

Proposal for a Directive of the European Parliament and of the Council on the reuse and commercial exploitation of public sector documents

(2002/C 227 E/17)

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(Submitted by the Commission on 5 June 2002)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure set out in Article 251 of the Treaty,

Whereas:

- (1) The Treaty provides for the establishment of an internal market and of a system ensuring that competition in the internal market is not distorted. Harmonisation of the rules and practices in the Member States relating to the exploitation of public sector information contributes to the achievement of these objectives.
- (2) The evolution towards an information and knowledge society should influence the life of every citizen in the Community, *inter alia*, by affording new ways of gaining access to and acquiring knowledge.
- (3) Digital content plays a predominant role in this evolution. Content production has given rise to rapid job creation in recent years and continues to do so. Most of these jobs are created in small emerging companies.
- (4) The public sector collects, collates and disseminates information in many areas of activity, such as geographical, tourist, business, patent and educational information.
- (5) One of the principal aims of the establishment of an internal market is the creation of conditions to promote the development of Community-wide services. Public sector information is an important primary material for digital content products and services and will become an even more important content resource with the development of wireless content services. A broad cross-border geographical coverage will also be essential in this context.
- (6) There are considerable differences in the rules and practices in the Member States relating to the exploitation

of public sector information resources, which constitute barriers to bringing out the full economic potential of this key information resource. A minimum harmonisation of national rules and practices on the reuse and commercial exploitation of public sector information should therefore be undertaken, in cases where the differences in national regulations and practices or the absence of clarity hinder the smooth functioning of the internal market and the proper development of the information society in the Community.

- (7) Moreover, without a minimum harmonisation at Community level, legislative activities at national level, which have already been initiated in a number of Member States in order to respond to the technological challenges, might result in even more significant differences. The impact of such legislative differences and uncertainties will become more significant with the further development of the information society, which has already greatly increased cross-border exploitation of information.
- (8) A general framework for the conditions of reuse of public sector information is needed in order to ensure fair, proportionate and non-discriminatory conditions for the re-use of such information.
- (9) This Directive should apply to documents held by public sector bodies that are generally accessible. Where public sector bodies allow the reuse of such documents they should be reusable for commercial and non-commercial purposes under certain conditions. Public sector bodies should be encouraged to make available for reuse any documents held by them that are generally accessible.
- (10) The different formats used by public sector bodies can represent a considerable burden for private organisations that want to reuse information taken from several sources. The need to digitise paper-based documents or to manipulate digital files to make them mutually compatible should be reduced by requiring public bodies to make the documents available in all pre-existing formats.
- (11) The time limit for replying to requests for reusing information resources should be reasonable and in line with the equivalent time for requests to access the document, in order not to prevent the creation of new aggregated information products and services. Excessive time-lags between the request to reuse documents and the decision on these requests can hamper the establishment of data collections covering the whole of the Community, since the slowest country will set the pace.

- (12) Where charges are made, the total income from allowing access to or reuse of these documents should not exceed the total costs of producing, reproducing and disseminating them, together with a reasonable profit margin. Production includes collection and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable profit margin, constitutes an upper limit to the charges, as any excessive prices should be precluded. The public sector bodies should have the possibility of applying lower charges or of not charging at all, and Member States should encourage public sector bodies to make documents available at charges that do not exceed the marginal costs for reproducing and disseminating the documents.
- (13) Charges and other conditions for the reuse of public sector information should be non-discriminatory. This also applies to the commercial activities of public sector bodies that fall outside their public task. This means that the same input conditions should apply to the commercial activities of public sector bodies as to the activities of other actors in the market. In particular the charges and other conditions associated with the provision of public information as inputs for those commercial activities should be the same as those applied to third parties requesting such information.
- (14) Ensuring that the conditions for reuse of public sector information are clear and publicly available is a pre-condition for the development of a Community-wide information market. Therefore all applicable conditions for the reuse of the information should be made clear to the potential reusers.
- (15) Standard licence agreements that are available online can also play an important role in this respect. In all cases where the public sector bodies exercise their intellectual property rights and/or charge for the reuse of the documents standard licence agreements should be available to facilitate transactions and to increase their transparency.
- (16) Public sector bodies should not run the risk of conflict with the basic competition policy principles and should not adopt conduct that could constitute an abuse of a dominant position. Exclusive arrangements between public sector bodies and private partners for the exploitation of the documents can lead to considerable market distortions. In many cases these arrangements will have a national basis, thereby preventing other Community players from entering the market and reusing the same information. However, for the purposes of providing a service of general economic interest, an exclusive right to reuse specific public sector information resources may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.
- (17) The reuse of public sector information resources should fully respect the particular obligations of the authorities under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾. In particular, personal data collected by public sector bodies should not be used for purposes that are incompatible with the original, explicit and legitimate purpose(s) for which they were collected. Reuse of personal data or documents containing personal data for commercial purposes may generally not be compatible with such original purposes, especially not in cases where the collection of personal data by the public authority is obligatory and where the data subjects cannot refuse the processing of their personal data.
- (18) The intellectual property rights of third parties are not affected by this Directive. The Directive does not affect the existence or ownership of intellectual property rights of public sector bodies, nor does it limit the exercise of these rights in any way beyond the boundaries set by this Directive. The obligations of this Directive should apply only in so far as the obligations imposed are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights ⁽²⁾. Public sector bodies should, however, exercise their copyright in a way that facilitates reuse.
- (19) The objectives of the proposed action are to facilitate the creation of Community-wide information products and services based on public sector information, to enhance an effective cross-border use of public sector information by private companies for added-value information products and services, to limit distortions of competition on the Community market and to avoid a situation whereby a different pace in the Member States in dealing with the reuse of public sector information leads to further disparities. In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, such objectives cannot be sufficiently achieved by the Member States and can therefore, in view of the intrinsic Community scope and impact of the said action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose,

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 336, 23.12.1994, p. 214.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

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

2. This Directive shall not apply to:

- (a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by law or by other binding rules in the Member State, or in the absence of such rules as defined in line with common administrative practice in the Member State in question;
- (b) documents or parts of documents for which third parties hold intellectual property rights;
- (c) documents containing personal data, unless the reuse of such personal data is admissible under the provisions of Community law and national measures on the processing of personal data and the protection of privacy;
- (d) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;
- (e) documents held by educational and research establishments, such as schools, universities, research facilities, archives and libraries;
- (f) documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres.

3. The provisions of this Directive shall only apply in so far as the obligations imposed are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Article 2

Definitions

For the purpose of this Directive the following definitions shall apply:

1. 'public sector body' means the State regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several such bodies governed by public law;

2. 'body governed by public law' means any body:

(a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

(b) having legal personality; and

(c) financed, for the most part by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;

3. 'document' means:

(a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording);

(b) any part of such a content;

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

5. 'reuse' means the use by persons or legal entities of documents held by public sector bodies for commercial or non-commercial purposes;

6. 'personal data' means data as defined in Article 2(a) of Directive 95/46/EC.

Article 3

General principle

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

CHAPTER II

CONDITIONS FOR REUSE*Article 4***Availability**

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

2. Public sector bodies cannot be required to continue the production of a certain type of documents with a view to the reuse of these documents by a private sector organisation.

*Article 5***Time and requirements in case of a negative decision**

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

2. Where no time-limits have been established, public sector bodies shall process the request and shall deliver the documents to the applicant within a timeframe of not more than three weeks after its receipt.

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

4. Any negative decision shall contain a reference to the means of redress in case the applicant wishes to appeal the decision.

*Article 6***Charging principles**

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

*Article 7***Non-discrimination**

1. Any applicable conditions for the commercial reuse or exploitation of documents shall be non-discriminatory.

2. Any applicable conditions for the non-commercial reuse of documents shall be non-discriminatory for comparable categories of reusers.

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

*Article 8***Transparency**

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

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

*Article 9***Facilitating reuse**

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

CHAPTER III

FAIR TRADING*Article 10***Prohibition of exclusive arrangements**

1. The reuse of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights that constitute an unjustified restriction of competition or the reuse of the information.

2. If, for reasons such as the provision of a service in the public interest, an exclusive right is deemed necessary, the validity of the reason to grant such an exclusive right shall be subject to regular review, and shall, in any event, be reviewed every three years. The exclusive arrangements established after the entry into force of this Directive shall be open to public inspection.

CHAPTER IV

FINAL PROVISIONS*Article 11***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [31 December 2004] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 12***Review**

This Directive shall be subject to a review within three years of its entry into force.

The review shall in particular address the scope of this Directive regarding the public sector bodies covered. It shall also address the overall impact of the Directive in increasing the availability of public sector information for reuse and its impact on government revenue.

*Article 13***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 14***Addressees**

This Directive is addressed to the Member States.
