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*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and
Council directive on the re-use and commercial exploitation of public sector
documents
(7946/1/2003 – C5-0251/2003 – 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

At the sitting of 12 February 2003 Parliament adopted its position at first reading on the proposal/amended 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 5 June 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Industry, External Trade, Research and Energy (7946/1/2003 – C5-0251/2003).

The committee had appointed W.G. van Velzen rapporteur at its meeting of 19 June 2002.

It considered the common position and draft recommendation for second reading at its meetings of 17 June, 25 and 26 August 2003.

At the last meeting it adopted the draft legislative resolution by 43 votes to 0, with 1 abstention.

The following were present for the vote: Luis Berenguer Fuster, chairman; Peter Michael Mombaur, Yves Piétrasanta and Jaime Valdivielso de Cué vice-chairmen; W.G. van Velzen, rapporteur; Gordon J. Adam (for Massimo Carraro), Konstantinos Alyssandrakis, Per-Arne Arvidsson (for Sir Robert Atkins), María del Pilar Ayuso González (for Godelieve Quisthoudt-Rowohl), Guido Bodrato, Marco Cappato, Gérard Caudron, Giles Bryan Chichester, Harlem Désir, Concepció Ferrer, Francesco Fiori (for Umberto Scapagnini), Christos Folias (for Dominique Vlasto), Neena Gill (for Norbert Glante), Michel Hansenne, Hans Karlsson, Bashir Khanbhai, Werner Langen, Rolf Linkohr, Erika Mann, Hans-Peter Martin (for Mechtild Rothe), Marjo Matikainen-Kallström, Eryl Margaret McNally, Ana Clara Maria Miranda de Lage, Elizabeth Montfort, Bill Newton Dunn (for Nicholas Clegg), Angelika Niebler, Seán Ó Neachtain, Josu Ortuondo Larrea (for Nuala Ahern), Reino Paasilinna, Paolo Pastorelli, Elly Plooi-j-van Gorsel, John Purvis, Imelda Mary Read, Christian Foldberg Røvsing, Paul Rübiger, Konrad K. Schwaiger, Esko Olavi Seppänen, Claude Turmes and Alejo Vidal-Quadras Roca.

The recommendation for second reading was tabled on 4 September 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a European Parliament and Council directive on the re-use and commercial exploitation of public sector documents (7946/1/2003 – C5-0251/2003 – 2002/0123(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (7946/1/2003 – C5-0251/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2002) 207²),
 - having regard to the Commission's amended proposal (COM(2003) 119³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Industry, External Trade, Research and Energy (A5-0284/2003),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ Text adopted on 12.02.2003, P5_TA(2003)0049

² OJ C 227E, 24.09.2002, p. 382.

³ OJ C not yet published.

Amendment 1

Title

DIRECTIVE 2003/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the re-use of public sector *documents*

DIRECTIVE 2003/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the re-use of public sector *information*

Justification

Self-explanatory.

Amendment 2

Recital 6

(6) 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 information resource. A minimum harmonisation of national rules and practices on the re-use and commercial exploitation of public sector information 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.

(6) 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 information resource. ***Traditional practice in public-sector departments in exploiting public-sector information has, however, developed in very disparate ways. That should be taken into account.*** A minimum harmonisation of national rules and practices on the re-use and commercial exploitation of public sector information 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.

Justification

Self-explanatory.

Amendment 3

Recital 9

(9) This Directive does not contain an obligation to allow re-use of documents. The decision whether or not to authorise re-use will remain with the Member States or the public sector body concerned. 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. The definition of "document" is not intended to cover computer programs. 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. 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.

(9) This Directive does not contain an obligation to allow re-use of documents. The decision whether or not to authorise re-use will remain with the Member States or the public sector body concerned. 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. The definition of "document" is not intended to cover computer programs. 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 Community level, Article 41 (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 access to European Parliament, Council 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.

Justification

Self-explanatory.

Amendment 4

Recital 12

(12) The time limit for replying to requests for re-use should be reasonable and in line with the equivalent time for requests to access the document under the relevant access regimes, ***in order to*** stimulate the creation of new aggregated information products and services at pan-European level.

(12) The time limit for replying to requests for re-use should be reasonable and in line with the equivalent time for requests to access the document under the relevant access regimes. ***Reasonable time limits throughout the Union will*** stimulate the creation of new aggregated information products and services at pan-European level. ***Once a request for re-use has been granted, public sector bodies should make the documents available in a timeframe that allows for their full economic potential to be exploited. This is particularly important for dynamic content (e.g. traffic data), the economic value of which depends on its immediate availability and of regular updates. Should a licence be used, the timely availability of documents may be a part of the terms of the licence.***

Justification

Self-explanatory.

Amendment 5

Recital 13

(13) 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

(13) 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.

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 available their own documents 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 people with disabilities.***

Justification

Self-explanatory.

Amendment 6 Recital 14

(14) This Directive recognises that certain public sector bodies are required to be self-financing in whole or in part and depend on the income from sales of their documents to fulfil their public task effectively. This Directive therefore allows public sector bodies to recover total costs of collecting, producing, reproducing and disseminating documents, together with a reasonable return on investment.

Production includes creation and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable return on investment, constitutes an upper limit to the charges, as any excessive prices should be precluded. ***Member States or public sector bodies may choose the most appropriate cost calculation method, in line with the accounting principles applicable to the public sector bodies involved.*** The upper limit for charges set in this Directive is without prejudice to the right of Member

(14) Where charges are made, the total income from allowing access to or re-use of documents should not exceed the total costs of producing, reproducing and disseminating this document, together with a reasonable return on investment.

Production includes creation and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable return on investment, constitutes an upper limit to the charges, as any excessive prices should be precluded.

The upper limit for charges set in this Directive is without prejudice to the right of Member States or public sector bodies to apply lower charges or no charges 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.

States or public sector bodies to apply lower charges or no charges 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.

Amendment 7

Recital 15

(15) 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 Community-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.

(15) 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 Community-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 should be informed of available means of redress relating to decisions or practices affecting them. This will be, in particular, important for SMEs which may not be familiar with interactions with public sector bodies from other MS and corresponding means of redress.***

Justification

Self-explanatory.

Amendment 8 Recital 15 a (new)

(15a). Making public all generally accessible information held by the public sector – concerning not only the political process but 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 institutions at every level, be it local, national or international. Public authorities at every institutional level should therefore promote and encourage the re-use of documents made available by them.

Amendment 9

Recital 16a (new)

(16a). If the competent authority decides to discontinue making certain documents available for re-use, or to terminate updating these documents, it shall make these decisions publicly known, at the earliest opportunity, via electronic means when possible.

Justification

It should be guaranteed that those enterprises, in particular, that have committed themselves to investments in connection with the re-use of documents will have planning security in terms of whether, and for how long, certain documents will continue to be made available by the authorities concerned.

Amendment 10

Recital 20 a (new)

(20a). Tools that help potential re-users to find documents available for re-use and

the conditions for re-use can considerably facilitate the cross-border use of public sector documents. Therefore Member States should ensure that practical arrangements are in place that help re-users in their search for documents available for re-use. Assets lists, accessible preferably online, of main documents (documents that are extensively re-used or that have the potential to be extensively re-used), and portal sites that are linked to decentralised assets lists are examples of such practical arrangements.

Amendment 11

Article 1, paragraph 1

1. This Directive establishes a minimum set of rules governing the re-use of existing documents held by public sector bodies of the Member States.

1. This Directive establishes a minimum set of rules governing the re-use *and the practical means of facilitating re-use* of existing documents held by public sector bodies of the Member States.

Justification

Self-explanatory.

Amendment 12

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;

Amendment 13
Article 1, paragraph 3

3. This Directive builds on the existing access regimes in the Member States ***and does not change the national rules for access to documents held by public sector bodies.*** This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to get access to the documents.

3. This Directive builds on the existing access regimes in the Member States. This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to get access to the documents.

Amendment 14
Article 2, paragraph 3, point a) new

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

Amendment 15
Article 2, paragraph 3, point bb) new

bb) ‘generally accessible information’

means any information to which a right of access is granted under the rules established in the Member State for access to information as well as any information used by public sector bodies as an input for information products or services which they commercialise;

Amendment 16
Article 3

Member States shall ensure that, where the re-use of documents held by public sector bodies is allowed, the conditions set out in chapters III and IV shall apply.

Where public sector bodies allow the re-use of 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.

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

Amendment 17
Article 4, paragraph 2

2. Where no time-limits or other rules regulating the timely provision of documents have been established, *Member States shall ensure that* public sector bodies process *requests* and deliver the documents for re-use to the applicant *or, if a licence is needed, finalise the licence offer to the applicant* within a timeframe of not more than *20 working days* after its

2. Where no time-limits or other rules regulating the timely provision of documents have been established, public sector bodies *shall* process *the request* and *shall* deliver the documents for re-use to the applicant within a timeframe of not more than *three weeks* after its receipt. This timeframe may be extended by another 20 working days for extensive or

receipt. This timeframe may be extended by another 20 working days for extensive or complex requests. In such cases the applicant shall be notified within three weeks after the initial request that more time is needed to process it.

complex requests. In such cases the applicant shall be notified within three weeks after the initial request that more time is needed to process it.

Amendment 18

Article 7, paragraph 1

Any applicable conditions and standard charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible and appropriate. The public sector body in question shall also indicate which factors will be taken into account in the calculation of charges for atypical cases.

Any applicable conditions and standard charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible and appropriate. ***On request, the public sector body shall indicate the calculation basis for the published charge.*** The public sector body in question shall also indicate which factors will be taken into account in the calculation of charges for atypical cases. ***Public sector bodies shall ensure that applicants for re-use of documents are informed of available means of redress relating to decisions or practices affecting them.***

Justification

Self-explanatory.

Amendment 19

Article 8 a (new)

Member States shall ensure that practical arrangements are in place that facilitate the search for documents available for re-use, such as assets lists, available preferably online, of main documents,

and portal sites that are linked to decentralised assets lists.