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## **REPORT**

on the proposal for a European Parliament and Council directive on the re-use and commercial exploitation of public sector documents  
(COM(2002) 207 – C5-0292/2002 – 2002/0123(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: W.G. van Velzen

***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 7 June 2002 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a European Parliament and Council directive on the re-use and commercial exploitation of public sector documents (COM(2002) 207 – 2002/0123 (COD)).

At the sitting of 4 July 2002 the President of Parliament announced that he had referred this proposal to the Committee on Industry, External Trade, Research and Energy as the committee responsible and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on Culture, Youth, Education, the Media and Sport for their opinions (C5-0292/2002).

The Committee on Industry, External Trade, Research and Energy appointed W.G. van Velzen rapporteur at its meeting of 19 June 2002.

It considered the Commission proposal and draft report at its meetings of 11 September 2002, 8 October 2002, 12 November 2002, 3 December 2002 and 28 January 2003.

At the latter meeting it adopted the draft legislative resolution by 29 votes to 7, with 1 abstention.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur and Jaime Valdivielso de Cué, vice-chairmen; W.G. van Velzen, rapporteur; Per-Arne Arvidsson (for Bashir Khanbhai), Sir Robert Atkins, David Robert Bowe (for Gary Titley), Giles Bryan Chichester, Nicholas Clegg, Marie-Hélène Descamps (for Concepció Ferrer), Francesco Fiori (for Guido Bodrato), Norbert Glante, Alfred Gomolka (for Godelieve Quisthoudt-Rowohl), Hans Karlsson, Werner Langen, Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Erika Mann, Marjo Matikainen-Kallström, Bill Newton Dunn (for Willy C.E.H. De Clercq), Angelika Niebler, Seán Ó Neachtain, Reino Paasilinna, Paolo Pastorelli, Elly Plooij-van Gorsel, Samuli Pohjamo (for Colette Flesch), John Purvis, Bernhard Rapkay (for Mechtild Rothe), Imelda Mary Read, María Rodríguez Ramos (for Luis Berenguer Fuster, pursuant to Rule 153(2)), Christian Foldberg Rovsing, Paul Rübig, Konrad K. Schwaiger, Esko Olavi Seppänen, Alejo Vidal-Quadras Roca and Dominique Vlasto.

The opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Economic and Monetary Affairs are attached; the Committee on Legal Affairs and the Internal Market and the Committee on Culture, Youth, Education, the Media and Sport decided on 10 September 2002 and 11 July 2002 not to deliver opinions.

The report was tabled on 29 January 2003.

## DRAFT LEGISLATIVE RESOLUTION

### European Parliament legislative resolution on the proposal for a European Parliament and Council directive on the re-use and commercial exploitation of public sector documents (COM(2002) 207 – C5-0292/2002 – 2002/0123(COD))

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2002) 207<sup>1</sup>),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0292/2002),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, External Trade, Research and Energy and the opinions of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Economic and Monetary Affairs (A5-0025/2003),
1. Approves the Commission proposal as amended;
  2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

#### Amendment 1 Title

DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on the re-use and commercial exploitation  
of public sector *documents*

DIRECTIVE OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL  
on the re-use and commercial exploitation  
of public sector *information*

*(This amendment concerns the words  
"documents" and "document" and applies  
throughout the text.)*

#### *Justification*

*The term 'information' corresponds better with the concept intended than the term 'document(s)'*

<sup>1</sup> OJ C 227E, 24.9.2002, p.382.

does.

Amendment 2  
Recital 1 a

***Article 41 on the right to good administration and Article 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 right of access to European Parliament, Council and Commission documents.***

*Justification*

*Reference should be made in this proposal for a directive to the right of access to public documents recognised by the Charter of Fundamental Rights of the European Union.*

Amendment 3  
Recital 4

(4) The public sector collects, collates and disseminates information in many areas of activity, such as geographical, tourist, ***business***, patent and educational information.

(4) The public sector collects, collates and disseminates ***a wide range of*** information in many areas of activity, such as ***social, economical, weather***, tourist, patent, and educational information.

*Justification*

*For clarification purposes, it is important to underline the wide nature of information collected by the public sector and deemed to be re-used.*

Amendment 4  
Recital 6, paragraph a (new)

***The tradition of the exploitation of public sector information by public sector bodies has developed in many different ways. This should also be taken into account.***

*Justification*

*Self-explanatory.*

Amendment 5  
Recital 8, paragraph a (new)

***In particular, the level of fees charged by public sector bodies should not be such as to prevent the re-use and commercial exploitation of public sector documents.***

*Justification*

*The provision of public sector information should not be prevented in practice by the charging of excessively high fees by the relevant public sector bodies.*

Amendment 6  
Recital 9

(9) This Directive should apply to ***documents*** held by public sector bodies that ***are*** generally accessible. ***Where*** public sector bodies ***allow the re-use of such documents they*** should be re-usable for commercial and non-commercial purposes under certain conditions. ***Public sector bodies should be encouraged to make available for re-use any documents held by them that are generally accessible.***

(9) This Directive should apply to ***all information*** held by public sector bodies that ***is*** generally accessible. ***All information held by*** public sector bodies should be re-usable for commercial and non-commercial purposes under certain conditions.

*Justification*

*See Amendment 16.*

Amendment 7  
Recital 10

(10) The different formats used by public sector bodies can represent a considerable burden for private organisations that want to re-use information taken from several

(10) The different formats used by public sector bodies can represent a considerable burden for private organisations that want to re-use information taken from several

sources. *The need to digitise paper-based documents or to manipulate digital files to make them mutually compatible should be reduced by requiring public bodies to make the documents available in all pre-existing formats.*

sources. *It is therefore necessary to promote public data-gathering systems which are not dependent on the use of specific software which is subject to payment, in particular by favouring systems with publicly accessible codes. All the information must be presented not only in graphic form but also in textual mode, in order to enable people with sensory difficulties to use it.*

#### *Justification*

*No justification.*

#### Amendment 8

##### Recital 11

(11) The time limit for replying to requests for re-using information resources **should** be reasonable and in line with the equivalent time for requests to access the document, in order not to prevent the creation of new aggregated information products and services. Excessive time-lags between the request to re-use documents and the decision on these requests can hamper the establishment of data collections covering the whole of the Community, since the slowest country will set the pace.

(11) The time limit for replying to requests for re-using information resources **shall** be reasonable and in line with the equivalent time for requests to access the document, in order not to prevent the creation of new aggregated information products and services. Excessive time-lags between the request to re-use documents and the decision on these requests can hamper the establishment of data collections covering the whole of the Community, since the slowest country will set the pace.

#### *Justification*

*Makes the text more effective.*

#### Amendment 9

##### Recital 12

(12) Where charges are made, the total income from allowing access to or re-use

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of *these documents* should not exceed the total costs of *producing*, reproducing and disseminating *them, together with a reasonable profit margin. Production includes collection and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable profit margin, constitutes an upper limit to the charges, as any excessive prices should be precluded.* The public sector bodies should have the possibility of applying lower charges or of not charging at all, *and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.*

of *information* should not exceed the total costs of reproducing and disseminating *this information.* The public sector bodies should have the possibility of applying lower charges or of not charging at all.

*Justification*

*See Amendment 23.*

Amendment 10  
Recital 14 a (new)

***Making public all generally accessible documents held by the public sector – concerning not only the political process but hence also the legal and administrative process – is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. This objective is applicable to institutional matters at every level, be it local, national or international. Public administrations, at every institutional level should therefore promote and encourage the re-use of information made available by them.***

*Justification*

*Self-explanatory.*

## Amendment 11

### Recital 16

Public sector bodies *should* not run the risk of conflict with the basic competition policy principles and *should* not adopt conduct that could constitute an abuse of a dominant position. Exclusive arrangements between public sector bodies and private partners for the exploitation of the documents can lead to considerable market distortions. In many cases these arrangements will have a national basis, thereby preventing other Community players from entering the market and re-using the same information. However, for the purposes of providing a service of general economic interest, an exclusive right to re-use specific public sector information resources may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.

Public sector bodies *must* not run the risk of conflict with the basic competition policy principles and *must* not adopt conduct that could constitute an abuse of a dominant position. Exclusive arrangements between public sector bodies and private partners for the exploitation of the documents can lead to considerable market distortions. In many cases these arrangements will have a national basis, thereby preventing other Community players from entering the market and re-using the same information. However, for the purposes of providing a service of general economic interest, an exclusive right to re-use specific public sector information resources may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.

### *Justification*

*Makes the text more effective.*

## Amendment 12

### Article 1, paragraph 1

1. This Directive establishes a minimum set of rules governing the commercial and non-commercial exploitation by any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State of existing **documents** held by public sector bodies of the Member States which *are* generally accessible.

1. This Directive establishes a minimum set of rules governing the *re-use*, commercial and non-commercial exploitation *and the practical accessibility*, by any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, of existing **information** held by public sector bodies of the Member States which *is* generally accessible.

### *Justification*

*This directive should not only try to establish a minimum set of rules to harmonise conditions for re-use and (non-)commercial exploitation but at the same time facilitate the re-use of the information by enhancing the practical accessibility of the information that is generally accessible. As a citizen or company one should have the possibility to know which information is available for this purpose, where and how to get it. This can be achieved by making available lists of main content assets that contain, where relevant, information on the conditions for re-use.*

### Amendment 13

#### Article 1, paragraph 2, point (d)

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

(d) documents **within the power of disposal of** public service broadcasters and their subsidiaries, and **of** other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

### *Justification*

*Clarification of the provision. Public service broadcasters do not own all the documents in their archives. However, such documents are within their power of disposal for programme-making purposes.*

### Amendment 14

#### Article 1, paragraph 2, point (f a) (new)

**(fa) documents or parts thereof which constitute trade or business secrets.**

### *Justification*

*The protection of trade and business secrets must be guaranteed. For this reason, documents containing such secrets must be excluded from the scope of the directive.*

Amendment 15  
Article 2, paragraph 3 a (new)

***(a) the ‘basic information’ of the democratic constitutional states comprises at least texts of legislation and regulations, judicial decisions and the information of representative bodies (e.g. parliamentary information);***

***(b) ‘other information’ means information which does not fall within the definition of basic information pertaining to democratic states where the rule of law prevails;***

*Justification*

*No justification*

Amendment 16  
Article 3

***Where*** public sector bodies ***allow the re-use of documents*** that ***are*** generally accessible, ***these documents*** shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in chapters II and III.

***All information held by*** public sector bodies that ***is*** generally accessible shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in chapters II and III.

*Justification*

*Article 1 of the proposal states that the directive shall apply to documents which are generally accessible unless they belong to a category explicitly excluded by the proposal. In addition, public bodies must not be given the opportunity to refuse permission to re-use information which is already generally accessible.*

Amendment 17  
Article 3, paragraph 1 a (new)

***1a. Basic information shall be made generally accessible, through electronic means where possible.***

### *Justification*

*It is important that basic information pertaining to democratic states where the rule of law prevails, such as the texts of legislation and regulations, court judgments and information pertaining to representative bodies – in a word, information which members of the public and businesses need in order to be able to participate in a democratic state where the rule of law prevails – should be made generally accessible, through electronic means where possible.*

### Amendment 18 Article 4, paragraph 1

1. Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible **and appropriate**. This does not imply an obligation for public sector bodies to create documents or to adapt documents in order to comply with the request.

1. Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible. This does not imply an obligation for public sector bodies to create documents or to adapt documents in order to comply with the request. ***The public authorities must make available to any citizen of the Union and any natural or legal person residing or having its registered office in a Member State their own documents in a format which as far as possible is not dependent on the use of specific software subject to payment, in particular by favouring systems with publicly accessible codes. Where possible and appropriate, all the information must be presented not only in graphic form but also in textual mode, to enable people with sensory difficulties to use it.***

### *Justification*

*Information that will be made available should be made so through electronic means where possible. In some cases, it may not (yet) be possible. It is, however, always appropriate.*

### Amendment 19 Article 4, paragraph 2

2. Public sector bodies cannot be required to continue the production of a certain type of

2. Public sector bodies ***may decide to discontinue*** the production of a certain type of ***other information having regard to the impact of such discontinuance on any***

documents with a view to the re-use of these documents by a private sector organisation.

private sector organisation ***using such other information and provided that reasonable notice and explanation of such discontinuance has been given to private sector organisations using such other information. The burden of proving that the notice is reasonable shall lie with the public sector body discontinuing production of such other information.***

#### *Justification*

*In many cases, organisations may invest considerable resources in techniques and systems, under the expectation that the information is generally accessible. The unilateral discontinuation of the production of a certain type of information without taking account the legitimate expectation of the user could lead to serious economic damages, both for the user and other organisations, which rely on these products. This high risk should be counter-balanced by a burden on public sector bodies to inform the user on the timing and on the reason of ceasing this activity and to act reasonably in so doing.*

#### Amendment 20 Article 5, paragraph 1

1. Public sector bodies shall process the requests for re-use and shall make ***the document*** available to the applicant within a reasonable time that is not longer than the timeframes foreseen for treating requests to accessing the ***documents, through electronic means where possible and appropriate.***

1. Public sector bodies shall process the requests for re-use and shall make ***information*** available to the applicant within a reasonable time that is not longer than the timeframes foreseen for treating requests to accessing the ***information, and that takes into account the purpose of the re-use.***

#### *Justification*

*The notion of reasonable time might differ from one Member State to another. Furthermore, the request must be processed within such a timeframe that the information remains relevant and valuable to the user.*

#### Amendment 21 Article 5, paragraph 3

3. In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the

3. In the event of a negative decision, the public sector bodies shall communicate the grounds for refusal to the applicant on the

basis of the relevant provisions of the access regime in that Member State, one of the exceptions in Article 1(2) or Article 3. Where a negative decision is based on Article 1(2)(b), the public sector body shall include a reference to the natural or legal person who is the rightholder or alternatively to the licensor from which the public sector body has obtained the relevant material. The public sector body concerned shall not be held liable in the event of such reference being incorrect.

basis of the relevant provisions of the access regime in that Member State, one of the exceptions in Article 1(2) or Article 3. Where a negative decision is based on Article 1(2)(b), the public sector body shall include, ***where it is able to do so***, a reference to the natural or legal person who is the rightholder or alternatively to the licensor from which the public sector body has obtained the relevant material. The public sector body concerned shall not be held liable in the event of such reference being incorrect, ***except in cases where bad faith is shown to be the reason for the failure to make documents available***.

*Justification*

*Strengthening of the wording of the text.*

Amendment 22  
Article 6, -1 a (new)

***Basic information shall be made available free of charge.***

*Justification*

*It is important to ensure the transparency of the price mechanism.*

Amendment 23  
Article 6

Where charges are made, the total income from allowing access to or the re-use of ***these documents*** shall not exceed the cost of ***producing***, reproducing and disseminating ***them, together with a reasonable return on investment***. The burden of proving that charges ***are cost-oriented*** shall lie with the public sector

Where charges are made, the total income from allowing access to or the re-use of ***information*** shall not exceed the cost of reproducing and disseminating ***this information***. The burden of proving that charges ***do not exceed marginal costs of reproduction and dissemination*** shall lie with the public sector body charging for the re-use of the ***information***.

body charging for the re-use of the **document**.

*Justification*

*Public sector information is a valuable resource for society as a whole. It should be as widely available for re-use as possible. The best way to achieve this is for only costs of reproduction and dissemination to be charged for this information. Moreover, a pricing model where only marginal costs of reproduction and dissemination are charged is the best way to ensure a level playing field without unfair competition and cross-subsidisation from one public sector body to another. This is particularly true if one considers that, in many cases, a public-sector body is the monopoly source of public-sector information.*

Amendment 24

Article 6, first paragraph a (new)

***Where an applicant considers that the charges made by the public sector body exceed those allowed under this article, the applicant shall have the right to request a review of the charges.***

*Justification*

*Where charges are made and the applicant considers them to be excessive, there should be a mechanism to allow the applicant to appeal the decision on grounds of cost.*

Amendment 25

Article 6, first paragraph b (new)

***In specific cases a Member State may decide that, where charges are made, the total income from allowing access to or the re-use of documents shall not exceed the cost of producing, reproducing and disseminating them. The burden of proving that charges are cost-oriented shall lie with the public sector body charging for the re-use of the documents.***



*Justification*

*In specific cases, Member States may decide that privatised bodies may not only pass on the cost of reproducing and disseminating public sector information, but also the cost of producing that information.*

Amendment 26  
Article 7, paragraph 3

3. If **documents are** used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the **documents** for those activities as apply to other users, **where re-use is allowed**.

3. If **information is** used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the **information** for those activities as apply to other users.

*Justification*

*See Amendment 16.*

Amendment 27  
Article 8, paragraph 1

1. Any applicable charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible **and appropriate**.

1. Any applicable charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible.

*Justification*

*See Amendment 17.*

Amendment 28  
Article 8, paragraph 2

2. Any other applicable conditions for the re-use of documents shall be clearly expressed and published, through electronic means where possible **and appropriate**.

2. Any other applicable conditions for the re-use of documents shall be clearly expressed and published, through electronic means where possible.

*Justification*

See Amendment 17.

Amendment 29  
Article 8, paragraph 2 a (new)

***2a. The European Commission develops a guidelines on how to calculate the charges for the re-use of public information. Where a natural or legal person re-uses a document for commercial purposes, they shall clearly express that the document was obtained from a public sector body***

*Justification*

*A template would be crucial in order to ensure that the public sector bodies in Europe charge for the same costs and that they do not overcharge for the re-use of information. A template could also be used by companies, especially SMEs, when they calculate the costs whilst developing different pan-European services.*

Amendment 30  
Article 9

Member States shall ensure that standard licence agreements for the commercial exploitation of public sector information are available in digital format, and can be processed electronically.

***Public administrations at every institutional level must promote and encourage the re-use of the information made available by them.*** Member States shall ensure that standard licence agreements for the commercial exploitation of public sector information are available in digital format, and can be processed electronically.

*Justification*

*Making public all information concerning citizens' civil and political rights is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. It is therefore of fundamental importance that public administrations be encouraged to promote maximum distribution and re-use of this type of information.*

Amendment 31  
Article 9, first paragraph a (new)

***Member States shall facilitate the re-use of the information they hold by making available, preferably online, lists of main content assets (e.g. major databases) held by public-sector bodies that contain, where relevant, information on the conditions for re-use. Such lists shall be made available freely, and shall show by category whether the generally accessible information is basic information or other information and the public sector body responsible for making it available for re-use.***

*Justification*

*Member States shall ensure transparency as to which categories of data are generally accessible to allow easy comparisons within the EU and identify discrepancies.*

Amendment 32

Article 12, second paragraph a (new)

***The review shall also assess the Directive in relation to the objectives set out in Recital 19. In particular, the review should focus on the success of the Directive in facilitating the creation of Community-wide information products and services, and on how far it has enhanced the cross-border use of public sector information.***

*Justification*

*A review of the directive should include an assessment against its main objectives.*

## EXPLANATORY STATEMENT

### Contents of the Commission proposal

The proposal for a Directive concerning the re-use of public sector information is part of the eEurope 2002 Action Plan “An Information Society for All” presented to and endorsed by the Lisbon European Council. The Commission considers that this new directive will contribute to eEurope 2002 goals, particularly in the areas of eGovernment and digital content.

Besides the advantages that citizens can derive from getting public sector documents recast for more specific use and better reading, the Commission considers that public sector information has an important economic potential. The ultimate aim is that of combining data coming from different sources and creating added-value products and services. Businesses interested in this field therefore have the opportunity to generate new prosperity and create new jobs.

Once recast, public sector information will provide support for digital information products and make it possible to create new services, particularly for the wireless Internet. At the same time, public sector information is expected to become a key factor in the further development of the content sector, consequently increasing job creation.

### Rapporteur's position

Public sector information is defined as all information, irrespective of the medium through which it is conveyed. Thus it includes information written on paper or stored in electronic form or as a sound, visual or audiovisual recording and any part thereof. As the broadest possible definition is being adopted here, it is preferable to refer to ‘information’ rather than ‘documents’. The term ‘document’ primarily suggests material which is written, typed or printed on paper, and this could cause confusion. The term ‘information’ is broader and therefore matches the intended sense better.

The proposal for a directive relates to all public sector information which is already generally accessible in Member States. This information should be available for re-use on the same terms in all Member States. Only then can a level playing field be created. And only a level playing field can ensure that pan-European information products can come onto the market. These can play an important part in the development of third-generation mobile communication services (3G). Merely rolling out UMTS networks is not enough: the development of new content services is one of the essential preconditions for the success of third-generation mobile communication services. The public sector can act as a launching pad for them by encouraging re-use of public sector information, inter alia by making only a marginal charge to cover costs arising from the re-use of this information.

At present there are still numerous obstacles to the successful development of genuinely pan-European information products. The conditions which apply to re-use differ (in some cases widely) between Member States. First, there are the costs of re-use. Whereas in one country only marginal costs may be charged for re-using public sector information, in another high prices may be charged (for example for climatological information: it has been found that the prices charged for such information vary enormously in Member States. This is a major obstacle to a level playing field).

The periods within which information is made available to re-users likewise vary widely, not only between Member States but even within one and the same. In many cases complex procedures apply to requests for information. Often it is not even clear what information is generally accessible, let alone how it can be obtained and under what conditions it may be re-used.

The lack of harmonisation of such conditions is an obstacle to a level playing field. In order to bring about a harmonised approach to the re-use of information, it is important to create clear conditions. I should like to start by distinguishing between basic information and other public sector information. Basic information is information pertaining to democratic states where the rule of law prevails, such as the texts of legislation and regulations, court judgments and information pertaining to representative bodies. In other words, it is information which members of the public and businesses need in order to be able to participate in a democratic system. In every democracy, the individual has the right of access to information which is needed in order to function in a democratic state where the rule of law prevails. This information must therefore be made accessible to all as quickly as possible and free of charge, wherever possible electronically and preferably via the Internet. All other information which is not covered by this definition should be designated as 'other information'. This distinction is necessary because basic information must be made available free of charge. Other information should be available for re-use in return for payment of marginal costs, i.e. costs of reproduction and dispatch of information and the costs of the information medium (video tape, diskette, paper, etc.).

An exception to this is information from cultural institutions (e.g. museums, libraries, archives, orchestras, opera companies, ballet companies, theatres and educational and research institutions such as schools, universities, research institutes, archives and libraries). Insofar as this information is not already excluded from the scope of the directive because it is covered by third-party copyrights, a charge may be made for the information which includes a profit margin in addition to the marginal costs of re-use. This is necessary in order to ensure that there is no threat to the survival of these institutions, which have a very specific public task to perform. The profit margin should be related to costs, and it is up to the public body concerned to prove that this requirement has been complied with.

Besides creating clear conditions to make it possible to re-use public sector information at a minimum of cost or free of charge, rules must be adopted concerning accessibility. Members of the public and businesses must be able to ascertain easily what information is generally available (and thus available for re-use), how it can be obtained and, where applicable, what conditions apply to its re-use. Wherever possible, this should be arranged by publishing lists electronically, preferably on the Internet. Unless satisfactory arrangements are made for practical access to information available for re-use, the advantages of this directive, such as the market potential for new information products, will be partially, and perhaps even largely, cancelled out. For small and medium-sized businesses in particular, this could be an obstacle, because they often do not have the resources to discover what information is available in which countries. As a result there would not be a level playing field. Although this directive does not seek to harmonise the existing access arrangements of the Member States, and although there may be differences from country to country as to what information can or cannot be regarded as generally accessible, due to the existing access rules, which differ, in some cases widely – a fact which in itself is already a serious obstacle to the establishment of a single market for pan-European information products and services – re-use can be better facilitated by publishing lists of generally accessible information on the Internet, as proposed above, stating the conditions which apply.

A point which is of a different nature, but quite fundamental to this directive, is the basic principle underlying the directive that all public sector information which is generally accessible is by definition suitable for re-use in accordance with the conditions laid down in Chapters 2 and 3 of the directive. Public bodies should not be given the opportunity to refuse permission for re-use.

By means of these proposals I hope to make it possible to establish better, harmonised conditions for the re-use of public sector information, so that a better level playing field can be created. In this way, genuine pan-European information products and services can be developed which will benefit the information society in Europe.

4 December 2002

## **OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS**

for the Committee on Industry, External Trade, Research and Energy

on the proposal for a directive of the European Parliament and of the Council on the re-use and commercial exploitation of public sector documents  
(COM(2002) 207 – C5-0292/2002 – 2002/0123(COD))

Draftsman: Jorge Salvador Hernández Mollar

### **PROCEDURE**

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Marco Cappato draftsman at its meeting of 2 October 2002.

It considered the draft opinion at its meetings of 12 November 2002 and 3 December 2002.

At the latter meeting it adopted the following amendments by 29 votes to 6, with 1 abstention.

After the vote, the draftsman requested that his name be withdrawn from the opinion. The committee therefore decided to table the report in the name of its chairman, Jorge Salvador Hernández Mollar.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman and draftsman; Robert J.E. Evans, vice-chairman; Lousewies van der Laan, vice-chairman; Generoso Andria (for Giacomo Santini, pursuant to Rule 153(2)), Mario Borghezio, Giuseppe Brienza, Marco Cappato (for Johan Van Hecke), Michael Cashman, Chantal Cauquil (for Ilka Schröder, pursuant to Rule 153(2)), Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Marianne Eriksson (for Giuseppe Di Lello Finuoli, pursuant to Rule 153(2)), Evelyne Gebhardt (for Adeline Hazan), Anna Karamanou (for Carmen Cerdeira Morterero), Timothy Kirkhope, Ole Krarup, Alain Krivine (for Fodé Sylla), Giorgio Lisi (for Bernd Posselt, pursuant to Rule 153(2)), Manuel Medina Ortega (for Martin Schulz), Pasqualina Napoletano (for Elena Ornella Paciotti, pursuant to Rule 153(2)), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Hubert Pirker, José Ribeiro e Castro, Heide Rühle, Olle Schmidt (for Baroness Sarah Ludford), Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Sabine Zissener (for Eva Klamt, pursuant to Rule 153(2)).

## SHORT JUSTIFICATION

Making public all generally-accessible documents held by the public sector – and hence not only documents concerning the political process but also the judicial and administrative process – is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. The mass exploitation of such information – if effected in such a way that guarantees all EU citizens and undertakings access to and use of that information on the Internet – would facilitate their relations with the public administration and enhance their participation in the democratic process.

At EU level, the objective of accessibility can and should be pursued along structural lines, by developing the use of information technologies and providing a spur to economic growth, employment and competitiveness, and at the same time affording ample opportunities to extend the civil and political rights recognised under the Treaty.

There is a growing need to guarantee access to EU administrative documents in order to encourage participation by European citizens and to reinforce their confidence in the Community institutions. This objective is applicable to institutional matters at every level, be it local, national or international.

Your draftsman considers it a priority for the European institutions to strive to create the necessary legislative and structural conditions for developing and extending individual rights and freedoms by way of new technologies and the prime asset of information, and therefore proposes that:

- each institution should recognise by law, or promote on the basis of its respective powers, the right of every citizen to have access at any moment, not least via the Internet, to the public proceedings of the institutions and the meetings of the elective and competent bodies, and to obtain copies, not least via the Internet, of any public administration document. The information must be presented not only in graphic form but also in textual mode, to enable people with sensory difficulties to use it. It must also be possible for all the information to be accessed via user-friendly programs that are not dependent on proprietary software and whose use is not governed by the need for a licence or by any other requirement;
- citizens should be able to exercise their civil and political rights via electronic channels, in strict compliance with security and privacy requirements. It must be possible to certify that all the programs used comply with the requirements of secrecy and security, and for this to be verifiable, for example by means of public access to the codes for these programs;
- the low-cost principle should be applied to the cost of the use and re-use of any generally-accessible public sector document, in such a way that the amount charged for such documents is limited to the marginal costs of reproducing and disseminating a single copy. At the same time, any information relating to citizens' civil and political rights should always be provided free of charge;
- none of the information held and produced by the public sector should be governed by intellectual property rights, since that would impose an objective limit on its dissemination and re-use.



## AMENDMENTS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Industry, External Trade, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1

#### Recital 1 a

***Article 41 on the right to good administration and Article 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 right of access to European Parliament, Council and Commission documents.***

#### *Justification*

*Reference should be made in this proposal for a directive to the right of access to public documents recognised by the Charter of Fundamental Rights of the European Union.*

### Amendment 2

#### Recital 10

(10) The different formats used by public sector bodies can represent a considerable burden for private organisations that want to re-use information taken from several sources. ***The need to digitise paper-based documents or to manipulate digital files to***

(10) The different formats used by public sector bodies can represent a considerable burden for private organisations that want to re-use information taken from several sources. ***It is therefore necessary to promote public data-gathering systems***

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<sup>1</sup> OJ C ....

*make them mutually compatible should be reduced by requiring public bodies to make the documents available in all pre-existing formats.*

*which are not dependent on the use of specific software which is subject to payment, in particular by favouring systems with publicly accessible codes. All the information must be presented not only in graphic form but also in textual mode, in order to enable people with sensory difficulties to use it.*

*Justification*

*No justification*

Amendment 3  
Recital 11

(11) The time limit for replying to requests for re-using information resources **should** be reasonable and in line with the equivalent time for requests to access the document, in order not to prevent the creation of new aggregated information products and services. Excessive time-lags between the request to re-use documents and the decision on these requests can hamper the establishment of data collections covering the whole of the Community, since the slowest country will set the pace.

(11) The time limit for replying to requests for re-using information resources **shall** be reasonable and in line with the equivalent time for requests to access the document, in order not to prevent the creation of new aggregated information products and services. Excessive time-lags between the request to re-use documents and the decision on these requests can hamper the establishment of data collections covering the whole of the Community, since the slowest country will set the pace.

*Justification*

*Makes the text more effective.*

#### Amendment 4

##### Recital 12

(12) Where charges are made, the total income from allowing access to or re-use of these documents should not exceed the total costs of producing, reproducing and disseminating them, together with a reasonable profit margin. Production includes collection and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable profit margin, constitutes an upper limit to the charges, as any excessive prices should be *precluded*. The public sector bodies should have the possibility of applying lower charges or of not charging at all, and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.

(12) Where charges are made, the total income from allowing access to or re-use of these documents should not exceed the total costs of producing, reproducing and disseminating them, together with a reasonable profit margin. Production includes collection and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable profit margin, constitutes an upper limit to the charges, as any excessive prices should be *prohibited*. The public sector bodies should have the possibility of applying lower charges or of not charging at all, and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.

#### *Justification*

*No justification.*

#### Amendment 5 Recital 14 a (new)

***Making public all generally accessible documents held by the public sector – concerning not only the political process but hence also the legal and administrative process – is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. This objective is applicable to institutional matters at every level, be it local, national or international. Public administrations, at every institutional level should therefore promote and***

*encourage the re-use of information made available by them.*

*Justification*

*Self-explanatory.*

Amendment 6  
Recital 16

Public sector bodies **should** not run the risk of conflict with the basic competition policy principles and **should** not adopt conduct that could constitute an abuse of a dominant position. Exclusive arrangements between public sector bodies and private partners for the exploitation of the documents can lead to considerable market distortions. In many cases these arrangements will have a national basis, thereby preventing other Community players from entering the market and re-using the same information. However, for the purposes of providing a service of general economic interest, an exclusive right to re-use specific public sector information resources may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.

Public sector bodies **must** not run the risk of conflict with the basic competition policy principles and **must** not adopt conduct that could constitute an abuse of a dominant position. Exclusive arrangements between public sector bodies and private partners for the exploitation of the documents can lead to considerable market distortions. In many cases these arrangements will have a national basis, thereby preventing other Community players from entering the market and re-using the same information. However, for the purposes of providing a service of general economic interest, an exclusive right to re-use specific public sector information resources may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.

*Justification*

*Makes the text more effective.*

Amendment 7  
Article 4, paragraph 1

1. Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible and appropriate. This does not imply an obligation for public sector bodies to create documents or to adapt documents in order to comply with the request.

1. Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible and appropriate. This does not imply an obligation for public sector bodies to create documents or to adapt documents in order to comply with the request. ***The public authorities must make available to any citizen of the Union and any natural or legal person residing or having its registered office in a Member State their own documents in a format which as far as possible is not dependent on the use of specific software subject to payment, in particular by favouring systems with publicly accessible codes. Where possible and appropriate, all the information must be presented not only in graphic form but also in textual mode, to enable people with sensory difficulties to use it.***

*Justification*

*No justification.*

Amendment 8  
Article 9

Member States shall ensure that standard licence agreements for the commercial exploitation of public sector information are available in digital format, and can be processed electronically.

***Public administrations at every institutional level must promote and encourage the re-use of the information made available by them.*** Member States shall ensure that standard licence agreements for the commercial exploitation of public sector information are available in digital format, and can be processed electronically.

*Justification*

*See justification for amendment 11.*

29 November 2002

## **OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

for the Committee on Industry, External Trade, Research and Energy

on the proposal for a European Parliament and Council directive on the re-use and commercial exploitation of public sector documents  
(COM(2002) 207 – C5-0292/2002 – 2002/0123(COD))

Draftsman: Miquel Mayol i Raynal

### **PROCEDURE**

The Committee on Economic and Monetary Affairs appointed Miquel Mayol i Raynal draftsman at its meeting of 1 October 2002.

It considered the draft opinion at its meetings of 5 November and 28 November 2002.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: John Purvis acting chairman and vice-chairman; Generoso Andria, Richard A. Balfe (for Jonathan Evans), Luis Berenguer Fuster (for Robert Goebbels), Pervenche Berès, Roberto Felice Bigliardo, Hans Udo Bullmann, Bert Doorn (for José Manuel García-Margallo y Marfil), Manuel António dos Santos (for Christa Randzio-Plath), Harald Ettl (for Mary Honeyball), Lisbeth Grönfeldt Bergman, Brice Hortefeux, Christopher Huhne, Othmar Karas, Christoph Werner Konrad, Werner Langen (for Ingo Friedrich), Astrid Lulling, Thomas Mann (for Hans-Peter Mayer), Helmuth Markov (for Philippe A.R. Herzog), David W. Martin, Fernando Pérez Royo, Elly Plooij-van Gorsel (for Karin Riis-Jørgensen), Alexander Radwan, Bernhard Rapkay, Herman Schmid (for Ioannis Patakis), Olle Schmidt, Peter William Skinner, Helena Torres Marques, Bruno Trentin, Ieke van den Burg (for Giorgos Katiforis), and Theresa Villiers.

## SHORT JUSTIFICATION

The Commission's proposal aims to facilitate the re-use of public sector information by creating a set of rules governing affordable access to public information. Public information such as financial, economic, company information is produced in vast quantities by Ministries and other public sector organisations (which are often in effect natural monopolies). The use of this raw content for new information services is a burgeoning industry, estimated to be of an economic value (i.e. national income derived from industries and activities involved in exploitation of public sector information) of EUR 68 billion<sup>1</sup>, employing around 4 million EU citizens<sup>2</sup>. Many SMEs and start-up companies in particular are involved in the on-line content distribution of public sector information.

Conditions throughout the EU are currently extremely diverse regarding the collection of public sector information and there are therefore currently many legal and practical barriers facing persons and enterprises which wish to use public sector information. This creates a particular problem when re-using information from a public sector organisation in another Member State, to create Europe-wide products. The European content market is therefore facing unnecessary and expensive challenges, in contrast to the situation in other markets.

The proposal creates new opportunities for the European content industry, by creating minimum standards for a legal framework. Your draftsman welcomes the proposal, since it ensures the provision by public sector bodies of documents (electronically where possible), tackles time limits for the provision of documentation, restricts prices for provision of documentation, provides for non-discrimination, ensures transparency of charges, and prohibits exclusive arrangements between public sector bodies and private partners. Documents must be made available in any pre-existing format or language and electronically where possible. The proposal also ensures full respect of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>3</sup> - documents containing personal data are excluded from the directive, unless the re-use of the personal data is permitted under Community law and national measures. The proposal excludes from its scope public sector broadcasters, educational and research establishments and cultural establishments.

The proposal does, however, need to be improved in three main areas in order to ensure that public sector bodies are not afforded loop-holes through which the requirements of the proposal would be seriously diluted. It must be ensured that public sector bodies which are currently imposing high charges are not allowed to maintain this practice, documents which are generally accessible must also be available for re-use (without the possibility for public sector bodies to classify at will certain documents which are not to be re-used and exploitation) and entities which commercialise the documents must clarify that the documents were obtained from public bodies and at the cost of production, re-production and dissemination.

### **Charging**

The proposal restricts the charges for information to not exceeding the total costs of producing, reproducing and disseminating the information, yet the proposal also allows public sector bodies to make a "reasonable" profit margin from this information which has been collected with public

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<sup>1</sup> PIRA International study on the Commercial Exploitation of Europe's Public Sector Information

<sup>2</sup> See explanatory memorandum COM 2002/207

<sup>3</sup> OJ L 281 23.11.1995, p. 31



money. This permits opportunity for public sector bodies to apply high charges for taxpayer-funded public information. Your draftsman is of the opinion that public sector information should not be treated by Member States as a commodity to produce short-term revenues for the benefit of the individual public sector body, since the documents have already been paid for by EU citizens. The economic benefits and ultimately corporate and other tax revenue generated by an expanding content industry are likely to outweigh the short-term gains of over-charging for publicly available information. Therefore your Draftsman proposes that the public sector bodies should not be permitted to make a profit from the dissemination of the documentation, but that they should charge only for the cost of production, re-production and dissemination of the information.

### **Re-use of all generally accessible documents**

The Commission's proposal does not oblige public sector bodies to allow the re-use of documents, even if they are documents which are classified as "generally accessible". Your Draftsman considers that in order for the proposal to have a real impact and to stimulate the accessibility to the public and the expansion of the European content industry, all documents which are generally accessible should be available to re-use. Otherwise the status quo will remain and the directive will not have the stated desired effect. Public sector bodies should not be able to classify at will certain documents which are not to be not for re-use and exploitation.

### **Transparency from the entities which are commercialising public sector information**

It is important that there is transparency from the commercialisers of public sector documents as to the source of the information that they are exploiting. Your Draftsman therefore considers that it must be clear that the information was obtained from a public sector body and at the cost of production, reproduction and dissemination.

## AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Industry, External Trade, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 9

This Directive should apply to documents held by the public sector bodies that are generally accessible. ***Where public sector bodies allow the re-use of such documents they should be re-usable for commercial and non-commercial purposes under certain conditions.*** Public sector bodies should ***be encouraged to*** make available for re-use any documents held by them that are generally accessible

This Directive should apply to documents held by the public sector bodies that are generally accessible. Public sector bodies should make available for re-use any documents held by them that are generally accessible.

### *Justification*

*The Commission's proposal is restrictive since it allows only documents that Member States currently allow to be re-used to be included in the provisions of the directive. This therefore means that public sector information which is generally accessible can still be subject to restrictions on re-use for commercial or non-commercial purposes*

### Amendment 2 Recital 14a (new)

***When a natural or legal person is commercially exploiting public sector documents, they must specify that the information was obtained from a public***

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<sup>1</sup> OJ C 227 E, 24.09.2002, p. 382-386.

***sector body and at the cost of production, reproduction and dissemination.***

*Justification*

*An entity which commercialises the documents must be transparent about the source of the information and must make it clear that the information was obtained from a public sector body and at the charge of the cost of production, reproduction and dissemination.*

Amendment 3  
Article 3

***Where public sector bodies allow the re-use of*** documents that are generally accessible, ***these documents*** shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in chapters II and III.

Documents that are generally accessible shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in chapters II and III.

*Justification*

*The Commission's proposal is restrictive since it allows only documents that Member States currently allow to be re-used to be included in the provisions of the directive. This therefore means that public sector information which is generally accessible can still be subject to restrictions on re-use for commercial or non-commercial purposes.*

Amendment 4  
Article 8.2a (new)

***Where a natural or legal person re-uses a document for commercial purposes, they shall clearly express that the document was obtained from a public sector body and that the charge by the public sector body did not exceed the cost of***

*production, reproduction and  
dissemination of the document.*

*Justification*

*An entity which commercialises the documents must be transparent about the source of its information and must make it clear that the information was obtained from a public sector body at the charge of the cost of production, reproduction and dissemination.*