24) *The upper limits for charges set in this Directive are without prejudice to the right of Member States to apply lower charges or no charges at all.*

- (25) *Member States should lay down the criteria for charging above marginal costs. In this respect, Member States, for example, may lay down such criteria 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 the Member States. It could be an existing body with budgetary executive powers and under political responsibility.*
- (26) In relation to any re-use that is made of the document, public sector bodies may impose conditions, *where appropriate through a licence*, 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 event 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 should eventually become common practice across the Union*.

- (27) *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.*
- (28) *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 a 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 accordance with the needs of a rapidly changing market.*

- (29) *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.*
- (30) *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 resources, which could not be effectively accommodated by the 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 accelerate access to the cultural heritage for members of the public.*

(31) *Where an exclusive right relates to digitisation of cultural resources, a certain period of exclusivity might be necessary in order to give the private partner the possibility to recoup its investment. That 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 an exclusive right to digitise cultural resources should in general not exceed 10 years. Any period of exclusivity 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 the digitisation of cultural resources should grant the partner cultural institution full rights with respect to the post-termination use of digitised cultural resources.*

(32) *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 do 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 but before the application of national measures transposing this Directive, in order to avoid situations whereby contracts or other long-term arrangements which do not comply with this Directive are concluded so as to circumvent future national transposition measures to be adopted. Contracts and other arrangements concluded after the entry into force of this Directive but before the date of application of national transposition measures should therefore comply with this Directive as from the date of application of national measures transposing this Directive.*

(33) 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, *particularly by 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, by reasons of the 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 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.

- (34) 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 for the Protection of Human Rights and Fundamental Freedoms.
- (35) 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.*

- (36) The Commission should assist the Member States in implementing this Directive in a consistent way by *issuing guidelines*, particularly on *recommended standard licences, datasets and charging for the re-use of documents*, after consulting interested parties.

■

- (37) Directive 2003/98/EC should therefore be amended accordingly,

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, *or in the absence of such rules, as defined in line with common administrative practice in the Member State in question, provided that the scope of the public tasks is transparent and 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. 'machine-readable *format*' means *a file format* structured *so that* software applications *can easily* identify, *recognize and extract specific data, including individual statements of fact, and their internal structure*;

7. *'open format' means a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents;*
8. *'formal open standard' means a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability;*
9. *'university' means any public sector body that provides post-secondary-school 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 in which libraries, including university libraries, museums and archives hold 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 points (a) to (cc) of Article 1(2) 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. 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 a 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 the format and the metadata should, in so far as possible, comply with formal open standards.*
2. *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.*

3. *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 tasks;*
- (b) by way of exception, documents for which the public sector body concerned 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, the requirements shall be defined in accordance with common administrative practice in the Member State;*
- (c) libraries, including university libraries, museums and archives.*

3. *In the cases referred to in points (a) and (b) of paragraph 2, the public sector bodies concerned 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 the public sector bodies referred to in point (c) of paragraph 2, 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 the case of standard charges for the re-use of documents held by public sector bodies, any applicable conditions and the actual amount of those charges, including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate.*
- 2. In the case of charges for the re-use other than those referred to in paragraph 1, the public sector body in question shall indicate at the outset 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. *The requirements referred to in point (b) of Article 6(2) 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-linguistic search for documents.**".

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

(a) *the following subparagraph is added to paragraph 2:*

"This paragraph shall not apply to digitisation of cultural resources.";

(b) the following paragraph is inserted:

"2a. Notwithstanding paragraph 1, where an exclusive right relates to digitisation of cultural resources, the period of exclusivity shall in general not exceed 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 seven years thereafter.

The arrangements granting exclusive rights referred to in the first subparagraph shall be transparent and made public.

In the case of an exclusive right referred to in the first subparagraph, the public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. That copy shall be available for re-use at the end of the period of exclusivity."

(c) paragraph 3 is replaced by the following:

"3. Exclusive arrangements existing on 1 July 2005 that do not qualify for the exceptions under paragraph 2 shall be terminated at the end of the contract or in any event not later than 31 December 2008.";

(d) the following paragraph is added:

"4. 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 event not later than ...** .".*

* *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.*

█
(11) █ 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 that review, together with any proposals for amendments to this Directive, to the European Parliament and the Council.*

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

2. Member States shall submit a **■** report *every 3 years* 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 that 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.*

3. *The review referred to in 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 ***immediately inform*** the Commission ***thereof***.

They shall apply those measures from ... * .

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

2. When Member States adopt those *measures*, 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 *twentieth* day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States ■ .

Done at

For the European Parliament

For the Council

The President

The President