



**2018/0111(COD)**

19.9.2018

# **DRAFT OPINION**

of the Committee on Culture and Education

for the Committee on Industry, Research and Energy

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))

Rapporteur for opinion: Theodoros Zagorakis

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## **SHORT JUSTIFICATION**

Re-using public sector information can provide economic, societal and democratic benefits by permitting users other than the originating public authorities to create new products and services using official information. This can stimulate economic activity and increase the efficiency and transparency of public functions.

Directive 2003/98/EC on the re-use of public sector information, a core element of Union to open up government data for economic purposes whilst pursuing societal goals, encouraged public sector bodies to make their information available by setting out rules to apply when a discretionary choice was made to permit re-use.

Revised in July 2013, the Directive went further by making re-use mandatory for most public authorities, bringing museums, libraries (including university libraries) and archives within its scope in order to increase transparency, data-based innovation and fair competition.

On 25 April 2018, the Commission published a legislative proposal to recast the Directive, to further encourage and facilitate re-use. The recast notably aims to strengthen the position of SMEs by reducing market barriers to reusing public sector information for commercial purposes, whilst bringing public undertakings and research data within the scope of the Directive.

The Rapporteur welcomes the Commission's proposal. The Rapporteur supports in particular the Commission's approach to leave the treatment of cultural sector bodies (libraries, archives and museums) currently in force unchanged, as the Directive in this field continues to work satisfactorily.

Moreover the Rapporteur takes note of the Commission's intention to designate, by way of a delegated act, certain high value public sector databases (List of high value datasets, Article 13) as ones that must be made available free of charge at a future date. The Rapporteur does not object to the Commission's proposal in that regard. The Rapporteur would like to stress however that it is necessary that such a list should be as clear and as detailed as possible in order to ensure legal certainty for all parties concerned.

In this context, the Rapporteur gives overall support to the Commission's proposal and suggests a minimum set of amendments to provide further legal clarity, as well as to specify some provisions further.

## **AMENDMENTS**

The Committee on Culture and Education calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

### **Amendment 1**

#### **Proposal for a directive Recital 6**

*Text proposed by the Commission*

(6) The public sector in the Member States collects, produces, reproduces and disseminates 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.

*Amendment*

(6) The public sector in the Member States collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, ***cultural***, 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.

Or. en

**Amendment 2**

**Proposal for a directive  
Recital 19**

*Text proposed by the Commission*

(19) The Directive lays down an obligation for Member States to make all documents re-usable ***unless access is restricted or excluded under national rules on access to documents and subject to the other*** exceptions laid down in this Directive. The Directive builds on the ***existing*** access regimes in the Member States ***and*** does not change the national rules for access to documents. It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Union level, Articles 41 (right to good administration) and 42 of the Charter of Fundamental Rights of the European Union recognise the right of any citizen of the Union and any natural or legal person residing or having its registered office in a Member State to have access to European Parliament, Council and Commission documents. Public sector bodies should be

*Amendment*

(19) The Directive lays down an obligation for Member States to make all documents re-usable ***without prejudice to*** exceptions laid down in this Directive. The Directive builds on the access regimes ***currently in force*** in the Member States. ***In that regard, it*** does not change the national rules for access to documents, ***nor does it establish specific access rights or obligations to publish information, which should remain a decision at the discretion of Member States.*** It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. At Union level, Articles 41 (right to good administration) and 42 of the Charter of Fundamental Rights of the European Union recognise the right of any citizen of the Union and any natural or legal person residing or having its registered office in a Member State to have access to European Parliament, Council

encouraged to make available for re-use any documents held by them. Public sector bodies should promote and encourage re-use of documents, including official texts of a legislative and administrative nature in those cases where the public sector body has the right to authorise their re-use.

and Commission documents. Public sector bodies should be encouraged to make available for re-use any documents held by them. Public sector bodies should promote and encourage re-use of documents, including official texts of a legislative and administrative nature in those cases where the public sector body has the right to authorise their re-use.

Or. en

### *Justification*

*The Directive should only govern the rules with regards to the re-use of public documents, Member States having exclusive competences on access to documents. This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.*

## **Amendment 3**

### **Proposal for a directive Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) Documents held by public undertakings should be excluded from the scope of this Directive, if 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 or, in the absence of such rules, in accordance with standard administrative practice currently in force; this should apply equally to the documents of public undertakings which are in direct economic competition with private companies in order to promote the basic objective of fair competition.***

Or. en

## Amendment 4

### Proposal for a directive

#### Recital 31

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

(31) A document should be considered to be in a machine-readable format if it is in a file format that is structured in such a way that software applications can easily identify, recognise and extract specific data from it. Data encoded in files that are structured in a machine-readable format should be considered to be machine-readable data. Machine-readable formats can be open or proprietary; they can be formal standards or not. Documents encoded in a file format that limits automatic processing, because the data cannot, or cannot easily, be extracted from them, should not be considered to be in a machine-readable format. Member States should where possible and appropriate encourage the use of open, machine-readable formats.

##### *Amendment*

(31) A document should be considered to be in a machine-readable format if it is in a file format that is structured in such a way that software applications can easily identify, recognise and, ***in a technologically neutral manner***, extract specific data from it. Data encoded in files that are structured in a machine-readable format should be considered to be machine-readable data. Machine-readable formats can be open or proprietary; they can be formal standards or not. Documents encoded in a file format that limits automatic processing, because the data cannot, or cannot easily, be extracted from them, should not be considered to be in a machine-readable format. Member States should where possible and appropriate encourage the use of open, machine-readable formats.

Or. en

## Amendment 5

### 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

##### *Amendment*

(32) Charges for the re-use of documents constitute an important market entry barrier for start-ups and SMEs, ***in particular in the cultural and creative sectors***. 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. ***Marginal costs consist of the extra costs occurring from the***

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.

***digitisation, storage and management of documents, as well as the costs of digital mass storage, the additional effort to render data machine readable and the extra burden deriving from infrastructure measures.*** 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.

Or. en

#### *Justification*

*This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.*

## Amendment 6

### Proposal for a directive

#### Recital 57

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

(57) One of the principal aims of the establishment of the internal market is the creation of conditions conducive to the development of Union-wide services. Libraries, museums and archives hold a significant amount of valuable public sector information resources, in particular since digitisation projects have multiplied the amount of digital public domain material. These cultural heritage collections and related metadata are a potential base for digital content products and services and have a huge potential for innovative re-use *in* sectors such as learning and tourism. Other types of cultural establishments (such as orchestras, operas, ballets and theatres), including the archives that are part of those establishments, should remain outside the scope because of their ‘performing arts’ specificity and the fact that almost all of their material is subject to third-party intellectual property rights and would therefore remain outside the scope of that Directive.

##### *Amendment*

(57) One of the principal aims of the establishment of the internal market is the creation of conditions conducive to the development of Union-wide services. Libraries, museums and archives hold a significant amount of valuable public sector information resources. ***The re-use of documents held by such institutions possesses substantial social and economic potential for cultural and creative industries, as well as to society***, in particular since digitisation projects have multiplied the amount of digital public domain material, ***which is accessible on platforms such as Europeana***. These cultural heritage collections and related metadata are a potential base for digital content products and services and have a huge potential for innovative re-use ***not only for the cultural and creative sectors, but also in other*** sectors such as learning and tourism. Other types of cultural establishments (such as orchestras, operas, ballets and theatres), including the archives that are part of those establishments, should remain outside the scope because of their ‘performing arts’ specificity and the fact that almost all of their material is subject to third-party intellectual property rights and would therefore remain outside the scope of that Directive.

Or. en

##### *Justification*

*This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.*



## Amendment 7

### Proposal for a directive

#### Article 1 – paragraph 1 – point a

*Text proposed by the Commission*

(a) ***existing*** documents held by public sector bodies of the Member States;

*Amendment*

(a) ***publicly accessible*** documents held by public sector bodies of the Member States;

Or. en

*Justification*

*This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.*

## Amendment 8

### Proposal for a directive

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

*Text proposed by the Commission*

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

*Amendment*

(b) ***publicly accessible*** 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 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

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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).

and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

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<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

## Amendment 9

### Proposal for a directive

#### Article 1 – paragraph 2 – point b

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

(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;

##### *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 ***or in the absence of such rules, in accordance with standard administrative practice currently in force;***

Or. en

## Amendment 10

### Proposal for a directive

#### Article 1 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The Directive shall not affect the level of protection granted to individuals with regard to the processing of their personal data under Union and national law, and, in particular, shall be without prejudice to the obligations and rights set out in Regulation EU 2016/679 (General Data Protection Regulation (GDPR)).**

Or. en

## Amendment 11

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

**(aa) documents for which the public sector body concerned is required, under national law or, in the absence thereof, under common administrative practice in the Member State concerned, to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination;**

Or. en

## Amendment 12

### Proposal for a directive

#### Article 6 – paragraph 5

*Text proposed by the Commission*

*Amendment*

5. The re-use of high value datasets, the list of which shall be defined in

5. The re-use of high value datasets, the list of which shall be defined in

accordance with Article 13, and of research data referred to in point (c) of Article 1(1) shall be free of charge for the user.

accordance with Article 13, and of research data referred to in point (c) of Article 1(1) shall be free of charge *or at a reduced cost* for the user.

Or. en

## Amendment 13

### Proposal for a directive

#### Article 8 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*In the case of public undertakings, where the re-use of documents is permitted under Article 3(2), and takes place without any corresponding conditions, where appropriate through a licence, the public undertakings shall be excluded from all liability as regards the documents made available for re-use insofar as such an exclusion of liability does not run counter to any binding Member State rules.*

Or. en

*Justification*

*This amendment is needed for the internal logic of the text as it inextricably relates to other admissible amendments.*