Re-use of public sector information

2011/0430(COD) - 13/06/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 486 votes to 62, with 10 abstentions, a legislative resolution 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amend the Commission proposal as follows:

Purpose of amending Directive 2003/98/EC: it is specified that the amendments aim to lay down a **clear obligation for Member States to make all documents re-usable** unless access is restricted or excluded under national rules on access to documents and subject to the other exceptions laid down in the Directive.

Scope: the amended text provides that the directive does not apply to:

- 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;

- documents which are excluded from access by virtue of the access regimes in the Member States, including on the grounds of: (i) the **protection of national security**, defence, or public security; (ii) **statistical or commercial confidentiality**;

- **documents access to which is restricted** by virtue of the access regimes in the Member States, including cases whereby citizens or companies have to prove a particular interest to obtain access to documents

- documents access to which is excluded or restricted by virtue of the access regimes on the grounds of **protection of personal data.**

The Directive builds on and is without prejudice to access regimes in the Member States.

Processing of request for re-use: in the event of a negative decision, the public sector bodies shall **communicate the grounds for refusal to the applicant**. Where a negative decision concerns documents for which third parties hold intellectual property rights, the public sector body shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material.

Any decision on re-use shall contain a reference to the means of redress in case the applicant wishes to appeal the decision. The means of redress shall include the possibility of review by an **impartial review body** with the appropriate expertise, such as the national competition authority, the national access to documents authority or a national judicial authority.

Available formats: public sector bodies shall make their documents available in any pre-existing format or language, and, where possible and appropriate, in **open and machine-readable format.** Where possible Member States shall facilitate the **cross-linguistic search** for documents.

There is no obligation for public sector bodies to create or adapt documents or provide extracts where this would involve disproportionate effort, going beyond a simple operation. They cannot be required to continue the production and storage of a certain type of documents with a view to the re-use of such documents by a private or public sector organisation.

Charges: where charges are made for the re-use of documents, those **charges shall be limited to the marginal costs** incurred for their reproduction, provision and dissemination.

This **shall not apply to:** (i) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks; (ii) by way of exception, documents for which the public sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination; (iii) libraries, including university libraries, museums and archives.

The total charges shall be calculated according to **objective, transparent and verifiable criteria** to be laid down by the Member States.

The total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment.

In order to increase **transparency,** any applicable conditions and the actual amount of those charges, including the calculation basis for such charges, shall be pre-established and published, through electronic means where possible and appropriate.

Prohibition of exclusive arrangements: where an exclusive right relates to digitisation of cultural resources, the **period of exclusivity shall in general not exceed 10 years**. In a case where that period exceeds 10 years, its duration shall be subject to review during the 11th year and, if applicable, every seven years thereafter. The arrangements granting exclusive shall be transparent and made public.

Review: the Commission shall carry out a review of the application of this Directive **five years after entry into force** of the latter and shall communicate the results of this review, together with any proposals for modifications of the Directive, to the European Parliament and the Council.