

Council of the EU: Directive 2003/98/EC Governs the Re-use of Public Sector Information

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On 17 November 2003, the European Parliament and the Council adopted a new Directive (2003/98/EC), the purpose of which was to facilitate the re-use of public sector information.

The aim of the Directive is to standardise at a minimum level the national rules on the provision of information in the possession of public bodies. The intention of the EU legislators is to promote the development of Community-wide services and foster the implementation of the internal market. Companies should be able to use the wide range of information in the public sector covering many different areas as “primary material for digital content products and services” and in this way contribute to economic growth and job creation.

It remains up to the member states to decide whether to authorise the re-use and what information this applies to. Excluded from the scope of the Directive from the outset are documents that need to be kept confidential, including those held by public service broadcasters for the fulfilment of their public service broadcasting remit. Similar exceptions apply to documents held by cultural, educational and research establishments. For the remaining information held by public sector bodies, the Directive lays down a minimum standard, which member states may go beyond if they wish.

The rules of the Directive provide *inter alia* for public sector bodies to process requests for re-use within a reasonable time-limit. They must make their documents available “in any pre-existing format or language, through electronic means where possible”. However, this explicitly does not imply they have an obligation to create or adapt documents. Charges for making documents available must not exceed the total costs involved plus “a reasonable return on investment”.

The Directive also calls for the conditions for the re-use to be made transparent. If the re-use is made subject to the issue of a licence, the terms and conditions must not unnecessarily restrict the re-use or serve to distort competition. The conditions and charges must be laid down in advance and published, if possible by electronic means. The conditions must not be discriminatory. However, according to the recitals this does not mean that no distinction may be made

between different categories, such as a commercial and non-commercial re-use. Exclusive agreements with private individuals should, however, be avoided unless this is necessary to provide a service of general economic interest.

Finally, member states should ensure that practical arrangements are in place to make it easier to locate documents for re-use.

The member states have until 1 July 2005 to transpose the provisions of the Directive into domestic law. The Commission must carry out a review of the application of the Directive before 30 June 2008 and communicate the results to the Council and the Parliament.

Directive 2003/98/EC on the re-use of public sector information

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0098:EN:HTML>

