

6.6.2013

A7-0404/ 001-055

AMENDMENTS 001-055

by the Committee on Industry, Research and Energy

Report

Ivailo Kalfin

A7-0404/2012

Re-use of public sector information

Proposal for a directive (COM(2011)0877 – C7-0502/2011 – 2011/0430(COD))

Amendment 1

Proposal for a directive

Citation 5 a (new)

Text proposed by the Commission

Amendment

***Having regard to the opinion of the
European Data Protection Supervisor¹,***

***¹ Opinion of the European Data
Protection Supervisor of 18 April 2012 on
the 'Open-Data Package' of the European
Commission including a Proposal for a
Directive amending Directive 2003/98/EC
on re-use of public sector information
(PSI).***

Amendment 2

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

***(1a) Data and information produced by
Member States' governments, the public
sector and Union institutions and bodies***

constitute a vast, diverse and valuable pool of resources that can benefit the knowledge economy.

Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) Open data policies which encourage the wide availability and re-use of public sector information for private or commercial purposes, with minimal or no legal, technical or financial constraints, can play an important role in kick-starting the development of new services based on novel ways to combine and make use of such information. However, this requires a level playing field at Union level in terms of whether or not the re-use of documents is authorised, which cannot be achieved by leaving it up to the different rules and practices of the Member States or the public bodies concerned.

Amendment

(2) Open data policies which encourage the wide availability and re-use of public sector information for private or commercial purposes, with minimal or no legal, technical or financial constraints, ***and which promote the circulation of information not only for economic operators but also for members of the public and the free movement of persons within the Union, with due regard to fundamental rights in every case,*** can play an important role in kick-starting the development of new services based on novel ways to combine and make use of such information, ***stimulate economic growth and promote social engagement.*** However, this requires a level playing field at Union level in terms of whether or not the re-use of documents is authorised, which cannot be achieved by leaving it up to the different rules and practices of the Member States or the public bodies concerned.

Amendment 4

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) Allowing re-use of documents held by a public sector body adds value for the re-users, for the end users ***and*** for the society in general and ***in many cases*** for the public body itself, by providing feedback from re-users and end users which allows the holder to improve the quality of the

Amendment

(3) Allowing re-use of ***data and*** documents held by a public sector body adds value for the re-users, for the end users, for the society in general and for the public body itself, by ***promoting transparency and*** providing feedback from re-users and end users which allows the holder to improve

information collected.

the quality of the information collected.

Amendment 5

Proposal for a directive

Recital 6

Text proposed by the Commission

(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 *Sates* 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.**

Amendment

(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. **That Directive merely 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 6

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The obligation to make all generally available documents re-usable and to grant permission to re-use documents access to which is not restricted by virtue of access regimes in the Member States should be ensured while respecting the subsidiarity principle and guaranteeing the protection of privacy and personal data at Union level with respect for and in full compliance with Union data protection legislation, including in cross-border data re-use.

Amendment 7

Proposal for a directive
Recital 6 b (new)

Text proposed by the Commission

Amendment

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

Amendment 8

Proposal for a directive
Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) Directive 2003/98/EC does not contain an obligation for Member States to digitise analogue material which they have available, or to make it accessible in an open format. Public sector bodies may themselves decide when and under what conditions data are to be digitised .

Amendment 9

Proposal for a directive
Recital 6 d (new)

Text proposed by the Commission

Amendment

(6d) 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 that public task to be defined for the bodies concerned either in general or from case to case.

Amendment 10

Proposal 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 held 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 **general** obligation for **the** Member States, **while respecting the subsidiarity principle, to provide that** generally available documents **may be re-used and to generate all such future documents with a view of their being re-usable**. As it constitutes a limitation to the intellectual property rights held 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 11

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Documents in which the intellectual property rights have expired and which consequently enter the public domain constitute a very important part of the

collections of libraries, archives and museums and should be given priority in digitisation campaigns; it is therefore desirable to ensure that such digitisation does not alter their legal status. Access to, and re-use of, those data must be guaranteed in order to respect the fundamental right of access to culture, information and education.

Amendment 12

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Seeking out, digitising and presenting cultural assets are important challenges in order to ensure access to culture, information and education for all. It is therefore important to opt for judicious use of cultural assets which facilitates access to their cultural heritage for members of the public, while taking account of the fact that cultural assets are not economic assets like any others and that they should be protected against excessive commercialisation. The cultural institutions with which this Directive is concerned should be supported by public authorities through the establishment of public funds for the digitisation and dissemination of data.

Amendment 13

Proposal for a directive Recital 10

Text proposed by the Commission

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.

(10) The scope of application of the Directive is extended to libraries (including university libraries), museums, **public bodies managing archaeological and cultural sites** and archives, **encouraging the 'virtualisation' of historical sites in order to simplify access to that type of information**. The Directive does not apply

to *research or educational establishments or 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 14

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 offers substantial social and economic potential for the cultural and creative industries, as well as to society through the extension of the collection of Europeana, the on-going digitisation of European cultural collections should be promoted.

Amendment 15

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 such 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 16

Proposal for a directive Recital 10 c (new)

Text proposed by the Commission

Amendment

(10c) Union institutions and bodies should lead by example in the re-use of public sector information, thus transforming information management across the public sector, promoting best practices and developing innovative technology solutions.

Amendment 17

Proposal for a directive Recital 10 d (new)

Text proposed by the Commission

Amendment

(10d) Certain personal data contained in archive documents to which the prohibition of any form of discrimination applies should be excluded from the scope of Directive 2003/98/EC or, if the legislation in force requires them to be communicated, should be rendered anonymous or the data concerning individuals should be masked out before they are used in any way.

Amendment 18

Proposal for a directive Recital 10 e (new)

Text proposed by the Commission

Amendment

(10e) Data held by educational and research establishments should remain outside the scope of Directive 2003/98/EC.

Amendment 19

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 **open** 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 20

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) A document would be in a machine readable format if it was in a file format that was structured in such a way that software applications could easily identify, recognise and extract data of interest from it. Data encoded in files that are structured in a machine-readable format are machine-readable data. Machine-readable formats can exist as formal open standards or not. Member States should when appropriate encourage the use of open, machine-readable formats.

Amendment 21

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

Amendment

(12) Where charges are made for allowing and supplying the re-use of documents, they should in principle be limited to the

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.

marginal costs incurred for their reproduction, **provision and formatting, ensuring of their interoperability** and dissemination, unless exceptionally justified according to objective, transparent and verifiable criteria. **However**, the necessity of not hindering the normal running of public sector bodies **that are required to cover** a substantial part of **their costs incurred in** the performance of their public task **as well as the normal running costs of libraries, museums and archives** should notably be taken into consideration. **Those public sector bodies should be allowed to charge higher charges for re-use. Such charges in excess of marginal costs should be set according to objective, transparent and verifiable criteria and the total income from supplying and allowing re-use of documents should not exceed the cost of production, reproduction and dissemination, together with a reasonable return on investment.** The burden of proving that charges are cost-oriented and comply with relevant **criteria** should always lie with the public sector body charging for the re-use of documents.

Amendment 22

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

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, **preferably limiting them to an 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

government licences.

open licences *that in time should become standardised across the Union*.

Amendment 23

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 **review** by authorities competent on the re-use of public sector information. **Member States have a responsibility to make appropriate national authorities responsible for that review**. 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.

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 24

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) Since the objective of this Directive, namely to facilitate the creation of Union-wide information products and services based on public sector documents, to ensure the effective cross-border use of public sector documents by private companies for added-value information products and services, **and to limit distortions of competition on the Union market**, cannot be sufficiently achieved by Member States and can therefore, in view

Amendment

(15) Since the objective of this Directive, namely to facilitate the creation of Union-wide information products and services based on public sector documents, to ensure the effective cross-border use of public sector documents **on the one hand** by private companies, **focusing on small and medium enterprises**, for added-value information products and services, and **on the other hand by citizens to facilitate the free circulation of information and**

of the intrinsic pan-European scope of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the Functioning of the European Union. In accordance with the principles of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

communication, cannot be sufficiently achieved by Member States and can therefore, in view of the intrinsic pan-European scope of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the Functioning of the European Union. In accordance with the principles of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment 25

Proposal for a directive Recital 16

Text proposed by the Commission

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the right to property (Article 17). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights.

Amendment

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including ***the right to protection of personal data in all aspects of life (Article 8) and*** the right to property (Article 17). Nothing in this Directive should be interpreted or implemented in a manner that is inconsistent with the European Convention on Human Rights.

Amendment 26

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

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 ***impartial body competent to supervise the re-use of public sector information***. To ensure consistency between approaches at Union level, coordination between the ***impartial bodies***

of information on best practices and data re-use policies.

should be encouraged, particularly through exchange of information on best practices and data re-use policies.

Amendment 27

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*** giving ***non-binding*** guidance, particularly on charging and calculation of costs, on recommended licensing conditions and on formats, after consulting interested parties. ***Thus, cross-border exchange of best practices and knowledge between stakeholders, public bodies and regulators should be promoted by the Commission and the Member States.***

Amendment 28

Proposal for a directive

Article 1 – point 1 – point 1 a (new)

Directive 2003/98/EC

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

"(b) documents in which third parties hold intellectual property rights, including documents held by a university library in which the university holds intellectual property rights;"

Justification

This amendment is intended to clarify that the directive does not apply to documents held by a library which forms part of the university which holds the intellectual property right (IPR) in the document. A university and its libraries may constitute a single legal entity. Without amendment, the exclusion of documents subject to third-party IPR would not apply where a library holds the document but the IPR is held by the university because the university would

not be a separate (i.e., third) party.

Amendment 29

Proposal for a directive

Article 1 – point 1 – point 1 b (new)

Directive 2003/98/EC

Article 1 - paragraph 2 - point c

Text proposed by the Commission

Amendment

(1b) 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 30

Proposal for a directive

Article 1 – point 1 – point 2

Directive 2003/98/EC

Article 1 – paragraph 2 – point e

Text proposed by the Commission

Amendment

‘(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 ;’

“(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 ;”

Amendment 31

Proposal for a directive

Article 1 – point 1 – point 2 a (new)

Directive 2003/98/EC

Article 1 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(2a) In paragraph 2, the following point is inserted after point (e):

“(ea) documents held by archives, museums or libraries (including university libraries) of a particularly sensitive religious nature or that involve traditional knowledge;”

Justification

It has to be ensured that cultural establishments which hold materials of a particularly sensitive religious nature or on traditional knowledge are able to treat the reuse of such materials ethically.

Amendment 32

Proposal for a directive

Article 1 – point 1 – point 3 a (new)

Directive 2003/98/EC

Article 1– paragraph 3

Text proposed by the Commission

Amendment

(3a) Paragraph 3 is replaced by the following:

“3. This Directive builds on and is without prejudice to access regimes in the Member States.”

Amendment 33

Proposal for a directive

Article 1 – point 1 – point 5 a (new)

Directive 2003/98/EC

Article 1– paragraph 5 a (new)

Text proposed by the Commission

Amendment

(5a) The following paragraph is added after paragraph 5:

"5a. Public bodies should ensure that access to and re-use of public sector information comply with Union data protection legislation."

Amendment 34

Proposal for a directive

Article 1 – point 2

Directive 2003/98/EC

Article 2 – point 6

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) 'machine-readable' means that digital documents are structured **so that** software applications **can, in a open format manner**, easily and reliably identify, recognize and extract individual statements of fact and their internal structure.'

Amendment 35

Proposal for a directive

Article 1 – point 2 a (new)

Directive 2003/98/EC

Article 2 – point 6 a (new)

Text proposed by the Commission

Amendment

2a. The following point is added to Article 2:

"6a. 'anonymisation' means carrying out the necessary procedures to delete, mask or to make illegible personal data."

Amendment 36

Proposal for a directive

Article 1 – point 2 b (new)

Directive 2003/98/EC

Article 2 – point 6 b (new)

Text proposed by the Commission

Amendment

2b. The following point is added to Article 2:

"6b. 'formal standard' means a standard which has been codified in written form, detailing specifications for the requirements on how to make interoperable software for the management of files."

Amendment 37

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

Text proposed by the Commission

Amendment

2c. The following point is added to Article 2:

"6c. 'open format' means a format that is platform independent, machine readable, and made available to the public without legal, technical or financial restrictions that would impede the re-use of that information".

Amendment 38

Proposal for a directive
Article 1 – point 3
Directive 2003/98/EC
Article 3 – paragraph 1

Text proposed by the Commission

Amendment

(1) Subject to paragraph (2) Member States shall ensure that documents referred to in Article 1 shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.

(1) Subject to paragraph (2) Member States shall ensure that documents **of public sector bodies** referred to in Article 1 shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV, **provided that the documents concerned are of types classified as accessible under the rules which exist in the Member States regarding access to public sector information. Where possible, those documents shall be disseminated in an open format, machine-readable form.**

Amendment 39

Proposal for a directive
Article 1 – point 3
Directive 2003/98/EC
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

(2) For documents for which libraries

(2) For documents for which libraries

(including university libraries), museums and archives have intellectual property rights, Member States shall ensure that, where the re-use of documents is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV.

(including university libraries), museums and archives have intellectual property rights, Member States shall ensure that, where the re-use of documents is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV, ***provided that the documents concerned are of types classified as accessible under the rules which exist in the Member States regarding access to public-sector information. Where possible, those documents shall be disseminated in an open format.***

Amendment 40

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:

"(1) Public sector bodies shall process requests for re-use by electronic means. They shall make, by 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 period of reasonable time that is consistent with the time frames laid down for the processing of requests for access to documents."

Amendment 41

Proposal for a directive

Article 1 – point 4 – point 2

Directive 2003/98/EC

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

The means of redress shall include the

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.

possibility of review by *the respective impartial body in the Member State* that *rules on* the re-use of public sector information and whose decisions are binding upon the public sector body concerned.

Amendment 42

Proposal for a directive

Article 1 – point 4 – point 2 a (new)

Directive 2003/98/EC

Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

(2a) The following paragraph is added to Article 4:

"(5a) This Directive is fully compliant with applicable data protection law. If public data made available for re-use concern personal data, it should be specified under what conditions and subject to which specific data protection safeguards re-use is permissible, if practicable under a licence. That assessment shall ensure that there is an adequate legal basis for the transfer and re-use of data under national law, that the re-use 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 the implementation of this Directive closely so that it does not infringe Union data protection legislation."

Amendment 43

Proposal for a directive

Article 1 – point 5

Directive 2003/98/EC

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

(1) In paragraph 1, the words ‘through

(1) Paragraph 1 is replaced by the

*electronic means’ are replaced by ‘in machine-readable format **and** together with their metadata’.*

following:

"(1) Public sector bodies shall make their documents available in any pre existing format or language and where possible and appropriate, in open , machine-readable format together with their metadata, both of which in so far as possible should comply with open, formal standards. Documents created after the entry into force of this Directive shall in principle be made available in machine readable format. That shall not imply an obligation to adapt where the adaptation of existing documents, including the provision of extracts, would involve disproportionate effort, in accordance with transparent, objective and verifiable criteria."

Amendment 44

Proposal for a directive

Article 1 – point 6 – point 1

Directive 2003/98/EC

Article 6 – paragraph 1

Text proposed by the Commission

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.

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, **provision** and dissemination.

Amendment 45

Proposal for a directive

Article 1 – point 6 – point 1

Directive 2003/98/EC

Article 6 – paragraphs 2 and 3

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 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.'

Amendment 46

Proposal for a directive

Article 1 – point 6 – point 2 a (new)

Directive 2003/98/EC

Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

2. Paragraph 1 shall not apply to the following:

(a) public sector bodies that are required to generate revenue to cover a substantial part of the cost of production, reproduction and dissemination of documents;

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

Those exceptions may be granted provided it is in the public interest and in accordance with objective, transparent and verifiable criteria, and without prejudice to paragraph 4 of this Article.

3. Charges made over and above the marginal costs by bodies referred to in points (a) and (b) of paragraph 2 are subject to review by an impartial body as referred to in Article 4(4).

Amendment

(2a) The following paragraph is added to Article 6:

"4a. Member States shall designate the appropriate body or appropriate bodies, other than the public sector body itself, competent to lay down the criteria for charging above marginal costs as laid out in paragraph 4."

Amendment 47

Proposal for a directive
Article 1 – point 6 – point 3
Directive 2003/98/EC
Article 6 – paragraph 5

Text proposed by the Commission

Amendment

(3) A new paragraph 5 is added:

deleted

The burden of proving that charges comply with this Article shall lie with the public sector body charging for re-use.

Amendment 48

Proposal for a directive
Article 1 – point 7
Directive 2003/98/EC
Article 7

Text proposed by the Commission

Amendment

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

(7) In Article 7, 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 49

Proposal for a directive
Article 1 – point 8 – point 1
Directive 2003/98/EC
Article 8 – paragraph 1

Text proposed by the Commission

Amendment

‘Public sector bodies may allow re-use without conditions or may impose

"1. Public sector bodies may allow re-use of documents without conditions or may

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.'

impose conditions, where appropriate through a licence *dealing with relevant issues*. These conditions shall not unnecessarily restrict possibilities for re-use and shall not be used to restrict competition."

Amendment 50

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 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.

Amendment

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

That shall not entail an obligation for public sector bodies to create or adapt documents in order to comply with the request, nor shall it entail an obligation to provide extracts from documents where that would involve disproportionate effort, going beyond a simple operation.

Amendment 51

Proposal for a directive

Article 1 – point 9 a (new)

Directive 2003/98/EC

Article 9 a (new)

Text proposed by the Commission

Amendment

9a. The following Article is inserted:

"Article 9a

In order to contribute to a consistent implementation of this Article, the Commission may adopt guidelines with a list of recommended datasets available for

re-use."

Amendment 52

Proposal for a directive
Article 1 – point 9 b (new)
Directive 2003/98/EC
Article 11 – paragraph 2

Text proposed by the Commission

Amendment

9b. Article 11(2) is replaced by the following:

"2. However, 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 **by the authority referred to in Article. 4(4)**, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be **transparent and** made public **by the public sector bodies concerned**."

Amendment 53

Proposal for a directive
Article 1 – point 9 c (new)
Directive 2003/98/EC
Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

9c. The following paragraph is added to Article 11:

"2a. Where an exclusive right granting preferential commercial exploitation terms is necessary to digitise cultural resources, such preferential exploitation shall not exceed seven years in general. Such exclusive arrangements, established after the entry into force of this Directive, shall be transparent and made public. Where an exclusive right granting preferential commercial exploitation is necessary to digitise cultural resources, the public sector body concerned shall be provided with a free copy of the digitised

cultural resources as part of those arrangements. Regardless of any contractual terms to the contrary, every digital copy shall be made available by the cultural institution for public re- use at the end of the period of exclusivity .".

Amendment 54

Proposal for a directive

Article 1 – point 10

Directive 2003/98/EC

Article 11 – paragraph 3

Text proposed by the Commission

"However, such arrangements involving cultural establishments and university libraries 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

"Existing arrangements involving libraries (including university libraries), museums and archives shall be terminated at the end of the contract.

Amendment 55

Proposal for a directive

Article 1 – point 12

Directive 2003/98/EC

Article 13 – paragraphs 1 and 2 a (new)

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:

Member States shall submit a yearly 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 referred to in article 4(4).

Amendment

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

"2a. Member States shall submit every two years a 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 impartial body in the Member States referred to in Article 4(4). The Commission shall publish every two years a relevant scoreboard including performance indicators for the re-use of public sector information."