



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0430(COD)

15.10.2012

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council
amending Directive 2003/98/EC on re-use of public sector information
(COM(2011)0877 – C7-0502/2011 – 2011/0430(COD))

Rapporteur: Rafał Trzaskowski

PA_Legam

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Unbureaucratic, cost-effective re-use of public sector information is available for the following important communities of users: SMEs, particularly those in ICT; journalists; and scientists. In addition, improved access to information in the public sector promotes transparency and clarity in the work of public bodies vis-à-vis citizens.

Amendment 2

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) Directive 2003/98/EC does not **contain** an obligation to allow re-use of documents. The decision whether or not to authorise re-use remains with the Member States or the public sector body concerned. At the same time, the Directive builds on national rules on access to documents. Some Member States have expressly linked the right of re-use to this right of access, **so that all generally accessible documents are re-usable. In** other Member States, **the link between the two sets of rules is less clear and this is a source of legal uncertainty.**

(6) Directive 2003/98/EC does not **justify** an obligation **for Member States** to allow **access to, and** re-use of, **public-sector** documents. The decision whether or not to authorise re-use remains with the Member States or the public sector body concerned. **The Directive only harmonises the conditions subject to which documents are made available for re-use.** At the same time, the Directive builds on national rules on access to documents. Some Member States have expressly linked the right of re-use to this right of access, **whereas** other Member States **have legally separated the right of re-use from national rules on**

access to information and freedom of information.

Amendment 3

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) National regulations on access to public documents are based on transparency and freedom of information. In some cases, however, this right is restricted, for example to those who have a particular interest in these documents or in cases in which the documents contain sensitive information relating, for example, to national or public security.

Amendment 4

Proposal for a directive Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) Directive 2003/98/EC applies to documents the supply of which forms part of the public task of the public-sector bodies concerned, as defined by law or by other binding rules in the Member State in question. It should be possible for this public task to be defined for the bodies concerned either in general or from case to case.

Amendment 5

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) Directive 2003/98/EC should therefore

(7) Directive 2003/98/EC should therefore

lay down a clear obligation for Member States to make all generally available documents re-usable. As it constitutes a limitation to the intellectual property rights hold by the authors of the documents, the scope of such a link between the right of access and the right of use should be narrowed to what is strictly necessary to reach the objectives pursued by its introduction. In this respect, taking into account the Union legislation and Member States' and Union's international obligations, notably under the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), documents on which third parties hold intellectual property rights should be excluded from the scope of Directive 2003/98/EC. If a third party was the initial owner of a document held by libraries (including university libraries), museums and archives that is still protected by intellectual property rights, that document should, for the purpose of this Directive, be considered as a document for which third parties hold intellectual property rights.

regulate how Member States make all available documents available for re-use. The scope of such a link between the right of access and the right of use should therefore be narrowed to what is strictly necessary to reach the objectives pursued by its introduction. In this respect, taking into account the Union legislation and Member States' and Union's international obligations, notably under the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), documents on which third parties hold intellectual property rights should be excluded from the scope of Directive 2003/98/EC. If a third party was the initial owner of a document held by libraries (including university libraries), museums and archives that is still protected by intellectual property rights, that document should, for the purpose of this Directive, be considered as a document for which third parties hold intellectual property rights.

Amendment 6

Proposal for a directive Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) As the re-use of documents held by libraries (including university libraries), museums and archives possesses substantial social and economic potential for cultural and creative industries, on-going digitisation of European cultural collections should be promoted.

Amendment 7

Proposal for a directive
Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) As regards the description, digitisation and presentation of cultural collections, there are numerous cooperation arrangements between libraries (including university libraries), museums, archives and private partners which involve public sector bodies granting exclusive rights of access and commercial exploitation to cooperation partners. Practice has shown that these public-private partnerships can facilitate worthwhile use of cultural collections and at the same time that they accelerate access to the cultural heritage for members of the public. Directive 2003/98/EC should therefore not preclude the conclusion of agreements granting exclusive rights. Moreover, cultural institutions should be free to choose for themselves the partners with which they wish to cooperate, subject to compliance with the principles of transparency and non-discrimination.

Amendment 8

Proposal for a directive
Recital 11

Text proposed by the Commission

Amendment

(11) To facilitate re-use, public sector bodies should make documents available through machine readable formats and together with their metadata where possible and appropriate, in a format that ensures interoperability , e.g. by processing them in a way consistent with the principles governing the compatibility and usability requirements for spatial information under Directive 2007/2/EC of the European Parliament and of the Council of 14 March

(11) To facilitate re-use, public sector bodies should make documents available through ***technology-neutral*** machine-readable formats and together with their metadata where possible and appropriate, in a format that ensures interoperability , e.g. by processing them in a way consistent with the principles governing the compatibility and usability requirements for spatial information under Directive 2007/2/EC of the European Parliament and

2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)

of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).

Amendment 9

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) A document is considered a document in a machine-readable format if it is a digital document in a file format which allows software applications to easily identify, recognise and extract data from it. Documents encoded in files limiting in any way such processing, or determining a specific technology needed for this processing, shall not be considered as documents in machine-readable formats. Member States shall ensure the use of open machine-readable formats, with the exception of data where use of open formats would be unjustifiable due to technological or economical reasons. Every usage of non-open machine-readable data format should be justified and the technical description of the format used should be provided.

Amendment 10

Proposal for a directive Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) ‘open’ means that the format’s specification is maintained by a not-for-profit organisation; its ongoing development occurs on the basis of an open decision-making procedure available to all interested parties; the format

specification document is available freely; the intellectual property of the standard is made irrevocably available on a royalty-free basis.

Justification

Definition based on a definition provided by the European Commission for the purpose of the European Interoperability Framework.

Amendment 11 **Proposal for a directive** **Recital 12**

Text proposed by the Commission

(12) Where charges are made for the re-use of documents, they should in principle be limited to the marginal costs incurred ***for their reproduction and dissemination, unless exceptionally justified according to objective, transparent and verifiable criteria.*** The necessity of not hindering the normal running of public sector bodies covering a substantial part of the operating cost relating to the performance of their public task from the exploitation of their intellectual property rights should notably be taken into consideration. The burden of proving that charges are cost-oriented and comply with relevant limits should lie with the public sector body charging for the re-use of documents.

Amendment 12 **Proposal for a directive** **Recital 13**

Text proposed by the Commission

(13) In relation to any re-use that is made of the document, public sector bodies may, where practicable, impose conditions on the re-user, such as acknowledgment of source. Any licences for the re-use of public sector information should in any

Amendment

(12) Where charges are made for the re-use of documents, they should in principle be limited to the marginal costs incurred ***in the process of meeting a given request for re-use.*** The necessity of not hindering the normal running of public sector bodies covering a substantial part of the operating cost relating to the performance of their public task from the exploitation of their intellectual property rights should notably be taken into consideration. The burden of proving that charges are cost-oriented and comply with relevant limits should ***always*** lie with the public sector body charging for the re-use of documents. ***Those charges should be set according to objective, transparent and verifiable criteria.***

Amendment

(13) In relation to any re-use that is made of the document, public sector bodies may, where practicable, impose conditions on the re-user, such as acknowledgment of source. Any licences for the re-use of public sector information should in any

case place as few restrictions on re-use as possible. Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, *may also* play an important role in this respect. Therefore, Member States should encourage the use of open *government* licences.

case place as few restrictions on re-use as possible, *preferably limiting them to the indication of source*. Open licences available online, which grant wider re-use rights without technological, financial or geographical limitations and relying on open data formats, *should* play an important role in this respect. Therefore, Member States should encourage the use of open licences *that in time should become standardised across the Union*.

Amendment 13

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Proper implementation of some of the features of this Directive, such as means of redress, compliance with charging principles and reporting obligations require supervision by independent authorities competent on the re-use of public sector information. To ensure consistency between approaches at Union level, coordination between the independent authorities should be encouraged, particularly through exchange of information on best practices and data re-use policies.

Amendment

(14) Proper implementation of some of the features of this Directive, such as means of redress, compliance with charging principles and reporting obligations require supervision by independent authorities competent on the re-use of public sector information. *Member States have a responsibility to make appropriate national authorities responsible for supervision*. To ensure consistency between approaches at Union level, coordination between the independent authorities should be encouraged, particularly through exchange of information on best practices and data re-use policies. *Where implementation results in conflict, recourse can be made to national ombudsmen systems or the European Ombudsman*.

Justification

The establishment of an independent regulatory authority would be contrary to the efforts of the Member States to reduce bureaucracy and consolidate budgets and would encroach to an unnecessary degree upon Member States' powers of self-organisation.

Amendment 14
Proposal for a directive
Recital 17

Text proposed by the Commission

(17) It is necessary to ensure that the Member States (see recital 19) report to the Commission on the ***extent of the re-use of*** public sector information, the conditions under which it is made available, and the work of the independent authority. To ensure consistency between approaches at Union level, coordination between the independent authorities should be encouraged, particularly through exchange of information on best practices and data re-use policies.

Amendment

(17) It is necessary to ensure that the Member States (see recital 19) report to the Commission on the ***availability*** of public sector information ***for re-use***, the conditions under which it is made available, and the work of the independent authority. To ensure consistency between approaches at Union level, coordination between the independent authorities should be encouraged, particularly through exchange of information on best practices and data re-use policies.

Amendment 15

Proposal for a directive
Recital 18

Text proposed by the Commission

(18) The Commission should assist the Member States in implementing the Directive in a consistent way by ***giving guidance***, particularly on charging and calculation of costs, on recommended licensing conditions and on formats, after consulting interested parties.

Amendment

(18) The Commission should assist the Member States in implementing the Directive in a consistent way by ***making proposals and laying down guidelines***, particularly on charging and calculation of costs, on recommended licensing conditions and on formats, after consulting interested parties.

Amendment 16
Proposal for a directive
Article 1 – point 1 – point 1 a (new)
Directive 2003/98/EC
Article 1 - paragraph 2 - point c

Text proposed by the Commission

Amendment

(1 a) In paragraph 2, point (c) is replaced by the following:

'(c) documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of:

- the protection of national security (i.e. State security), defence, or public security,*
- statistical or commercial confidentiality;*
- protection of privacy and personal data;'*

Amendment 17
Proposal for a directive
Article 1 – point 2
Directive 2003/98/EC
Article 2 – point 6 (new)

Text proposed by the Commission

6. “machine-readable” means *that* digital documents are sufficiently structured for software applications to identify *reliably individual statements of fact and their internal structure*.

Amendment

6. “*document in a* machine-readable format” means *a* digital document in a file format which allows software applications to easily identify, recognise and extract data of interest from that document in a technologically neutral way.

Amendment 18
Proposal for a directive
Article 1 – point 4 – point - 1 (new)
Directive 2003/98/EC
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

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

Public sector bodies shall process requests for re-use through electronic means. They shall make, through electronic means where possible and appropriate, the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a reasonable time that is consistent with the time frames laid down for the processing of requests for access to

documents.

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point 2

Directive 2003/98/EC

Article 4 – paragraph 4

Text proposed by the Commission

The means of redress shall include the possibility of review by an *independent* authority *that is vested with specific regulatory powers regarding the re-use of public sector information and whose decisions are binding upon the public sector body concerned.*

Amendment

The means of redress shall include *a reference to* the possibility of review by an authority *in the Member States.*

Justification

The establishment of an independent regulatory authority would be contrary to the efforts of the Member States to reduce bureaucracy and consolidate budgets and would encroach to an unnecessary degree upon Member States' powers of self-organisation.

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point 2 (new)

2003/98/EC

Article 4 – new paragraph

Text proposed by the Commission

Amendment

This Directive is fully compliant with applicable data protection law. If public data made available for re-use concern personal data, it should be establish under what conditions and subject to what specific data protection safeguards reuse is permissible, if practicable under a licence. This assessment must ensure that there is an adequate legal basis for the transfer and reuse of data under national law, that the reuse is available only for a compatible purpose and that applicants

and subsequent users are required to comply with all other provisions of applicable data protection law. The Commission shall monitor closely if implementation of this Directive does not infringe EU data protection legislation.

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point 1

Directive 2003/98/EC

Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Paragraph 1 is *replaced by the following:*

‘1. Public sector bodies shall make their documents available in the pre-existing formats or languages and, where possible and appropriate, in technology-neutral, machine-readable format and together with their metadata. This shall not imply an obligation for public sector bodies to create, digitise or adapt documents or render them machine-readable in a technology-neutral manner in order to comply with the request, nor shall it imply an obligation to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.’

Amendment 22

Proposal for a directive

Article 1 – point 6 – point 1

Directive 2003/98/EC

Article 6 – paragraph 1 (new)

Text proposed by the Commission

1. Where charges are made for the re-use

Amendment

1. Where charges are made for the re-use

of documents, the total amount charged by public sector bodies shall be limited to the marginal costs incurred for their reproduction and dissemination.

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

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

of documents, the total amount charged by public sector bodies shall be limited to the marginal costs incurred for their reproduction, *provision* and dissemination.

2. Paragraph 1 shall not apply to:

a) exceptional cases, *where* public sector bodies **are required to** generate **revenue to cover** a substantial part of their operating costs relating to the performance of their public service task, public sector bodies may be allowed to charge for the re-use of documents over and above the marginal costs

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

3. Where charges are made under paragraph 2, they are set according to objective, transparent and verifiable criteria. The total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction, provision and dissemination, together with a reasonable return on investment. If applicable, it shall also not exceed, anonymization of personal data or investments for the purpose of making the data available for re-use through electronic means. Charges made under paragraphs 1 and 2 should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

4. Charges made under paragraph 3 are subject to review by the independent authority referred to in Article 4(4), and

without prejudice to paragraphs 2 and 3 of this Article.

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 7

Directive 2003/98/EC

Article 7

Text proposed by the Commission

(7) In Article 7 (Transparency), the **words ‘over and above the marginal costs or’ are inserted after ‘calculation of charges’.**

Amendment

(7) In Article 7 (Transparency), the **third sentence is replaced by the following:**

‘The public sector body in question shall also indicate which factors will be taken into account in the calculation of charges as referred to in Article 6.’

Amendment 24

Proposal for a directive

Article 1 – point 8 – point 1

Directive 2003/98/EC

Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 8 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) For the purpose of a consistent implementation of this Article, the Commission shall adopt guidelines for recommended standard and open licences for the re-use of public sector information. These guidelines will include a specific data protection clause.

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive 2003/98/EC

Article 9

Text proposed by the Commission

Amendment

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

Member States shall ***make*** practical arrangements ***to facilitate searches*** for documents available for re-use ***throughout the Union***, such as asset lists of main documents with relevant metadata, accessible preferably in ***technology-neutral***, machine-readable format, and portal sites that are linked to asset lists.

Justification

It is worthwhile to introduce cross-lingual search functions, and they are already provided voluntarily. However, in view of the financial situation of the public sector, introducing a general requirement always to provide such search options in other European languages as well would entail disproportionately high costs.

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 9 a (new)

Directive 2003/98/EC

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

(9a) Article 11, paragraph 2 is amended

as follows:

‘2. Notwithstanding paragraph 1, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the exclusive rights arrangement shall be subject to regular review, and shall, in any event, be reviewed every four years. The exclusive arrangements established after the entry into force of this Directive shall be subject to the principle of transparency and shall be made public by the public sector bodies concerned.’

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 9 b (new)

Directive 2003/98/EC

Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(9b) In Article 11, the following paragraph is inserted:

‘2a. Notwithstanding paragraph 1, where an exclusive right is granted in connection with the commercial exploitation which is necessary in order to digitise cultural collections, the commercial exploitation shall not continue for longer than seven years. During this period, the exclusive right may not be reviewed. The exclusive arrangements established after the entry into force of this Directive shall be transparent and made public.’

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 10 – introductory part

Directive 2003/98/EC

Article 11 – paragraph 3

Text proposed by the Commission

(10) **In** Article 11 (Prohibition of exclusive arrangements), ***the following sentence is added at the end of paragraph 3:***

Amendment

(10) ***Paragraph 3 of*** Article 11 (Prohibition of exclusive arrangements) ***shall read as follows:***

‘3. Existing exclusive arrangements that do not qualify for an exception under paragraph 2 shall be terminated at the end of the contract or in any case not later than 31 December 2008. Such arrangements concerning libraries (including university libraries), museums and archives which do not qualify for an exception under paragraph 2 or paragraph 2a shall be terminated at the end of the contract or in any case not later than 31 December 20XX [6 years after entry into force of the Directive].’

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 12 – introductory part

Directive 2003/98/EC

Article 13

Text proposed by the Commission

(12) In Article 13 (Review) the date of 1 July 2008 is replaced by [3 years after the ***transposition*** date] and the following paragraph is added:

Amendment

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

Amendment 31

Proposal for a directive

Article 1 – point 12

Directive 2003/98/EC

Article 13 – paragraph 3 (new)

Text proposed by the Commission

Member States shall submit ***a yearly*** report to the Commission on the ***extent of the re-use of*** public sector information, the

Amendment

Member States shall submit a report to the Commission ***every three years*** on the ***availability*** of public sector information ***for***

conditions under which it is made available and the work of the independent authority referred to in article 4(4).

re-use, the conditions under which it is made available and the work of the independent authority referred to in article 4(4).

PROCEDURE

Title	Amendment of Directive 2003/98/EC on re-use of public sector information		
References	COM(2011)0877 – C7-0502/2011 – 2011/0430(COD)		
Committee responsible Date announced in plenary	ITRE 15.12.2011		
Opinion by Date announced in plenary	IMCO 15.12.2011		
Rapporteur Date appointed	Rafał Trzaskowski 29.2.2012		
Discussed in committee	8.5.2012	20.6.2012	18.9.2012
Date adopted	11.10.2012		
Result of final vote	+: 28 -: 0 0: 2		
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Jorgo Chatzimarkakis, Sergio Gaetano Cofferati, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia de Campos, Vicente Miguel Garcés Ramón, Louis Grech, Mikael Gustafsson, Małgorzata Handzlik, Malcolm Harbour, Iliana Ivanova, Sandra Kalniete, Edvard Kožušník, Hans-Peter Mayer, Gesine Meissner, Sirpa Pietikäinen, Phil Prendergast, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Gino Trematerra, Barbara Weiler		
Substitute(s) present for the final vote	Regina Bastos, Ildikó Gáll-Pelcz, María Irigoyen Pérez, Olle Schmidt, Olga Sehnalová, Kyriacos Triantaphyllides, Kerstin Westphal		