DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy


Rapporteur: Marielle Gallo
SHORT JUSTIFICATION

The proposal for a directive is part of the Digital Agenda for Europe. Public sector information can be used in the development of new digital products and services and is a vast source of growth potential that has not been sufficiently exploited by Member States.

The rapporteur welcomes the timeliness of the Commission proposal, given that the Internet is no longer seen as a source of information and knowledge, but by many as a source of data.

As regards the content of the proposal, the rapporteur wishes to draw attention to the following points:

1. Scope of the directive
Documents which are not accessible due to personal data protection reasons should be excluded from the scope of the directive.

2. Definitions
In order to facilitate its re-use, public sector information should be made available in technology-neutral and machine-readable formats. Efforts should be made to ensure that, as far as possible, specific technology is not needed to process the documents.

3. Charges
The issue of charges is key to the success of the re-use of public sector information. If the charges are set too high, the development of new digital products and services will be cost-prohibitive for businesses, particularly start-ups and SMEs. However, some public sector bodies derive part of their revenue from the exploitation of their intellectual property rights.

The rapporteur is aware that a balance needs to be struck between these two objectives - increasing the re-use of public information, on the one hand, and financing the public service tasks of certain bodies, on the other hand. The rapporteur proposes maintaining the possibility for certain public bodies and libraries, museums and archives to charge amounts that exceed the marginal costs involved in reproducing information and making it available, on the basis of objective, transparent and verifiable criteria and subject to the approval of the national authority competent to supervise the re-use of public sector information.

4. Independent authority responsible for supervising the re-use of public sector information
Lastly, the rapporteur takes the view that a new administrative authority does not need to be created to supervise the re-use of public sector information. Member States can designate an existing authority to successfully carry out this role.

AMENDMENTS

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

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Amendment 1

Proposed for a directive
Recital 7

Text proposed by the Commission

(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.

Amendment

(7) Directive 2003/98/EC should therefore lay down a clear obligation for Member States to make all generally available documents re-usable. This obligation should not apply to documents which, in accordance with existing access rules in the Member States, are not accessible, or which are covered by the exceptions provided for in this Directive.
Amendment 2

Proposal for a directive
Recital 7 a (new)

*Text proposed by the Commission*

(7a) Taking into account the legislation of the Union and the Member States and the 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*

Or. fr

Amendment 3

Proposal for a directive
Recital 10

*Text proposed by the Commission*

(10) The scope of application of the Directive is extended to libraries (including university libraries), museums and archives. The Directive does not apply to other cultural institutions, such as operas, ballets or theatres, including the archives that are part of these institutions.

*Amendment*

(10) The scope of application of the Directive is extended to libraries (including university libraries), museums and archives. The Directive does not apply to other cultural institutions, such as operas, ballets or theatres, including the archives that are part of these institutions, *or to public service broadcasting bodies.*
Amendment 4
Proposal for a directive
Recital 11

Text proposed by the Commission

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

Amendment

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

Amendment 5
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

Amendment

(12) Where charges are made for the re-use of documents, they should be set according to objective, transparent and verifiable criteria that ensure equal treatment. They should in principle be limited to the marginal costs involved in reproducing documents and making them available. 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
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.

public task from the exploitation of their intellectual property rights should, *however*, be taken into consideration. *These bodies should be able to levy charges that exceed the marginal costs involved in reproducing documents and making them available and provide a reasonable return on investment.* The charges should be set according to **objective, transparent and verifiable criteria that ensure equal treatment.** 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 6**

**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 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.

*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, *should* play an important role in this respect. Therefore, Member States should encourage the use of open government licences.
Amendment 7

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 authorities competent on the re-use of public sector information. Member States should determine which authorities are competent to supervise the re-use of public sector information.

Or. fr

Amendment 8

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 extent of the re-use of public sector information, the conditions under which it is made available, and the work of the authority competent to supervise 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.

Or. fr
Amendment 9
Proposal for a directive
Article 1 – point 1 – sub-point 2
Directive 2003/98/EC
Article 1 – paragraph 2 – point e

Text proposed by the Commission
(e) documents held by educational and research establishments, *such as research facilities*, including, *where relevant,* organisations established for the transfer of research results, schools and universities (except university libraries in respect of documents other than research documents protected by third party intellectual property rights) and ;

Amendment
(e) documents held by educational and research establishments, including organisations established for the transfer of research results, schools and universities (except university libraries in respect of documents other than research documents protected by third party intellectual property rights) and ;

Or. fr

Amendment 10
Proposal for a directive
Article 1 – point 1 – sub-point 3
Directive 2003/98/EC
Article 1 – paragraph 2 – point f a (new)

Text proposed by the Commission
(fa) documents which, in accordance with Member State law, are not accessible for personal data protection reasons.

Amendment

Or. fr

Amendment 11
Proposal for a directive
Article 1 – point 2
Directive 2003/98/EC
Article 2 – paragraph 6
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6. ‘machine-readable’ means that digital documents are sufficiently structured for software applications to identify reliably individual statements of fact and their internal structure;

6. ‘machine-readable’ means that digital documents are structured in such a way that software applications can, in a technology-neutral manner, identify reliably and extract the relevant data;

Amendment 12
Proposal for a directive
Article 1 – point 4 – sub-point 2
Directive 2003/98/EC
Article 4 – paragraph 4 – last sentence

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 the possibility of review by an authority regarding the re-use of public sector information and whose decisions are binding upon the public sector body concerned.

Amendment 13
Proposal for a directive
Article 1 – point 6 – sub-point 1
Directive 2003/98/EC
Article 6 – paragraph 2

Text proposed by the Commission
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

Amendment
2. 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
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.

Amendment 14
Proposal for a directive
Article 1 – point 6 – sub-point 1
Directive 2003/98/EC
Article 6 – paragraph 3

Text proposed by the Commission
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.

Amendment
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 on the basis of objective, transparent and verifiable criteria and subject to the approval of the authority referred to in Article 4(4).

Amendment 15
Proposal for a directive
Article 1 – point 9
Directive 2003/98/EC
Article 9

Text proposed by the Commission
Member States shall ensure that practical arrangements facilitating the cross-lingual

Amendment
Member States shall adopt 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.