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Committee on Industry, Research and Energy

2011/0430(COD)

COMPROMISE AMENDMENTS

1 - 18

Draft report
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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

COM(2011)0877 – C7-0502/2011 – 2011/0430(COD))

COMPROMISE AMENDMENT 1
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 3 (Kalfin/S&D), AM 17 (Kalfin/S&D) and AM 26 (Karim/ECR)

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 done while respecting the subsidiarity principles and guaranteeing the protection of privacy and personal data at Union level in respect and in full compliance with the Union data protection legislation, including in cross-border data reuse.

COMPROMISE AMENDMENT 2
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 21 (Verheyen, Kammerevert, Niebler, Reul, Pieper, Winkler/EPP), AM 23 (Bendtsen/EPP), JURI 1-2, CULT 6 and IMCO 5

Proposal for a directive
Recital 7

Text proposed by the Commission

Amendment

(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

(7) Directive 2003/98/EC should therefore lay down a **general** obligation for **the** Member States, **while respecting the subsidiarity principle**, to **provide that the** generally available documents **can be re-used and to generate all such future documents with a view of being 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

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.

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.

COMPROMISE AMENDMENT 3
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 31 (Tsoukalas), AM 34 (Andersdotter) and IMCO 9

Proposal for a directive
Recital 11

Text proposed by the Commission

Amendment

(11a) A document shall be in a machine readable format if it is in a file format that is structured in such a way that software applications can 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.

COMPROMISE AMENDMENT 4

(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 35 (Karim/ECR), AM 36 (Sedó i Alabart/EPP), AM 37 (Verheyen/EPP, Kammerevert/S&D), AM 38 (Țicău/S&D), JURI 4, CULT 16 and IMCO 11

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 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.

Amendment

(12) Where charges are made for allowing and supplying the re-use of documents, they should in principle be limited to the 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** relating to the performance of their public task **as well as the normal running 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 above 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.

COMPROMISE AMENDMENT 5
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 5 (Kalfin/S&D), AM 47 (EPP), CULT 19 and IMCO 15

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.**

COMPROMISE AMENDMENT 6
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 59 (Sedó i Alabart/EPP), AM 60 (EPP), AM 61 (Vălean/ALDE), IMCO 17, CULT 20 and JURI 12

Proposal for a directive
Article 1 – point 2
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.'

COMPROMISE AMENDMENT 18 (NEW)
(EPP, S&D, ALDE, GREENS AND ECR)

N.B. This compromise amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.

Covering its ongoing development occurs on the basis of an open decision-making procedure available to all interested parties; the format specification document is available freely; the intellectual property of the standard is made irrevocably available on a royalty-free basis.")

Proposal for a directive

Article 1 – point 2 c (new)

Article 2 – paragraph 6 c (new)

Text proposed by the Commission

Amendment

2c. In Article 2 the following paragraph is added:

"An open format is one 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".

COMPROMISE AMENDMENT 7
(EPP, S&D, ALDE, GREENS AND ECR)

N.B. This compromise amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.

Covering AM 70(Verheyen/EPP, Kammervert/S&D), AMD 71(Karim, ECR), 72 (Kovács/NI) and AM 73 (Vălean/ALDE), IMCO 19, CULT 23 and JURI 13

Proposal for a directive

Article 1 – point 4 – point 2

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

(2) At the end of paragraph 4, the following wording is added:

The means of redress shall include the possibility of review by an **independent authority** that **is vested with specific**

(2) At the end of paragraph 4, the following wording is added:

The means of redress shall include the possibility of review by **the respective impartial authority in the Member State**

regulatory powers regarding the re-use of public sector information and whose decisions are binding upon the public sector body concerned.

that **rules on** the re-use of public sector information and whose decisions are binding upon the public sector body concerned.

COMPROMISE AMENDMENT 8

(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 9 (Kalfin/S&D), AM 74 (Andersdotter/Greens), AM 75 (EPP), CULT 24, IMCO 21 and AM 76 (Țicău/S&D)

Proposal for a directive

Article 1 – point 5

Article 5 – paragraph 1

Text proposed by the Commission

(1) **In** paragraph 1, **the words ‘through electronic means’ are replaced by** ‘in machine-readable format **and** together with their metadata.’.

Amendment

(1) **Article 5, paragraph 1 is replaced by the following:**

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

COMPROMISE AMENDMENT 9
(EPP, S&D, ALDE, GREENS AND ECR)

N.B. This compromise amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.

The intention of the legislator is to limit the total amount charged by public sector bodies to the marginal costs incurred for their reproduction, provision (replaces everywhere the word "collection") and dissemination throughout this Directive. All the paragraphs in this Directive should be modified accordingly.

Covering AM 78 (Karim/ECR), AM 79 (EPP), CULT 25, AM 80 (Sedó i Alabart/EPP) and IMCO 22 (par.1)

Proposal for a directive
Article 1 – point 6 – point 1
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.

COMPROMISE AMENDMENT 10 (AND 11)
(EPP, S&D, ALDE, GREENS AND ECR)

Covering, AM 82, 89 and 91 (Verheyen, Kammerevert, Niebler, Reul, Pieper, Winkler/EPP), AM 83, 88 and 93 (Sedó i Alabart/EPP), AM 84 and 92 (Karim/ECR), AM 85 (Kalfin/S&D), AM 86 (Vălean/ALDE), AM 87 and 90 (Proust/EPP), CULT 26-28, JURI 14-15 and IMCO 22 (par. 2-4)

Proposal for a directive

Article 1 – point 6 – point 1

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

2. Paragraph 1 shall not apply to the following:

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

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

These exceptions maybe granted provided this is in the public interest and according to 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 pints (a) and (b) of paragraph 2 are subject to review by an impartial authority referred to in Article 4 (4).

COMPROMISE AMENDMENT 12
(EPP, S&D, ALDE AND GREENS)

Covering AM 102 (Țicău/S&D), AM 103 (EPP), AM 104 (Sedó i Alabart/EPP), AM 105 (Karim/ECR), CULT 33, IMCO 26 and JURI 16

Proposal for a directive
Article 1 – point 9
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-lingual 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.

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

COMPROMISE AMENDMENT 13
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 109 (Proust/EPP), AM 110 (Sedó i Alabart/EPP), AM 111 (EPP), AM 112 (Andersdotter/Greens), AM 113 (Kalfin/S&D) and AM 122 (Vălean/ALDE), IMCO 28, CULT 35 and JURI 17(2nd part)

Proposal for a directive

Article 1 – point 9 b (new)

Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

"2a. Where an exclusive right relates to preferential commercial exploitation is necessary to digitise cultural resources, such preferential exploitation shall not exceed 7 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 relating to the preferential commercial exploitation necessary to digitise cultural resources exists, the public sector body shall be provided with a free copy of the digitised cultural resources as part of that agreement. 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 exclusive rights' agreement.

COMPROMISE AMENDMENT 14
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 114 (Sedó i Alabart/EPP), AM 115 (EPP), AM 116 (Vălean/ALDE), AM 117 (Vălean/ALDE), AM 118 (Sedó i Alabart/EPP), AM 119 (Karim/ECR), AM 120 (Kalfin/S&D), AM 121 (Vălean/ALDE), IMCO 29, CULT 36 and JURI 18

Proposal for a directive

Article 1 – point 10

Article 11 – paragraph 3

Text proposed by the Commission

(10) In Article 11 (Prohibition of exclusive arrangements), the following sentence is added at the end of paragraph 3:

"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

(10) In Article 11 (Prohibition of exclusive arrangements), the following sentence is added at the end of paragraph 3:

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

COMPROMISE AMENDMENT 15
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 8 (Kalfin/S&D), AM 66 (EPP), AM 67 (Sedó i Alabart/EPP) and CULT 21

Proposal for a directive

Article 1 – point 3

Article 3 – paragraph 1

Text proposed by the Commission

(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.

Amendment

(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, these documents shall be disseminated in open format, machine-readable form.***

COMPROMISE AMENDMENT 16
(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 123 (EPP), AM 124 (Bendtsen/EPP), AM 125 (Tsoukalas/EPP), AM 126 (EPP), AM 127 (Vălean/ALDE), IMCO 30-31 and CULT 37-38

Proposal for a directive

Article 1 – point 12 – introductory part

Article 13 – paragraph 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

Amendment

(12) In Article 13 (Review) the date of 1 July 2008 is replaced by [***5 years after the entry into force of the directive***] and the following paragraph is added:

Member States shall submit ***every two***

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).

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** authority **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.**

COMPROMISE AMENDMENT 17

(EPP, S&D, ALDE, GREENS AND ECR)

Covering AM 11 (Kalfin/S&D), 107 (Sedó i Alabart/EPP), 108 (Verheyen, Kammerevert, Niebler, Reul, Pieper, Winkler/EPP), CULT 34, IMCO 27 and JURI 17 (1st part)

Proposal for a directive

Article 1 – point 9 a (new)

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

-10. 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 Art. 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 **subject of transparency and** made public **by the public sector bodies concerned.**"