



**2018/0111(COD)**

12.9.2018

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on the re-use of public sector information (recast)  
(COM(2018)0234 – C8-0169/2018 – 2018/0111(COD))

Committee on Industry, Research and Energy

Rapporteur: Neoklis Sylikiotis

(Recast – Rule 104 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a directive of the European Parliament and of the Council on the re-use of public sector information (recast)**

**(COM(2018)0234 – C8-0169/2018 – 2018/0111(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0234),
  - 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 (C8-0169/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to the letter of 10 September 2018 from the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 104(3) of its Rules of Procedure
  - having regard to Rule 104 and Rule 59 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 Civil Liberties, Justice and Home Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a directive**

**Recital 3**

*Text proposed by the Commission*

(3) Following the stakeholder consultation and in the light of the Impact Assessment<sup>30</sup> results, the Commission considered that action at Union level was necessary in order to address the remaining and emerging barriers to a wide re-use of public sector and publicly-funded information across the Union and to bring the legislative framework up to date with the *advances* in digital technologies, such as Artificial Intelligence *and* the Internet of Things.

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<sup>30</sup> SWD(2018) 127.

*Amendment*

(3) Following the stakeholder consultation and in the light of the Impact Assessment<sup>30</sup> results, the Commission considered that action at Union level was necessary in order to address the remaining and emerging barriers to a wide re-use of public sector and publicly-funded information across the Union and to bring the legislative framework up to date with the *increasing role of data in the economy and in society, and with the developments in digital technologies and in the research sector*, such as Artificial Intelligence, the Internet of Things *and advanced robotics*.

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<sup>30</sup> SWD(2018) 127.

Or. en

## **Amendment 2**

### **Proposal for a directive Recital 4**

*Text proposed by the Commission*

(4) The substantive changes introduced to the legal text so as to fully exploit the potential of public sector information for the European economy and society focus on the following areas: the provision of real-time access to dynamic data via adequate technical means, increasing the supply of high-value public data for re-use, including from *public undertakings*, research performing organisations and research funding organisations, tackling the emergence of new forms of exclusive arrangements, the use of exceptions to the principle of charging the marginal cost and the relationship between this Directive and certain related legal instruments, including Directive 96/9/EC<sup>31</sup> and Directive

2007/2/EC of the European Parliament and of the Council<sup>32</sup> .

2007/2/EC of the European Parliament and of the Council<sup>32</sup> .

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<sup>31</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

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<sup>31</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

<sup>32</sup> 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) (OJ L 108, 25.4.2007, p.1).

<sup>32</sup> 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) (OJ L 108, 25.4.2007, p. 1).

Or. en

### Amendment 3

#### Proposal for a directive Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(4a) The access to information is a fundamental right. The Charter of Fundamental Rights of the European Union provides that everyone has the right to receive and impart information and ideas without interference.***

Or. en

*Justification*

*The fundamental right to access to information is the foundation of this Directive.*

### Amendment 4

#### Proposal for a directive Recital 6

*Text proposed by the Commission*

*Amendment*

(6) The public sector in the Member

(6) The public sector in the Member

States collect, produce, reproduce and disseminate a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit the *knowledge economy*.

States collect, produce, reproduce and disseminate a wide range of information in many areas of activity, such as social, economic, geographical, *environmental*, weather, tourist, business, patent and educational information. Documents produced by public sector bodies of executive, legislative or judicial nature constitute a vast, diverse and valuable pool of resources that can benefit the *society*. ***Therefore, Member States and the public sector entities should be supported financially to make data easily available for re-use.***

Or. en

#### *Justification*

*Supporting the Member States is crucial to achieve the aim of this Directive.*

### **Amendment 5**

#### **Proposal for a directive**

#### **Recital 9**

##### *Text proposed by the Commission*

(9) Digital content plays an important role in this evolution. Content production ***has given rise to rapid job creation in recent years and continues to do so. Most of these*** jobs are created by innovative start-ups and SMEs .

##### *Amendment*

(9) Digital content plays an important role in this evolution. Content production ***and development of Big Data can contribute to a shift on the labour market. New kinds of*** jobs are created by innovative start-ups and SMEs. ***However, the creation of new, quality and decent work as well as the protection of existing jobs must be ensured.***

Or. en

#### *Justification*

*We must ensure that the implementation of this directive will contribute to the creation of new quality jobs as well as to the protection of the existing jobs.*



## Amendment 6

### Proposal for a directive Recital 10

*Text proposed by the Commission*

(10) One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of Union-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. Broad cross-border geographical coverage will also be essential in this context. Wide possibilities of re-using **public sector** information should inter alia allow European **companies** to exploit **its** potential and contribute to **economic growth and job** creation.

*Amendment*

(10) One of the principal aims of the establishment of an internal market is the creation of conditions conducive to the development of Union-wide services. Public sector information **or information collected, produced, reproduced, and disseminated within the exercise of a public task or a service of general interest** is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. Broad cross-border geographical coverage will also be essential in this context. Wide possibilities of re-using **such** information should inter alia allow European **microenterprises and SMEs** to exploit **their** potential and contribute to **the digital society with the creation of new, quality and decent work and the protection of existing jobs**.

Or. en

*Justification*

*We must ensure that the implementation of this directive will contribute to the creation of new quality jobs as well as to the protection of the existing jobs.*

## Amendment 7

### Proposal for a directive Recital 11

*Text proposed by the Commission*

(11) 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

*Amendment*

(11) 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.

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. ***With the development of new technologies, the dissemination of data collected and distributed within the exercise of a public task or a service of general interest can contribute to ensuring users' authentic information.***

Or. en

### *Justification*

*An added value of this directive is the authenticity of the public sector information.*

## **Amendment 8**

### **Proposal for a directive Recital 12**

#### *Text proposed by the Commission*

(12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Practice in public sector bodies in exploiting public sector information continues to vary among Member States. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore 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 Community.***

#### *Amendment*

(12) There are considerable differences in the rules and practices in the Member States relating to the exploitation of public sector information resources, which constitute barriers to bringing out the full economic potential of this key document resource. Practice in public sector bodies in exploiting public sector information continues to vary among Member States. That should be taken into account. Minimum harmonisation of national rules and practices on the re-use of public sector documents should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder ***transparency and open access.***

Or. en

## *Justification*

*The term "open access" describes the idea behind the title of this directive "re-use of public sector information".*

### **Amendment 9**

#### **Proposal for a directive**

##### **Recital 13**

###### *Text proposed by the Commission*

(13) 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*.

###### *Amendment*

(13) 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 *primarily* for the public, can play an important role in *transparency and democratic accountability, promote social engagement, and kick-start* the development of new services based on novel ways to combine and make use of such information, stimulate economic growth. *In order to maximise those benefits, access to sources and evolving data should be ensured.*

Or. en

## *Justification*

*Is important to underline that this Directive will promote the circulation of information first and foremost for the public.*

### **Amendment 10**

#### **Proposal for a directive**

##### **Recital 18**

###### *Text proposed by the Commission*

(18) This Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell,

###### *Amendment*

(18) This Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell,

disseminate, exchange or give out information. **To avoid cross-subsidies**, re-use should include further use of documents within the organisation itself for activities falling outside the scope of its public tasks. Activities falling outside the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market.

disseminate, exchange or give out information. Re-use should **not** include further use of documents within the organisation itself for activities falling outside the scope of its public tasks. Activities falling outside the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market.

Or. en

## Amendment 11

### Proposal for a directive Recital 20

*Text proposed by the Commission*

(20) The Member States often entrust the provision of services in the general interest with entities outside of the public sector **while maintaining a high degree of control over such entities**. At the same time, the provisions of the Directive 2003/98/EC apply only to documents held by public sector bodies, while excluding public undertakings from its scope. **This leads to a poor availability for re-use of documents produced in the performance of services in the general interest in a number of areas, notably in the utility sectors. It also greatly reduces the potential for the creation of cross-border services based on documents held by public undertakings that provide services in the general interest.**

*Amendment*

(20) The Member States often entrust the provision of services in the general interest with entities outside of the public sector. At the same time, the provisions of the Directive 2003/98/EC apply only to documents held by public sector bodies, while excluding public undertakings from its scope.

Or. en

## Amendment 12

### Proposal for a directive Recital 21

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**(21) Directive 2003/98/EC should therefore be amended in order to ensure that its provisions can be applied to the re-use of documents produced in the performance of services in the general interest by public undertakings pursuing one of the activities referred to in Articles 8 to 14 of Directive 2014/25/EU of the European Parliament and of the Council<sup>33</sup>, as well as by public undertakings acting as public service operators pursuant to Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and the Council on public passenger transport services by rail and by road, public undertakings acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, and public undertakings acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).**

**deleted**

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<sup>33</sup> **Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).**

Or. en

## Amendment 13

### Proposal for a directive

#### Recital 22

##### *Text proposed by the Commission*

(22) This Directive should not contain an obligation to allow the re-use of documents produced by public undertakings. The decision whether or not to authorise re-use should remain with the public undertaking concerned. Only after the public undertaking has chosen to make a document available for re-use, should it observe the relevant obligations laid down in Chapters III and IV of this Directive, in particular as regards formats, charging, transparency, licences, non-discrimination and prohibition of exclusive arrangements. On the other hand, the public undertaking is not required to comply with the requirements laid down in Chapter II, such as the rules applicable to processing of requests.

##### *Amendment*

(22) This Directive should not contain an obligation to allow the re-use of documents produced by public undertakings. The decision whether or not to authorise re-use **of such documents**, should remain with the public undertaking concerned. Only after the public undertaking has chosen to make a document available for re-use, should it observe the relevant obligations laid down in Chapters III and IV of this Directive, in particular as regards formats, charging, transparency, licences, non-discrimination and prohibition of exclusive arrangements. On the other hand, the public undertaking is not required to comply with the requirements laid down in Chapter II, such as the rules applicable to processing of requests.

Or. en

## Amendment 14

### Proposal for a directive

#### Recital 27

##### *Text proposed by the Commission*

(27) Public sector bodies are increasingly making their documents available for re-use in a proactive manner, by ensuring online discoverability and actual availability of both metadata and the underlying content. Documents should also be made available for re-use following a request lodged by a re-user. In those cases, the time limit for replying to requests for re-use should be reasonable and in accordance with the equivalent time for

##### *Amendment*

(27) Public sector bodies are increasingly making their documents available for re-use in a proactive manner, by ensuring online discoverability and actual availability of both metadata and the underlying content. Documents should also be made available for re-use following a request lodged by a re-user. In those cases, the time limit for replying to requests for re-use should be reasonable and in accordance with the equivalent time for

requests to access the document under the relevant access regimes. Public undertakings, educational establishments, research performing organisations and research funding organisations *should* however be exempt from this requirement. Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. This is particularly important for dynamic data (including traffic data , satellite data, weather data ), the economic value of which depends on the immediate availability of the information and of regular updates. Dynamic data should therefore be made available immediately after collection, via an Application Programming Interface so as to facilitate the development of internet, mobile and cloud applications based on such data. Whenever this is not possible due to technical or financial constraints, public sector bodies should make the documents available in a timeframe that allows their full economic potential to be exploited. Should a licence be used, the timely availability of documents may be a part of the terms of the licence.

requests to access the document under the relevant access regimes. Public undertakings, educational establishments, research performing organisations and research funding organisations *should* however be exempt from this requirement. Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. This is particularly important for dynamic data (including traffic data , satellite data, weather data), the economic value of which depends on the immediate availability of the information and of regular updates. Dynamic data should therefore be made available immediately after collection, via an Application Programming Interface so as to facilitate the development of internet, mobile and cloud applications based on such data. Whenever this is not possible due to technical or financial constraints, public sector bodies should make the documents available in a timeframe that allows their full economic potential to be exploited. ***Abolishing austerity measures and offering financial support can contribute to the lifting of financial constraints of public sector bodies.*** Should a licence be used, the timely availability of documents may be a part of the terms of the licence.

Or. en

## Amendment 15

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

(28) In order to get access to the data opened for re-use by this Directive, the use of suitable and well-designed Application Programming Interfaces (APIs) is needed. An API describes the kind of data can be

#### *Amendment*

(28) In order to get access to the data opened for re-use by this Directive, the use of suitable and well-designed Application Programming Interfaces (APIs) is needed. An API describes the kind of data can be

retrieved, how to do this and the format in which the data will be received. It has different levels of complexity and can mean a simple link to a database to retrieve specific datasets, a web interface, or more complex set-ups. There is general value in re-using and sharing data via a suitable use of APIs as this will help developers and start-ups to create new services and products. It is also a crucial ingredient of creating valuable ecosystems around data assets that are often unused. The set-up and use of API needs to be based on several principles: stability, maintenance over lifecycle, uniformity of use and standards, user-friendliness as well as security. For dynamic data, meaning frequently updated data, often in real time, public sector bodies *and public undertakings* shall make this available for re-use immediately after collection by ways of suitable APIs.

retrieved, how to do this and the format in which the data will be received. It has different levels of complexity and can mean a simple link to a database to retrieve specific datasets, a web interface, or more complex set-ups. There is general value in re-using and sharing data via a suitable use of APIs as this will help developers and start-ups to create new services and products. It is also a crucial ingredient of creating valuable ecosystems around data assets that are often unused. The set-up and use of API needs to be based on several principles: stability, maintenance over lifecycle, uniformity of use and standards, user-friendliness as well as security. For dynamic data, meaning frequently updated data, often in real time, public sector bodies shall make this available for re-use immediately after collection by ways of suitable APIs. ***Public sector bodies should receive efficient support in order to develop an adequate level of competence in their service for the purpose of collecting, treating and disseminating information in an efficient, fast and easy way.***

Or. en

## Amendment 16

### Proposal for a directive Recital 29

#### *Text proposed by the Commission*

(29) The possibilities for re-use can be improved by limiting the need to digitise paper-based documents or to process digital files to make them mutually compatible. Therefore, public sector bodies should make documents available in any pre-existing format or language, through electronic means where possible and appropriate. Public sector bodies should view requests for extracts from existing

#### *Amendment*

(29) The possibilities for re-use can be improved by limiting the need to digitise paper-based documents or to process digital files to make them mutually compatible. Therefore, public sector bodies should make documents available in any pre-existing format or language, through electronic means where possible and appropriate. Public sector bodies should view requests for extracts from existing



documents favourably when to grant such a request would involve only a simple operation. Public sector bodies should not, however, be obliged to provide an extract from a document where this involves disproportionate effort. To facilitate re-use, public sector bodies should make their own documents available in a format which, as far as possible and appropriate, is not dependent on the use of specific software. ***Where possible and appropriate***, public sector bodies should take into account the possibilities for the re-use of documents by and for persons with disabilities by providing the information in accessible formats .

documents favourably when to grant such a request would involve only a simple operation. Public sector bodies should not, however, be obliged to provide an extract from a document where this involves disproportionate effort. To facilitate re-use, public sector bodies should make their own documents available in a format which, as far as possible and appropriate, is not dependent on the use of specific software. Public sector bodies should take into account the possibilities for the re-use of documents by and for persons with disabilities by providing the information in accessible formats.

Or. en

#### *Justification*

*This directive should take into account and guarantee the rights of the persons with disabilities.*

### **Amendment 17**

#### **Proposal for a directive Recital 32**

##### *Text proposed by the Commission*

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for re-use without charges and, where charges are necessary , they should in principle be limited to the marginal costs. In exceptional cases , 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 should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged.

##### *Amendment*

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs. Documents should therefore be made available for re-use without charges and, where charges are necessary , they should in principle be limited to the marginal costs. In exceptional cases , 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 should be taken into consideration. The role of public undertakings in a competitive economic environment should also be acknowledged.

In such cases, public sector bodies and public undertakings should therefore 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. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. 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 the scope of the services of general interest entrusted with public undertakings 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.

In such cases, public sector bodies and public undertakings should therefore 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, dissemination *and maintenance*, together with a reasonable return on investment. Where applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. 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 the scope of the services of general interest entrusted with public undertakings 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.

Or. en

## Amendment 18

### Proposal for a directive Recital 33

#### *Text proposed by the Commission*

(33) 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. Where applicable, the costs

#### *Amendment*

(33) 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, *maintenance*, preservation and rights clearance, together with a reasonable return on investment. Where

of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. 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.

applicable, the costs of anonymisation of personal data or of commercially sensitive information should also be included in the eligible cost. 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.

Or. en

## Amendment 19

### Proposal for a directive Recital 36

#### *Text proposed by the Commission*

(36) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide information *market*. Therefore all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use. Applicants for re-use of documents held by entities other than public undertakings, educational establishments, research performing organisations and research funding organisations should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.

#### *Amendment*

(36) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Union-wide *access to and re-use of public sector information as well as the extension of the right to knowledge*. Therefore all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use. Applicants for re-use of documents held by entities other than public undertakings, educational establishments, research performing organisations and research funding organisations should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.

*Justification*

*The fundamental right to access to information is the foundation of this Directive.*

**Amendment 20****Proposal for a directive****Recital 44***Text proposed by the Commission*

(44) 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. It is therefore appropriate to take into account current divergences in the Member States with regard to digitisation of cultural resources, by a specific set of rules pertaining to agreements on digitisation of such resources. 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

*Amendment*

(44) 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. It is therefore appropriate to take into account current divergences in the Member States with regard to digitisation of cultural resources, by a specific set of rules pertaining to agreements on digitisation of such resources. 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 **recover induced costs**. That period should 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 **seven** years. Any period of exclusivity longer than **seven** 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

institution full rights with respect to the post-termination use of digitised cultural resources.

grant the partner cultural institution full rights with respect to the post-termination use of digitised cultural resources.

Or. en

### *Justification*

*Exclusive rights is a limiting factor for the availability of information and the "open data". Therefore the period of ten years must be limited.*

## **Amendment 21**

### **Proposal for a directive**

#### **Recital 45**

##### *Text proposed by the Commission*

(45) Arrangements between data holders and data re-users which do not expressly grant exclusive rights but which can reasonably be expected to restrict the availability of documents for re-use should be subject to additional public scrutiny and should therefore be published ***at least two months*** before coming into effect so as to give interested parties an opportunity to request the re-use of the documents covered by the agreement and prevent the risk of restricting the range of potential re-users. Such agreements should also be made public following their conclusion, in the final form agreed by the parties.

##### *Amendment*

(45) Arrangements between data holders and data re-users which do not expressly grant exclusive rights but which can reasonably be expected to restrict the availability of documents for re-use should be subject to additional public scrutiny and should therefore be published ***in accordance with national rules on access to information or, in the absence of such rules, in accordance with administrative practice in the Member State concerned*** before coming into effect so as to give interested parties an opportunity to request the re-use of the documents covered by the agreement and prevent the risk of restricting the range of potential re-users. Such agreements should also be made public following their conclusion, in the final form agreed by the parties.

Or. en

## **Amendment 22**

### **Proposal for a directive**

#### **Recital 46**

*Text proposed by the Commission*

(46) This Directive aims at minimising the risk of excessive first-mover advantage that could limit the number of potential re-users of the data. ***Where contractual arrangements may, in addition to the Member State's obligations under this Directive to grant documents, entail a transfer of Member State's resources within the meaning of Article 107(1) TFEU, this Directive should be without prejudice to the application of the State aid and other competition rules laid down in Articles 101 to 109 of the Treaty. It follows from the State aid rules laid down in Articles 107 to 109 of the Treaty that the State must verify ex ante whether State aid may be involved in the relevant contractual arrangement and ensure that they comply with State aid rules.***

*Amendment*

(46) This Directive aims at minimising the risk of excessive first-mover advantage that could limit the number of potential re-users of the data.

Or. en

## Amendment 23

### Proposal for a directive Recital 47

*Text proposed by the Commission*

(47) This Directive is without prejudice and should be implemented and applied in full compliance with Union law relating to the protection of personal data including Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>37</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>38</sup>. Anonymisation is ***a means to reconcile the interests in making*** public sector information ***as re-usable as possible*** with the ***obligations under*** data protection legislation, ***but*** comes at a cost. It is appropriate to consider this cost as one of the cost items to be considered as part of

*Amendment*

(47) This Directive is without prejudice and should be implemented and applied in full compliance with Union law relating to the protection of personal data including Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>37</sup> and Directive 2002/58/EC of the European Parliament and of the Council<sup>38</sup>. Anonymisation is ***fundamental to ensuring the re-use of*** public sector information with the ***respect of the*** data protection legislation, ***even if it*** comes at a cost. It is appropriate to consider this cost as one of the cost items to be considered as part of the marginal cost of dissemination

the marginal cost of dissemination as defined in Article 6 of this Directive.

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<sup>37</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [...].

<sup>38</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201 , 31/07/2002 p. 37).

as defined in Article 6 of this Directive.

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<sup>37</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [...].

<sup>38</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201 , 31/07/2002 p. 37).

Or. en

## Amendment 24

### Proposal for a directive Recital 53

#### *Text proposed by the Commission*

(53) This Directive is without prejudice to Directive 2001/29/EC of the European Parliament and of the Council<sup>39</sup> and Directive 96/9/EC of the European Parliament and of the Council<sup>40</sup>. It spells out the conditions within which public sector bodies can exercise their intellectual property rights in the internal information market when allowing re-use of documents. ***In particular, where public sector bodies are holders of the right provided for in Article 7(1) of Directive 96/9/EC, they should not exercise it in order to prevent or restrict the re-use of data contained in databases.***

#### *Amendment*

(53) This Directive is without prejudice to Directive 2001/29/EC of the European Parliament and of the Council<sup>39</sup> and Directive 96/9/EC of the European Parliament and of the Council<sup>40</sup>. It spells out the conditions within which public sector bodies can exercise their intellectual property rights in the internal information market when allowing re-use of documents.

<sup>39</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

<sup>40</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

<sup>39</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

<sup>40</sup> Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20).

Or. en

### *Justification*

*The right provided for in Article 7(1) of Directive 96/9/EC could be exercised by public sector bodies.*

## **Amendment 25**

### **Proposal for a directive Recital 56**

#### *Text proposed by the Commission*

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

#### *Amendment*

(56) The Commission **should** assist the Member States in implementing this Directive in a consistent way **by supporting public bodies, in particular local communities, in developing the background and the resources to collect, disseminate and maintain the information and** by issuing and updating existing guidelines, particularly on recommended standard licences, datasets and charging for the re-use of documents, after consulting interested parties.

Or. en

## **Amendment 26**

### **Proposal for a directive Recital 58 a (new)**



***(58 a) All interested parties, including competent bodies holding public sector information, users and re-users, applicants for the use and re-use of documents, civil society groups and representative organisations, should have the possibility to submit proposals for additional data-sets to the Commission. The Commission should take those additional data-sets into account, or provide the interested party concerned with reasons for rejecting their suggestion. In the course of preparation, co-determination rights, as well as sufficient financial and personal resources to make effective use of those rights should be granted to the social partners.***

Or. en

## **Amendment 27**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) existing documents held by public undertakings active in the areas defined in Directive 2014/25/EU of the European Parliament and of the Council<sup>42</sup> and by public undertakings acting as public service operators pursuant to Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council<sup>43</sup>, public undertakings acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council<sup>44</sup>, and public undertakings acting as Community shipowners fulfilling public service obligations***

***deleted***

*pursuant to Article 4 of Council Regulation (EEC) No 3577/92<sup>45</sup>.*

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<sup>42</sup> *Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).*

<sup>43</sup> *Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70.*

<sup>44</sup> *Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (Text with EEA relevance) (OJ L 293, 31.10.2008, p. 3–20).*

<sup>45</sup> *Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7–10).*

Or. en

#### *Justification*

*Private undertakings that are competing with public undertakings could use the public data, gained by public money to improve their services and generate financial profits.*

#### **Amendment 28**

##### **Proposal for a directive Article 1 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) documents held by public

*Amendment*

(b) documents held by public

undertakings, *produced outside the scope of the provision of services in the general interest as defined by law or other binding rules in the Member State;*

undertakings

Or. en

*Justification*

*Public undertakings should be excluded from the scope of the PSI Directive.*

**Amendment 29**

**Proposal for a directive**

**Article 1 – paragraph 2 – point d – indent -1 (new)**

*Text proposed by the Commission*

*Amendment*

- *critical infrastructure such as public health, including operators of essential services as defined in point (4) of Article 4 of Directive (EU) 2016/1148<sup>1a</sup> ;*

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*<sup>1a</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).*

Or. en

*Justification*

*Operators that fall under the definition of a critical infrastructure should be excluded from the scope of the PSI Directive as their position is worthy of higher protection;*

**Amendment 30**

**Proposal for a directive**

**Article 1 – paragraph 2 – point g**

*Text proposed by the Commission*

*Amendment*

(g) documents access to which is

(g) *documents or parts of* documents

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;

access to which is excluded or restricted by virtue of regimes which contain personal data the re-use of which *could undermine the fundamental right to privacy and* the protection of personal data;

Or. en

#### *Justification*

*Providing a specific wording on the difference between ‘documents’ and ‘parts of documents’ to which the PSI Directive would not be applicable on data protection grounds is important to clarify the relationship and coherence between the PSI Directive and the GDPR.*

### **Amendment 31**

#### **Proposal for a directive Article 1 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4 a. This Directive shall retain and shall be without prejudice to the level of protection of individuals with regard to the processing of personal data under the provisions of Union and national law, and in particular the obligations and rights set out in Regulation (EU) 2016/679.***

Or. en

#### *Justification*

*A reference to GDPR EU (2016/679) is needed in order to further enhance the link between the re-use of public sector information and the protection of personal data.*

### **Amendment 32**

#### **Proposal for a directive Article 1 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The right for the maker of a database provided for in Article 7(1) of Directive 96/9/EC **shall not** be exercised by public sector bodies **in order to prevent or restrict the re-use of documents pursuant to this Directive.**

5. The right for the maker of a database provided for in Article 7(1) of Directive 96/9/EC **may** be exercised by public sector bodies.

Or. en

### **Amendment 33**

#### **Proposal for a directive Article 2 – paragraph 1 – point 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. 'open license' means any standardised public license that allows data and content to be freely accessed, used, modified, and shared by anyone for any purpose, subject, at most, to requirements that preserve provenance and openness;**

Or. en

*Justification*

*It must be specified what "open license" means.*

### **Amendment 34**

#### **Proposal for a directive Article 2 – paragraph 1 – point 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5a. 'anonymous information' or 'anonymised information' means information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not**

*or no longer identifiable;*

Or. en

*Justification*

*It must be specified what "anonymous or anonymized information" means.*

**Amendment 35**

**Proposal for a directive  
Article 2 – paragraph 1 – point 8**

*Text proposed by the Commission*

8. 'high value datasets' means documents the re-use of which is associated with important **socio-economic** benefits, notably because of their suitability for the creation of value-added services **and** applications, and the number of potential beneficiaries of the value-added services and applications based on these datasets;

*Amendment*

8. 'high value datasets' means documents the re-use of which is associated with important benefits **for society, the environment and the economy**, notably because of their suitability for the creation of value-added services, applications **and new, quality and decent work**, and the number of potential beneficiaries of the value-added services and applications based on these datasets;

Or. en

**Amendment 36**

**Proposal for a directive  
Article 2 – paragraph 1 – point 14 a (new)**

*Text proposed by the Commission*

*Amendment*

**14a. "marginal costs" means, inter alia, the additional cost and effort involved in digitising, storing and managing analogue documents; the cost of digital storage in general; the cost of generation of machine readability, which enables further automated processing of the data, including the associated additional storage costs and additional administrative effort; and the additional cost of corresponding infrastructural**

*measures enabling the provision of data, such as fail-safe servers or databases with a highly available internet connection and adequate dimensioning for data access.*

Or. en

*Justification*

*In view of earlier debates, marginal cost should be defined with greater precision".*

**Amendment 37**

**Proposal for a directive  
Article 3 – paragraph 2**

*Text proposed by the Commission*

2. For documents in which libraries, including university libraries, museums and archives hold intellectual property rights ***and for documents held by public undertakings***, 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.

*Amendment*

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.

Or. en

**Amendment 38**

**Proposal for a directive  
Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The decision whether or not to authorise re-use of any or all documents, under this Directive shall remain with the public undertaking concerned. After the public undertaking has chosen to make a document available for re-use, it shall observe the relevant obligations laid down in Chapters III and IV, in particular as***

*regards format, charging, transparency, licences, non-discrimination and the prohibition of exclusive arrangements.*

Or. en

*Justification*

*This paragraph is important to clarify the relevance of procedural safeguards for public undertakings and to ensure their power of decision on re-use;*

**Amendment 39**

**Proposal for a directive  
Article 5 – paragraph 1**

*Text proposed by the Commission*

1. Without prejudice to Chapter V, public sector bodies **and public undertakings** 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 shall, where possible, comply with formal open standards.

*Amendment*

1. Without prejudice to Chapter V, 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 shall, where possible, comply with formal open standards.

Or. en

**Amendment 40**

**Proposal for a directive  
Article 5 – paragraph 2**

*Text proposed by the Commission*

2. Paragraph 1 shall not imply an obligation for public sector bodies **or public undertakings** 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.

*Amendment*

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.



## Amendment 41

### Proposal for a directive Article 5 – paragraph 3

*Text proposed by the Commission*

3. On the basis of this Directive, public sector bodies **and public undertakings** 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.

*Amendment*

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.

Or. en

## Amendment 42

### Proposal for a directive Article 5 – paragraph 4

*Text proposed by the Commission*

4. Public sector bodies **and public undertakings** shall make dynamic data available for re-use immediately after collection, via suitable Application Programming Interfaces (APIs).

*Amendment*

4. Public sector bodies shall make dynamic data available for re-use immediately after collection, via suitable Application Programming Interfaces (APIs). ***To ensure the sustained supply of, and access to, dynamic data, public sector bodies shall be supported in order to be able to provide a high level of training to their employees dealing with new technologies.***

Or. en

## Amendment 43

### Proposal for a directive Article 5 – paragraph 5

*Text proposed by the Commission*

5. Where making available documents immediately after collection would exceed the financial and technical capacities of the public sector body **or the public undertaking**, documents referred to in paragraph 4 shall be made available in a timeframe that does not unduly impair the exploitation of their economic potential.

*Amendment*

5. Where making available documents immediately after collection would exceed the financial and technical capacities of the public sector body, documents referred to in paragraph 4 shall be made available in a timeframe that does not unduly impair the exploitation of their economic potential.

Or. en

**Amendment 44**

**Proposal for a directive**

**Article 6 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) 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.***

Or. en

*Justification*

*The maintenance and provision of (infrastructure) data is time and resource consuming. Therefore, the possibility for public sector bodies to generate sufficient revenue also above marginal cost for covering additional expenses is necessary to avoid overburdening of the public budget. The deletion of the exception in Article 6(2)(b) is therefore disproportionate. A secure household budget can only exist in case of reliable compensation of costs. The proposed changes violate also the organisational powers of the Member States. Furthermore, financial difficulties arising from the lack of cost compensation would increase and thus the*

*reluctance of public sector bodies to invest in the modernisation of the necessary infrastructure will continue or even grow.*

## **Amendment 45**

### **Proposal for a directive Article 8 – paragraph 1**

*Text proposed by the Commission*

1. Re-use of documents may be allowed without or with conditions, where appropriate through **a** licence. Those conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.

*Amendment*

1. Re-use of documents may be allowed without or with conditions, where appropriate through **an open** licence. Those conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition.

Or. en

*Justification*

*The kind of licence should be specified.*

## **Amendment 46**

### **Proposal for a directive Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Notwithstanding paragraph 1, Member States may, in individual instances and depending on the nature of the document, require that a notice be used, such as in the form of a text, pop-up window or a hyperlink to an external website.***

Or. en

*Justification*

*It must be underlined that Member States could consider whether a notice could be used instead as suggested in the EC Guidelines on recommended standard licences, datasets and charging for the reuse of documents (2014/C 240/01).*

## Amendment 47

### Proposal for a directive Article 8 – paragraph 2

*Text proposed by the Commission*

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 the use of **such standard** licences.

*Amendment*

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 the use of **open** licences.

Or. en

*Justification*

*The kind of licence should be specified.*

## Amendment 48

### Proposal for a directive Article 12 – paragraph 1

*Text proposed by the Commission*

1. The re-use of documents shall be open to all potential actors in the market, even if one or more **market** actors already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies **or public undertakings** holding the documents and third parties shall not grant exclusive rights.

*Amendment*

1. **To ensure fairness**, the re-use of documents shall be open to all potential actors in the market, even if one or more actors 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.

Or. en

*Justification*

*Public undertakings are excluded from the scope of this Directive.*

## Amendment 49

### Proposal for a directive

#### Article 12 – paragraph 3 – subparagraph 1

##### *Text proposed by the Commission*

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.

##### *Amendment*

Notwithstanding paragraph 1, where an exclusive right relates to digitisation of cultural resources, the period of exclusivity shall in general not exceed **seven** years. In case where that period exceeds **seven** years, its duration shall be subject to review during the **8th** year and, if applicable, every **five** years thereafter.

Or. en

##### *Justification*

*Exclusive rights is a limiting factor for the availability of information and the "open data". Therefore the period of ten years must be limited.*

## Amendment 50

### Proposal for a directive

#### Article 12 – paragraph 4

##### *Text proposed by the Commission*

4. Legal or practical arrangements that, without expressly granting an exclusive right, aim at or could reasonably be expected to lead to a restricted availability for re-use of documents by entities other than the third party participating in the arrangement, shall be made publicly available at least two months before their coming into effect. The final terms of such arrangements shall be transparent and made publicly available.

##### *Amendment*

4. Legal or practical arrangements that, without expressly granting an exclusive right, aim at or could reasonably be expected to lead to a restricted availability for re-use of documents by entities other than the third party participating in the arrangement, shall be made publicly available at least two months before their coming into effect. The **validity of the reason for the legal or practical arrangements shall be subject to regular review, and shall, in any event, be reviewed every three years.** The final terms of such arrangements shall be transparent and made publicly available.

Or. en

## Amendment 51

### Proposal for a directive Article 13 – paragraph 1

*Text proposed by the Commission*

1. With a view to achieving the objectives of this Directive, the Commission shall adopt the list of high value datasets among the documents to which this Directive applies, together with the modalities of their publication and re-use.

*Amendment*

1. With a view to achieving the objectives of this Directive, the Commission shall ***be empowered to*** adopt ***delegated acts in accordance with Article 14 in order to supplement*** the list of high value datasets ***set out in Annex Ia and in particular to further specify high value datasets***, among the documents to which this Directive applies, together with the modalities of their publication and re-use.

Or. en

## Amendment 52

### Proposal for a directive Article 13 – paragraph 5

*Text proposed by the Commission*

5. The selection of datasets for the list referred to in paragraph 1 shall be based on the assessment of their potential to generate ***socio-economic*** benefits, the number of users and the revenues they may help generate, and their potential for being combined with other datasets.

*Amendment*

5. The selection of ***additional*** datasets for the list referred to in paragraph 1 shall be based on the assessment of their potential to generate ***social, economic or environmental*** benefits, the number of users and the revenues they may help generate, and their potential for being combined with other datasets.

Or. en

## Amendment 53

### Proposal for a directive Article 13 – paragraph 7

*Text proposed by the Commission*

7. The Commission shall conduct an impact assessment including a cost-benefit analysis prior to the adoption of **the** delegated act and ensure that the act is complementary to the existing sector based legal instruments with respect to the re-use of documents that belong to the scope of application of this Directive. Where high value datasets held by public undertakings are concerned, the impact assessment shall give special consideration to the role of public undertakings in a competitive economic environment.

*Amendment*

7. The Commission shall conduct an impact assessment including a cost-benefit analysis prior to the adoption of **a** delegated act and ensure that the act is complementary to the existing sector based legal instruments with respect to the re-use of documents that belong to the scope of application of this Directive. Where high value datasets held by public undertakings are concerned, the impact assessment shall give special consideration to the role of public undertakings in a competitive economic environment.

Or. en

**Amendment 54**

**Proposal for a directive**

**Article 13 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***7a. For the purpose of adopting the delegated acts referred to in paragraph 1, the Commission shall carry out public consultations with all interested parties, including competent bodies holding public sector information, users and re-users, applicants for the use and re-use, social partners, and representative organisations. All interested parties shall be given the possibility to submit suggestions to the Commission for additional categories of high value datasets. The Commission shall take those public consultations into account, or provide the interested party with reasons for not taking them into account.***

Or. en

## *Justification*

*Effective public consultations. The parties concerned should have the possibility to submit proposals to the Commission.*

### **Amendment 55**

#### **Proposal for a directive Article 14 – paragraph 2**

##### *Text proposed by the Commission*

2. The power to adopt delegated acts referred to in Article 13 shall be conferred on the Commission for a period of five years from [date of entry into force of the Directive]. The Commission shall draw up a report in respect of the delegation of power not later than ***nine months*** before the end of the five-year period. ***The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

##### *Amendment*

2. The power to adopt delegated acts referred to in Article 13 shall be conferred on the Commission for a period of five years from [date of entry into force of the Directive]. The Commission shall draw up a report in respect of the delegation of power not later than ***one year*** before the end of the five-year period.

Or. en

### **Amendment 56**

#### **Proposal for a directive Article 16 – paragraph 2**

##### *Text proposed by the Commission*

2. The evaluation shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents to which this Directive applies , the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, the re-use of documents held by other entities than public sector bodies, the interaction between data protection rules and re-use

##### *Amendment*

2. The evaluation shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents to which this Directive applies, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, the re-use of documents held by other entities than public sector bodies, 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 data economy .

possibilities, as well as further possibilities of improving the proper functioning of the internal market, the development of the European data economy **and the impact on the labour market.**

Or. en

## **Amendment 57**

### **Proposal for a directive Annex I a (new)**

*Text proposed by the Commission*

*Amendment*

*Annex Ia*

*Category*

***Business Registers***

***Examples of Datasets***

***Company and business registers (lists of registered companies, legal form, ownership and management data, registration identifiers, balance sheets, etc.)***

***Environmental data: Air Quality***

***Detailed concentration of air pollutants, especially those established to being harmful or suspected to be harmful to human and animal health, as well as for other organisms; including location information***

***Environmental data: Water Quality***

***Detailed measurement data on the quality of water, measured at the source, in particular but not restricted to water designated for the use in food systems; including location information***

***Government Budget***

***Planned expenditure for past and upcoming years, on all levels of government***

***Government Spending***

***Detailed records of government spending on all levels of government, at transaction level, including ongoing expenditure and***

	<i>subsidies</i>
<i>Land Ownership</i>	<i>Mapping data on boundaries of lots/parcels of land, including land registry data</i>
<i>National Law</i>	<i>Legislative, regulatory and administrative measures;</i> <i>Draft measures, including procedural information related to their adoption;</i> <i>Measures which have been amended, repealed or are no longer in force</i> <i>Accompanying documents, such as explanatory statements, impact assessments, opinions of advisory bodies and voting records</i> <i>Case-law</i>
<i>Maps</i>	<i>Geographic mapping data including routes, paths, roads or other traffic routes, stretches of water, elevation and altitude/height; at least at a scale of 1:20 000 (1cm = 200m)</i>
<i>Meteorological: Weather forecast</i>	<i>Weather forecasts of temperature, precipitation, wind and atmospheric pressure; aggregated by location</i>
<i>Meteorological: Weather observation</i>	<i>Weather observation data; aggregated by location</i>

Or. en

## EXPLANATORY STATEMENT

The access to information is a fundamental right. The Charter of Fundamental Rights of the European Union provides that everyone has the right to receive and impart information and ideas without interference.

Open Data has become an ever more popular concept. Some governments and authorities have embraced the principle that data should be made available whenever possible. The increasing role of data in economy and in society, and with the developments in digital technologies and in the research sector, such as Artificial Intelligence, the Internet of Things and advanced robotics warrants legislative action.

While the Commission's proposal considers open data mainly from the perspective of marketization, open data can yield broad benefits for society and often plays a central role in more democratic and transparent governance. The dissemination of data collected and distributed within the exercise of a public task or a service of general interest can contribute to guaranteeing users authentic information. In order to maximise these benefits the access to the source and evolving data should be guaranteed, when possible and appropriate through open licenses.

Therefore, Member States and public sector entities should be encouraged and supported to collect, treat and disseminate information in an efficient, fast and easy way. In order to avoid that data would be accessible only to big companies, but unaffordable for SMEs, documents should ideally be made available for re-use without charges. When charges are necessary, they should in principle be limited to marginal costs. Abolishing austerity measures and offering financial support will have to contribute to the lifting financial constraints public sector bodies face when wanting to make their data available for re-use. Public bodies, especially local communities, should be assisted and supported in developing the background and the resources to collect, disseminate and maintain the data. Exclusive rights granted to private partners are a limiting factor for the availability of information and the "open data" for which the period must be limited.

Public undertakings also increasingly follow open data policies. However, in many fields these can compete with private undertakings, even when providing services of general interest. The proposed extension of the scope to public undertakings therefore skews even further the playing field by differentiating between public and private undertakings providing services of general interest. There is even a risk that current imbalances might accrue. Private undertakings competing with public undertakings would benefit from public data at little cost, created by public money in order to improve their services, generate financial profits and outcompete public undertakings. Oftentimes these private undertakings are moreover by no means small SMEs, but rather big tech companies.

In order not to skew the playing field further and to allow for and promote innovation by public undertakings, this Directive should therefore neither contain an obligation to allow the re-use of documents produced by public undertakings, nor open the way to such an obligation. The decision whether or not to authorise re-use of any or all documents, within the scope of this directive, needs to remain with the public undertaking concerned, as should the modalities.

In view of their relevance, the Rapporteur considers that Parliament should propose a list of categories for high value datasets, empowering the Commission to adopt delegated acts to supplement the list and to further specify high value datasets.

