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from:	Presidency
to:	Delegations

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No. prev.doc.	15065/12 TELECOM 185 PI 125 COMPET 632 AUDIO 98 CULT 127 CODEC 2406 16104/12 TELECOM 210 PI 142 COMPET 687 AUDIO 115 CULT 145 CODEC 2641
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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
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In view of the Telecommunications Working Party on 27 November, delegations will find at Annex I a Presidency text on the above proposal. Annex II comprises the consolidated version of Directive 2003/98/EC with the proposed changes.

Changes proposed by the Commission as part of the proposal (doc. 18555/11) are in *italics*.

Changes compared to the Commission proposal are in **bold** (and deletions in ~~strikethrough~~).

The changes since the latest Presidency text (doc. 15065/12) are **bold underlined** (and deletions in ~~strikethrough~~).

The proposed changes reflect the discussions held in the Working Party meetings of 26 October and 15 November and the delegations' written comments submitted on documents 15065/12 and 16104/12.

The main changes proposed include:

- reverting to one of the previous versions of the definition of 'university': Article 2(7);
- specifying that public sector bodies cannot be required not only to produce but also to store certain types of documents with a view to the re-use: Article 5(2);
- taking on board changes concerning the rules on charging as proposed in doc. 16104/12: Article 6 and Recitals 12 and 18;
- emphasising the principle that the limits on charging set in the Directive are without prejudice to the Member States' right to apply lower charges or no charges at all: Recital 12;
- inserting a text on Public Sector Information Group in all Articles mentioning Commission guidelines in order to align them with the new text of Recital 18: Articles 6(6), 8(3) and 9(2) and Recital 18;
- emphasising that in case of digitisation of cultural resources, digital copies shall be made publicly available at the end of the exclusive right's agreement: Article 11(2a).
- addressing concerns of some delegation with regard to the situation of existing exclusive arrangements by excluding them from the application of Article 11: Article 11(3), which required also additional text in Article 2(1) of the non-consolidated version and deletion of Recital 14c;
- eliminating further details on the Member States' reporting obligation under Article 13: Recital 17.

Draft amended
DIRECTIVE 2003/98/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 17 November 2003

on the re-use of public sector information

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the European Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure set out in Article 251 of the Treaty ⁴,

[ORIGINAL RECITALS FOR CLARITY]

¹ OJ C 227 E, 24.9.2002, p. 382.

² OJ C 85, 8.4.2003, p. 25.

³ OJ C 73, 26.3.2003, p. 38.

⁴ Opinion of the European Parliament of 12 February 2003 (not yet published in the Official Journal), Council Common Position of 26 May 2003 (OJ C 159 E, 8.7.2003, p. 1) and Position of the European Parliament of 25 September 2003 (not yet published in the Official Journal). Council Decision of 27 October 2003.

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 Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information⁷ 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, 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. 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.
- (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 **sector** body itself, by providing feedback from re-users and end users which allows the holder to improve the quality of the information collected.

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L 345, 31.12.2003, p. 90.

- (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 ~~exploded~~ **increased exponentially** and new types of data are being generated and collected. In parallel, we are witnessing continuous ~~revolution~~ **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 ~~s~~States have now established re-use policies under the 2003/98/EC Directive 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 the 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, the Directive 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 **be** therefore **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 the Directive**. These amendments do not seek to define or change access regimes within Member States, which remain under the responsibility of the Member States. ~~As it constitutes a limitation to the intellectual property rights hold by the authors of the documents, the scope of such a link between the right of access and the right of use should be narrowed to what is strictly necessary to reach the objectives pursued by its introduction. In this respect, 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.~~
- (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) For the purpose of identifying 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. 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 the Council of 24 October 1995 on the protection of individuals with regard to the processing of data and of the free movement of such data. In particular, re-use of documents access to which is not restricted by virtue of access regimes in the Member States should respect the restrictions set by national law in compliance with Directive 95/46/EC on processing of personal data contained therein.
- (8) The application of Directive 2003/98/EC should be without prejudice to the 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 the Directive ~~is should be~~ extended to ~~the cultural establishments, such as~~ libraries (including university libraries), museums and archives. ~~The Directive does not apply to other cultural institutions, such as operas, ballets or theatres, including the archives that are part of these institutions.~~

- (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, museum 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 which is part of cultural heritage and free of intellectual property rights. These cultural heritage collections and related metadata are a potential base for digital content products and services and has 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 the Directive 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.
- (11) To facilitate re-use, public sector bodies should make documents available through 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)⁸
- (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 be open (for example Comma Separated Values) or proprietary (for example as used by various proprietary spreadsheet programs, such as XLS); they can be formal standards (for example XML or RDF) or not (for example Comma Separated Values). 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.

⁸ OJ L 108, 25.4.2007, p. 1.

- (12) Where charges are made for **supplying and allowing** the re-use of documents, they should in principle be limited to the marginal costs ~~incurred for their reproduction and dissemination, unless higher charges are exceptionally justified according to objective, transparent and verifiable criteria.~~ However, ~~T~~the necessity of not hindering the normal running of public sector bodies ~~covering that are required to generate revenue to cover a substantial part of their operating costs relating to the performance of their public tasks or the costs relating to the performance of the specific tasks giving rise to the documents for which charges are made from the exploitation of their intellectual property rights~~ should ~~notably~~ be taken into consideration. Such public sector bodies should be able to charge above marginal costs. The requirement to generate revenue to cover substantial part of their costs relating to the performance of their public tasks does not have to be a requirement in legislation and may result, for example, from administrative practices in 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 the reasons not to hinder the normal running of these public sector bodies. In 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. The burden of proving that charges are cost-oriented and comply with relevant limits criteria should lie with the public sector body charging for the re-use of documents.

- (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. Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, may also play an important role in this respect. Therefore, Member States should encourage the use of open government licences.
- ~~(14) — Proper implementation of some of the features of this Directive, such as means of redress, compliance with charging principles and reporting obligations require supervision by independent authorities competent on the re-use of public sector information. To ensure consistency between approaches at Union level, coordination between the independent authorities should be encouraged, particularly through the exchange of information on best practices and data re-use policies.~~

- (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 prejudice 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.**
- (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. Following the extension of the scope of Directive 2003/98/EC to 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 current rules of that Directive on exclusive arrangements. Therefore, 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. 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.**

~~14(e) It is appropriate to take into account the situation of the exclusive arrangements existing on the date of application of national measures transposing this Directive. Such arrangements which do not qualify for the derogations provided for in this Directive (including arrangements which relate to digitisation of cultural resources, but which do not comply with the time limitation set out in this Directive) should be terminated at the end of the contract.~~

- (15) Since the objective 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 by private companies for added-value information products and services, and to limit distortions of competition on the Union market, 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 right to property (Article 17) **and protection of personal data (Article 8)**. 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 (~~see recital 19~~) report to the Commission on the extent of the re-use of public sector information, and the conditions under which it is made available, ~~and the work of the independent authority. To ensure consistency between approaches at Union level, coordination between the independent authorities should be encouraged, particularly through exchange of information on best practices and data re-use policies., in particular In this respect, Member States should submit to the Commission information on sources of re-usable PSI, such as open data portals, and other online resources, including links and statistics on visibility (numbers of visits and downloads) and commonly used formats of documents made available; a list of public bodies charging above marginal costs; pricing criteria, guidelines and practices; licensing conditions; exclusive agreements entered into; , activities of the impartial review body and judicial proceedings concerning application of PSI Directive and national implementing rules.~~
- (18) ~~The Commission should assist the Member States in implementing the Directive in a consistent way by giving guidance, particularly on charging and calculation of costs, on recommended licensing conditions and on formats, after consulting interested parties.~~ The Commission may assist the Member States in implementing the Directive in a consistent way by making available, after consulting the Public Sector Information Group, non-binding guidelines on recommended standard licenses, ~~and~~ datasets and charging for the re-use of documents.
- (19) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of [date], 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2003/98/EC

Directive 2003/98/EC is amended as follows:

1. Amendments to Article 1: (Subject matter and scope):

(1a) In paragraph 2, point (c), second indent 'or commercial' is deleted and a new indent is added:

– 'commercial confidentiality (e.g. business, professional or company secrets);'

(1aa) In paragraph 2, new points (ca) and (caa) is are added between points (c) and (d) :

‘(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, situations whereby the access is restricted to ensure protection of personal data;

(caa) parts of documents containing logos, crests and insignia;’

~~(1) In paragraph 2, 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 question;’~~

(2) In paragraph 2, point (e) is replaced by the following:

‘(e) documents held by educational and research establishments, ~~such as research facilities,~~ including, ~~where relevant,~~ organisations established for the transfer of research results, schools and universities (except university libraries) ~~in respect of documents other than research documents protected by third party intellectual property rights)~~ and ;’

(3) In paragraph 2, point (f) is replaced by the following:

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

(3a) Paragraph 3 is replaced by the following:

‘This Directive builds on and is without prejudice to access regimes in the Member States.’

(4) In paragraph 4, ‘Community’ is replaced by ‘Union’.

~~(5) At the end of paragraph 5, the following sentence is added:~~

~~‘The provisions of this Directive are without prejudice to the economic or moral rights that employees of public sector bodies may enjoy under national rules.’~~

2. In Article 2 (Definitions) the following paragraphs ~~is~~ **are** added:

‘6. "document in machine-readable format" means ~~that a~~ digital documents ~~are in a file format that is sufficiently structured in such a way that for~~ software applications can easily identify, recognise and extract data of interest from that document ~~to identify reliably individual statements of fact and their internal structure.~~’

‘7. “university” means any public sector establishment 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 ~~referred to in~~ **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. Amendments to Article 4 (Requirements applicable to the processing of requests for re-use):

- (0) **At the end of the first sentence of paragraph 3, 'Article 1(2)(a), (b) and (c) or Article 3' is replaced by 'Article 1(2)(a), (b),(c) and (ca) or Article 3'.**

- (1) At the end of paragraph 3, the following sentence is added:

‘However, libraries (including university libraries), museums and archives shall not be required to include such a reference.’

- (2) ~~At the end of paragraph 4, the following wording is added~~ **Paragraph 4 is replaced by the following:**

‘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, such as the national competition authority, the national access to documents authority or the national judicial authority, independent authority that is vested with specific regulatory powers regarding the re-use of public sector information and whose decisions are binding upon the public sector body concerned.’

5. Amendments to Article 5 (Available formats):

- (1) ~~In paragraph 1, the words ‘through electronic means’ are replaced by ‘in machine-readable format and together with their metadata.’.~~

Paragraph 1 is replaced by the following :

Public sector bodies shall make their documents available in any pre-existing format or language and, where possible and appropriate, in machine-readable format together with their metadata. This shall not imply an obligation for public sector bodies to create or adapt documents in order to comply with the requirement set out in the previous sentence, nor shall it imply an obligation to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

(2) In paragraph 2, the words 'and storage' are inserted after 'production'.

6. ~~Amendments to Article 6 (Charges)~~ Article 6 is replaced by the following:

‘Article 6

Principles governing charging

~~(1) The following paragraphs are inserted at the beginning of the Article:~~

~~‘1. Where charges are made for the re-use of documents, the total amount charged by public sector bodies, those charges shall be limited to the marginal costs incurred for their reproduction and dissemination supplying and allowing the re-use of documents.’²~~

~~‘2. In exceptional cases, in particular where public sector bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority referred to in Article 4(4), and without prejudice to paragraphs 3 and 4 of this Article.’²~~

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 following:

- the performance of their public tasks or**
- performance of any particular activity falling within their public tasks and representing a substantial part of these tasks the performance of specific public tasks giving rise to the documents for which charges are made,**

(b) Libraries (including university libraries), museums and archives.

~~**‘3. Notwithstanding paragraphs 1 and 2, libraries (including university libraries), museums and archives may charge over and above the marginal costs for the re-use of documents they hold.’**~~

~~**(2) The existing text of Article 6 becomes paragraph 4:**~~

4. Public sector bodies referred to in paragraph 2a, shall calculate total charges according to objective, transparent and verifiable criteria to be laid down by the Member States. 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 and dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

4a. Where charges are made by public sector bodies referred to in paragraph 2b, 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 should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

~~(3) — A new paragraph 5 is added:~~

~~‘5. The burden of proving that charges comply with this Article shall lie with the public sector body charging for re-use.’~~

‘6. In order to contribute to a consistent implementation of this Article and after consulting the Public Sector Information Group, the Commission may adopt non-binding guidelines providing guidance for the implementation of the principles governing charging set out in the previous paragraphs.’

7. In Article 7 (Transparency), ~~the words ‘over and above the marginal costs or’ are inserted after ‘calculation of charges’.~~ the third sentence is replaced by the following :

"The public sector body in question shall also indicate which criteria are taken into account in the calculation of charges above the marginal costs."

8. In Article 8 (Licences), a new paragraph 3 is added:

~~(1) Paragraph 1 is replaced by the following:~~

~~‘Public sector bodies may allow re-use without conditions or may impose conditions, such as indication of source, where appropriate through a licence. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.’~~

~~New paragraph 3 is added:~~

‘3. In order to contribute to a consistent implementation of this Article, the Commission may adopt non-binding guidelines on recommended standard licenses for the re-use of public sector information.’

9. Article 9 is replaced by the following:

‘Article 9

Practical arrangements

1. Member States shall ~~ensure that make~~ practical arrangements facilitating the ~~cross-lingual~~ search for documents available for re-use ~~are in place~~, such as asset lists of main documents with relevant metadata, ~~accessible~~ preferably **accessible online and** in machine-readable format, and portal sites ~~that are~~ linked to ~~decentralised the~~ assets lists.

2. In order to contribute to a consistent implementation of this Article, the Commission may adopt non-binding guidelines with a list of recommended datasets available for re-use.

10. In Article 11 (Prohibition of exclusive arrangements), ~~the following sentence is added at the end of paragraph 3~~ paragraphs 2 and 3 are 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. The validity of the reason for granting such an exclusive right shall not be subject to review. The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public. Where an exclusive right relating to the digitisation of cultural resources exists, the public sector body shall be provided with a copy of the digitised cultural resources as part of that agreement. Every digital copy shall be made available for public use at the end of the exclusive rights' agreement.

3. ~~Existing exclusive arrangements that do not qualify for the exceptions under paragraphs 2 or 2a shall be terminated at the end of the contract. This Article shall not apply to exclusive arrangements existing before [24 month from the day of entry into force of this Directive].~~

~~However, such arrangements involving cultural establishments and university libraries shall be terminated at the end of the contract or in any case not later than 31 December 20XX [6 years after entry into force of the Directive].~~

~~11. Article 12 (Transposition) is replaced by the following:~~

~~*‘Article 12*~~

~~Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.’~~

12. In Article 13 (Review) the date of 1 July 2008 is replaced by [3 5 years after the ~~transposition date~~ entry into force of this Directive] and the following paragraph is added:

~~‘Member States shall submit a yearly report every 4 years to the Commission on the extent of the re-use availability of public sector information for re-use and the conditions under which it is made available and the work of the independent authority referred to in article 4(4).’~~

Article 2

(1) **By (24 months from the day of entry into force of this Directive)** Member States shall adopt and publish, ~~by 18 months at the latest~~, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions ~~and a correlation table between those provisions and this Directive~~.

The Member States shall apply those provisions from [24 month from the day of entry into force of this Directive].

(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 Brussels,

For the European Parliament

The President

For the Council

The President

**DIRECTIVE 2003/98/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL
of 17 November 2003**

on the re-use of public sector information

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission ¹,

Having regard to the Opinion of the European Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure set out in Article 251 of the Treaty ⁴,

[ORIGINAL RECITALS REMOVED FOR CLARITY]

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ C 227 E, 24.9.2002, p. 382.

² OJ C 85, 8.4.2003, p. 25.

³ OJ C 73, 26.3.2003, p. 38.

⁴ Opinion of the European Parliament of 12 February 2003 (not yet published in the Official Journal), Council Common Position of 26 May 2003 (OJ C 159 E, 8.7.2003, p. 1) and Position of the European Parliament of 25 September 2003 (not yet published in the Official Journal). Council Decision of 27 October 2003.

Chapter I
General provisions

Article 1

Subject matter and scope

1. This Directive 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. This Directive shall not apply to:
 - (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,~~ **or in the absence of such rules as defined in line with common administrative practice in the Member State** in question;
 - (b) documents for which third parties hold intellectual property rights;
 - (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 ~~or commercial~~ confidentiality,
 - **commercial confidentiality (e.g. business, professional or company secrets);**
 - (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, situations whereby the access is restricted to ensure protection of personal data;**

(caa) parts of documents containing logos, crests and insignia;

(d) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

(e) documents held by educational and research establishments, ~~such as schools, universities, archives, libraries and research facilities~~ including, ~~where relevant~~, organisations established for the transfer of research results, *schools and universities (except university libraries)* ~~in respect of documents other than research documents protected by third party intellectual property rights~~ and;

(f) documents held by cultural establishments *other than* ~~such as~~ museums, libraries, and archives, ~~orchestras, operas, ballets and theatres~~.

3. This Directive builds on and is without prejudice to ~~the existing~~ access regimes in the Member States. ~~This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to obtain access to the documents.~~

4. This Directive leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of *Community Union* and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC.

5. The obligations imposed by this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention and the TRIPS Agreement. ~~The provisions of this Directive are without prejudice to the economic or moral rights that employees of public sector bodies may enjoy under national rules.~~

Article 2
Definitions

For the purpose of this Directive the following definitions shall apply:

- (1) "public sector body" means the State, regional or local authorities, bodies governed by public law and associations formed by one or several such authorities or one or several such bodies governed by public law;
- (2) "body governed by public law" means any body:
 - (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
 - (b) having legal personality; and
 - (c) financed, for the most part by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;
- (3) "document" means:
 - (a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording);
 - (b) any part of such content;

- (4) "re-use" means the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use;
- (5) "personal data" means data as defined in Article 2(a) of Directive 95/46/EC;
- (6) **"document in machine-readable format" means ~~that a digital documents are in a file format that is sufficiently structured in such a way that for software applications can easily identify, recognise and extract data of interest from that document to identify reliably individual statements of fact and their internal structure;~~**
- (7) **"university" means any public sector body establishment that provides post-secondary higher education leading to academic degrees.**

Article 3

General principle

~~Member States shall ensure that, where the re-use of documents held by public sector bodies 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. Where possible, documents shall be made available through electronic means.~~

1. Subject to paragraph (2) Member States shall ensure that documents **to which this Directive applies in accordance with ~~referred to in~~ 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.

Chapter II

Requests for re-use

Article 4

Requirements applicable to the processing of requests for re-use

1. Public sector bodies shall, through electronic means where possible and appropriate, process requests for re-use and shall make the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a reasonable time that is consistent with the timeframes laid down for the processing of requests for access to documents.
2. Where no time-limits or other rules regulating the timely provision of documents have been established, public sector bodies shall process the request and shall deliver the documents for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a timeframe of not more than 20 working days after its receipt. This timeframe may be extended by another 20 working days for extensive or complex requests. In such cases the applicant shall be notified within three weeks after the initial request that more time is needed to process it.
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), ~~and (c)~~, **and (ca)** 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 ~~negative~~ 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, such as the national competition authority, the national access to documents authority or the national judicial authority, independent authority that is vested with specific regulatory powers regarding the re-use of public sector information and* whose decisions are binding upon the public sector body concerned.
5. Public sector bodies covered under Article 1(2)(d), (e) and (f) shall not be required to comply with the requirements of this Article.

Chapter III

Conditions for re-use

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 machine-readable format and together with their metadata through electronic means.** This shall not imply an obligation for public sector bodies to create or adapt documents in order to comply with the **request requirement set out in the previous sentence**, nor shall it imply an obligation to provide extracts from documents 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.

Article 6

Principles governing charging

1. *Where charges are made ~~for the re-use of documents, the total amount charged~~ by public sector bodies, those charges shall be limited to the marginal costs incurred for supplying and allowing the re-use of documents ~~their reproduction and dissemination.~~*
2. ~~In exceptional cases, in particular where public sector bodies generate a substantial part of their operating costs relating to the performance of their public service tasks from the exploitation of their intellectual property rights, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs, according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority referred to in Article 4(4), and without prejudice to paragraphs 3 and 4 of this Article.~~
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 following:
 - the performance of their public tasks or
 - performance of any particular activity falling within their public tasks and representing a substantial part of these tasks the performance of specific public tasks giving rise to the documents for which charges are made,
 - (b) Libraries (including university libraries), museums and archives.
3. ~~Notwithstanding paragraphs 1 and 2, libraries (including university libraries), museums and archives may charge over and above the marginal costs for the re-use of documents they hold.~~

4. ~~Where charges are made, Public sector bodies referred to in under paragraph 2a, shall calculate the total charges according to objective, transparent and verifiable criteria to be laid down by the Member States. and~~ 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 and dissemination, together with a reasonable return on investment. Charges should be **cost-oriented over the appropriate accounting period and** calculated in line with the accounting principles applicable to the public sector bodies involved.
- 4a. Where charges are made by public sector bodies referred to in paragraph 2b , 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 should be **cost-oriented over the appropriate accounting period and** calculated in line with the accounting principles applicable to the public sector bodies involved.
- ~~5. The burden of proving that charges comply with this Article shall lie with the public sector body charging for re-use.~~
6. In order to contribute to a consistent implementation of this Article **and after consulting the Public Sector Information Group,** the Commission may adopt non-binding guidelines providing guidance for the implementation of the principles governing charging set out in the previous paragraphs.

Article 7
Transparency

Any applicable conditions and standard charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible and appropriate. On request, the public sector body shall indicate the calculation basis for the published charge. The public sector body in question shall also indicate which **factors criteria will be** are taken into account in the calculation of charges ~~over and above the marginal costs or for atypical cases~~. 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.

Article 8
Licences

1. — Public sector bodies may allow for re-use of documents without conditions or may impose conditions, where appropriate through a licence, dealing with relevant issues. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.

~~— Public sector bodies may allow re-use without conditions or may impose conditions, such as indication of source, where appropriate through a licence. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.~~

Public sector bodies may allow for re-use of documents without conditions or may impose conditions, where appropriate through a licence, dealing with relevant issues. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.

2. In Member States where licences are used, Member States shall ensure that standard licences for the re-use of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage all public sector bodies to use the standard licences.
3. **In order to contribute to a consistent implementation of this Article and after consulting the Public Sector Information Group, the Commission may adopt non-binding guidelines on recommended standard licenses for the re-use of public sector information.**

Article 9

Practical arrangements

1. Member States shall ~~ensure that make~~ practical arrangements *facilitating that facilitate the cross-lingual search for documents available for re-use* ~~are in place~~, such as asset lists of main documents with relevant metadata, ~~accessible~~ preferably accessible ~~online and in machine-readable format,~~ and portal sites ~~that are~~ linked to ~~decentralised~~ the assets lists.
2. **In order to contribute to a consistent implementation of this Article and after consulting the Public Sector Information Group, the Commission may adopt non-binding guidelines with a list of recommended datasets available for re-use.**

Chapter IV
Non-discrimination and fair trading

Article 10
Non-discrimination

1. Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use.
2. If documents are re-used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

Article 11
Prohibition of exclusive arrangements

1. The re-use of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights.
2. ~~However~~ **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 7 10 years. The validity of the reason for granting such an exclusive right shall not be subject to review.

The exclusive arrangements established after the entry into force of this Directive 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 copy of the digitised cultural resources as part of that agreement. Every digital copy shall be made available for public use at the end of the exclusive rights' agreement.

3. ~~Existing exclusive arrangements that do not qualify for the exceptions under paragraphs 2 or 2a shall be terminated at the end of the contract or in any case not later than 31 December 2008. This Article shall not apply to exclusive arrangements existing before [24 month from the day of entry into force of this Directive].~~

~~However, such arrangements involving cultural establishments and university libraries shall be terminated at the end of the contract or in any case not later than 31 December 20XX [6 years after entry into force of the Directive].~~

Chapter V

Final Provisions

Article 12

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2005. They shall forthwith inform the Commission thereof.

~~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.~~

~~Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.~~

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2005. They shall forthwith inform the Commission thereof.

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 13

Review

1. The Commission shall carry out a review of the application of this Directive before ~~1 July 2008~~ **[3 5 years after the transposition date entry into force of this Directive]** 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 yearly report every 4 2 years to the Commission on the extent of the availability re-use of public sector information for re-use and the conditions under which it is made available and the work of the independent authority referred to in Article 4(4).~~

2. The review 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, as well as further possibilities of improving the proper functioning of the internal market and the development of the European content industry.

Article 14

Entry into force

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

Article 15

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Parliament
The President

For the Council
The President

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