I

(Information)

COUNCIL

COMMON POSITION (EC) No 38/2003

adopted by the Council on 26 May 2003

with a view to adopting Directive 2003/. . ./EC of the European Parliament and of the Council of . . . on the re-use of public sector documents

(2003/C 159 E/01)

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 [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure set out in Article 251 of the Treaty [4],

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 influences the life of every citizen in the Community, *inter alia*, by enabling them to gain new ways of accessing and acquiring knowledge.

(3) Digital content plays an important 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, produces, reproduces and disseminates a wide range of information in many areas of activity, such as social, economic, geographical, weather, tourist, business, patent and educational information.

(5) One of the principal aims of the establishment of an internal market is the creation of conditions conducive to 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. Broad cross-border geographical coverage will also be essential in this context. Wider possibilities of re-using public sector information should *inter alia* allow European companies to exploit its potential and contribute to economic growth and job creation.

(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 document resource. Minimum harmonisation of national rules and practices on the re-use of public sector documents 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 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.

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[1] OJ C 227 E, 24.9.2002, p. 382.

[2] OJ C 85, 8.4.2003, p. 25.

[3] OJ C 73, 26.3.2003, p. 38.

[4] Opinion of the European Parliament of 12 February 2003 (not yet published in the Official Journal), Council Common Position of 26 May 2003 (not yet published in the Official Journal) and Decision of the European Parliament of . . . (not yet published in the Official Journal).

(8) A general framework for the conditions governing re-use of public sector documents is needed in order to ensure fair, proportionate and non-discriminatory conditions for the re-use of such information. Public sector bodies collect, produce, reproduce and disseminate documents to fulfil their public tasks. Use of such documents for other reasons constitutes a re-use. Member States' policies can go beyond the minimum standards established in this Directive, thus allowing for more extensive re-use.

(9) This Directive does not contain an obligation to allow re-use of documents. The decision whether or not to authorise re-use will remain with the Member States or the public sector body concerned. This Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell, disseminate, exchange or give out information. To avoid cross-subsidies, re-use should include further use of documents within the organisation itself for activities falling outside the scope of its public tasks. Activities falling outside the public task will typically include supply of documents that are produced and charged for exclusively on a commercial basis and in competition with others in the market. The definition of 'document' is not intended to cover computer programs. The Directive builds on the existing access regimes in the Member States and does not change the national rules for access to documents. It does not apply in cases in which citizens or companies can, under the relevant access regime, only obtain a document if they can prove a particular interest. Public sector bodies should be encouraged to make available for re-use any documents held by them. Public sector bodies should promote and encourage re-use of documents, including official texts of a legislative and administrative nature in those cases where the public sector body has the right to authorise their re-use.

(10) The definitions of 'public sector body' and 'body governed by public law' are taken from the public procurement directives (92/50/EEC [1], 93/36/EEC [2], 93/37/EEC [3] and 98/4/EC [4]). Public undertakings are not covered by these definitions.

(11) This Directive proposes a generic definition of the term 'document', in line with developments in the information society. It covers any representation of acts, facts or information — and any compilation of such acts, facts or information — whatever its medium (written on paper, or stored in electronic form or as a sound, visual or audiovisual recording), held by public sector bodies. A document held by a public sector body is a document where the public sector body has the right to authorise re-use.

(12) The time limit for replying to requests for re-use should be reasonable and in line with the equivalent time for requests to access the document under the relevant access regimes, in order to stimulate the creation of new aggregated information products and services at pan-European level.

(13) The possibilities for re-use can be improved by limiting the need to digitise paper-based documents or to process digital files to make them mutually compatible. Therefore, public sector bodies should make documents available in any pre-existing format or language, through electronic means where possible and appropriate. Public sector bodies should view requests for extracts from existing documents favourably when to grant such a request would involve only a simple operation. Public sector bodies should not, however, be obliged to provide an extract from a document where this involves disproportionate effort.

(14) This Directive recognises that certain public sector bodies are required to be self-financing in whole or in part and depend on the income from sales of their documents to fulfil their public task effectively. This Directive therefore allows public sector bodies to recover total costs of collecting, producing, reproducing and disseminating documents, together with a reasonable return on investment. Production includes creation and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable return on investment, constitutes an upper limit to the charges, as any excessive prices should be precluded. Member States or public sector bodies may choose the most appropriate cost calculation method, in line with the accounting principles applicable to the public sector bodies involved. The upper limit for charges set in this Directive is without prejudice to the right of Member States or public sector bodies to apply lower charges or no charges 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.

(15) Ensuring that the conditions for re-use of public sector documents are clear and publicly available is a pre-condition for the development of a Community-wide information market. Therefore all applicable conditions for the re-use of the documents should be made clear to the potential re-users. Member States should encourage the creation of indices accessible on line, where appropriate, of available documents so as to promote and facilitate requests for re-use.

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(1) OJ L 209, 24.7.1992, p. 1. Directive as last amended by Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p. 1).

(2) OJ L 199, 9.8.1993, p. 1. Directive as last amended by Commission Directive 2001/78/EC.

(3) OJ L 199, 9.8.1993, p. 54. Directive as last amended by Commission Directive 2001/78/EC.

(4) OJ L 101, 1.4.1998, p. 1.

(16) In some cases the re-use of documents will take place without a licence being agreed. In other cases a licence will be issued imposing conditions on the re-use by the licensee dealing with issues such as liability, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source. If public sector bodies license documents for re-use, the licence conditions should be fair and transparent. Standard licences that are available online may also play an important role in this respect. Therefore Member States should provide for the availability of standard licences.

(17) Conditions for re-use should be non-discriminatory for comparable categories of re-use. This should, for example, not prevent the exchange of information between public sector bodies free of charge for the exercise of public tasks, whilst other parties are charged for the re-use of the same documents. Neither should it prevent the adoption of a differentiated charging policy for commercial and non-commercial re-use.

(18) Public sector bodies should respect competition rules when establishing the principles for re-use of documents avoiding as far as possible exclusive agreements between themselves and private partners. However, in order to provide a service of general economic interest, an exclusive right to re-use specific public sector documents may sometimes be necessary. This may be the case if no commercial publisher would publish the information without such an exclusive right.

(19) This Directive should be implemented and applied in full compliance with the principles relating to the protection of personal data in accordance with 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 of the free movement of such data [1].

(20) The intellectual property rights of third parties are not affected by this Directive. For the avoidance of doubt, the term 'intellectual property rights' refers to copyright and related rights only (including *sui generis* forms of protection). This Directive does not apply to documents covered by industrial property rights, such as patents, registered designs and trademarks. 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 imposed by this Directive should apply only insofar as they 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 (the 'Berne Convention') and the Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement'). Public sector bodies should, however, exercise their copyright in a way that facilitates re-use.

(21) This Directive is without prejudice to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2] and Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases [3]. It spells out the conditions within which public sector bodies can exercise their intellectual property rights in the internal information market when allowing re-use of documents.

(22) Since the objectives of the proposed action, namely to facilitate the creation of Community-wide information products and services based on public sector documents, to enhance an 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 Community market, 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 at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives. This Directive should achieve minimum harmonisation, thereby avoiding further disparities between the Member States in dealing with the re-use of public sector documents,

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 re-use of existing documents held by public sector bodies of the Member States.

[1] OJ L 281, 23.11.1995, p. 31.

[2] OJ L 167, 22.6.2001, p. 10.

[3] OJ L 77, 27.3.1996, p. 20.

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 for which third parties hold intellectual property rights;

(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;

(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, archives, libraries and research facilities including, where relevant, organisations established for the transfer of research results;

(f) documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres.

3. This Directive builds on the existing access regimes in the Member States and does not change the national rules for access to documents held by public sector bodies. This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to get access to the documents.

4. This Directive leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter the obligations and rights set out in Directive 95/46/EC.

5. The obligations imposed by this Directive shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention and the TRIPS Agreement.

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 and 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; and

(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 content;

4. 're-use' means the use by persons or legal entities of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use;

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

Article 3

General principle

Member States shall ensure that, where the re-use of documents held by public sector bodies is allowed, the conditions set out in chapters III and IV shall apply.

CHAPTER II

REQUESTS FOR RE-USE

Article 4

Requirements applicable to the processing of requests for re-use

1. Public sector bodies shall, through electronic means where possible and appropriate, process requests for re-use and shall make the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a reasonable time that is consistent with the timeframes laid down for the processing of requests for access to documents.

2. Where no time-limits or other rules regulating the timely provision of documents have been established, Member States shall ensure that public sector bodies process requests and deliver the documents for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within a timeframe of not more than 20 working days after its receipt. This timeframe may be extended by another 20 working days for extensive or complex requests. In such cases the applicant shall be notified within three weeks after the initial request that more time is needed to process it.

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 or of the national provisions adopted pursuant to this Directive, in particular Article 1(2)(a), (b) and (c), 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, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material.

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

5. Public sector bodies covered under Article 1(2)(d), (e) and (f) shall not be required to comply with the requirements of this Article.

CHAPTER III

CONDITIONS FOR RE-USE

Article 5

Available formats

1. Public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible and appropriate. 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.

2. On the basis of this Directive, public sector bodies cannot be required to continue the production of a certain type of documents with a view to the re-use of such documents by a private or public sector organisation.

Article 6

Principles governing charging

Where charges are made, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved.

Article 7

Transparency

Any applicable conditions and standard charges for the re-use of documents held by public sector bodies shall be pre-established and published, through electronic means where possible and appropriate. The public sector body in question shall also indicate which factors will be taken into account in the calculation of charges for atypical cases.

Article 8

Licences

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

2. In Member States where licences are used, Member States shall ensure that standard licences for the re-use of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage all public sector bodies to use the standard licences.

CHAPTER IV

NON-DISCRIMINATION AND FAIR TRADING

Article 9

Non-discrimination

1. Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use.

2. If documents are re-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.

Article 10

Prohibition of exclusive arrangements

1. The re-use 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.

2. However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting 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 transparent and made public.

3. Existing exclusive arrangements that do not qualify for the exception under paragraph 2 shall be terminated at the end of the contract or in any case not later than . . . (*).

CHAPTER V

FINAL PROVISIONS

Article 11

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by . . . (**). They shall forthwith inform the Commission thereof.

When Member States adopt those measures, 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

1. The Commission shall carry out a review of the application of this Directive before . . . (***) and shall communicate the results of this review, together with any proposals for modifications of the Directive, to the European Parliament and the Council.

2. The review shall in particular address the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, as well as further possibilities of improving the proper functioning of the internal market and the development of the European content industry.

Article 13

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 14

Addressees

This Directive is addressed to the Member States.

Done at . . .

For the Parliament	*For the Council*
The President	*The President*

(*) Five years after the entry into force of this Directive.

(**) 18 months from the entry into force of this Directive.

(***) Three years from the date referred to in (*).

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 5 June 2002 the Commission adopted the above proposal for a Directive of the European Parliament and the Council [1]. The proposal is based on Article 95 of the Treaty.

2. The European Parliament delivered its Opinion on 12 February 2003, the Economic and Social Committee on 11 December 2002 and the Committee of Regions on 21 November 2002.

3. The Commission forwarded its amended proposal to the European Parliament and the Council on 19 March 2003 [2].

4. On 26 May 2003 the Council adopted its common position in accordance with Article 251 of the Treaty.

II. OBJECTIVE

The purpose of this Directive is to establish a minimum set of common rules intended to ensure that, in relation to the re-use of public sector documents, the same basic conditions apply to all players in the European information market, that more transparency is achieved on the conditions of re-use, and that unjustified market distortions are removed. The degree of harmonisation is relatively modest, leaving intact national rules governing access to public information as well as the level of data protection in place in Member States.

III. ANALYSIS OF THE COMMON POSITION

The common position shares the overall objective of the proposal submitted by the Commission, and also, in general terms, the proposed means of attaining that objective.

However, the text of the proposal has been reworded in the course of discussion within the Council. Moreover, some re-structuring in the order of the articles and recitals has taken place to ensure greater clarity and user-friendliness. The main points of the common position which differ from the Commission proposal are as follows:

1. The common position modifies the title of the proposed Directive by deleting the reference to commercial exploitation and this throughout the text of the Directive itself unless needed for specific reference. The Council considered that the term ‘re-use’ covers both commercial and non-commercial exploitation, as indicated in Article 2.

2. The common position modifies Article 1 by adding two new paragraphs specifying the scope of the Directive in that it neither changes the rules for access to documents held by public sector bodies in the Member States, nor affects the protection of individuals with regard to personal data. This latter paragraph reproduces the substance of Article 1(2)(c) of the original proposal. The Council considered it also appropriate to add wording to explicitly exclude from the Directive's scope documents already excluded from access by virtue of the access regimes in the Member States. These points have been further clarified in Recital 9.

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[1] OJ C 227, 24.9.2002, p. 382.

[2] Not yet published in the Official Journal.

3. In Article 2, the Council eliminated the definition of 'generally accessible document' since this would cause unnecessary confusion in the Directive, which handles re-use of and not access to documents. The spirit of this definition has been transferred to Article 1(3) of the common position, which seeks to distinguish the notions of access rights (Member States' competence) and of re-use of documents that are made accessible. On the other hand, the definition of 're-use' has been elaborated in order to avoid ambiguity concerning the exchange of documents between public sector bodies in pursuit of their public tasks. The definitions of the Directive have been further clarified in the new Recitals 10 and 11.

4. Article 3 of the proposal, which concerns the general principle of the Directive, has been modified in order to make it clearer. The new wording states the subject (Member States), the obligation (application of the conditions in chapters III and IV) and the object (documents held by public sector bodies the re-use of which is allowed). On the other hand, the new wording eliminates the reference to commercial or non-commercial purposes of re-use, which has been transferred to Article 2(4) of the common position.

5. In Article 4(2) of the common position, time-frames concerning the treatment of requests for re-use have been specified where no time-limits or other rules regulating the provision of documents are established in the Member States. To ensure a timely provision of documents, a time-frame of 20 working days is foreseen, extendable by another 20 working days in cases of extensive or complex requests.

6. In Article 6 on charges, the Council has amended the wording. A reference to accounting principles has been added to take into account the public sector bodies' practice of writing off investments over several years. Recital 14 has been clarified in this respect too. In Article 7 of the common position, transparency has been increased by adding wording demanding public sector bodies to indicate not only the applicable conditions and standard charges for re-use but also the factors taken into account in the calculation of charges for atypical cases.

7. Public sector bodies may either allow re-use without conditions, or may impose conditions where appropriate through a licence. To take into account the different possibilities, the Council has modified the wording in Article 8 of its common position and further clarified the text of Recital 16. The article now encourages all public sector bodies to use standard licences.

8. As far as exclusive arrangements are concerned, the Council added a new paragraph to Article 10 clarifying the situation concerning existing exclusive arrangements. The new paragraph sets a time-frame for their termination in light of bringing them within the scope and effects of the Directive.

9. In Article 12, the Council specified the aim of the review in order to ensure a full examination of the benefits expected to be achieved by it.

The extent of increase in re-use of public sector documents, including official texts of a legislative and administrative nature, the effects of the charging principles, as well as the further possibilities to improve the functioning of the internal market and the development of the content industry are specifically mentioned.

IV. EUROPEAN PARLIAMENT AMENDMENTS

1. European Parliament amendments accepted by the Commission and adopted by the Council

— Amendment 3 has been incorporated into recital 4 of the common position apart from the proposed suppression of the reference to business area activities.

— The Council felt that the change proposed by the Parliament in amendment 4 for recital 6 was already covered in its first sentence.

— Amendment 34 has been incorporated into recital 14 of the common position as far as it aligns the text to Article 6. However, the change of 'document' into 'information' has not been accepted (see first indent of point 2 of this section).

— The Council incorporated the last part of amendment 10 into recital 9 of its common position, although in a slightly redrafted wording. The first part of the amendment, however, could not be accepted since it deals with access and rather than with re-use.

— The first textual change proposed in amendment 12 has been accepted by the Council. The rest of the amendment was not considered appropriate since it refers to access.

— The substance of amendment 14 was incorporated into Article 1.2 (c) of the common position.

— The Council incorporated amendment 26 into the second paragraph of Article 9 in the common position, apart from the change of 'document' into 'information'.

— The Council accepted the principle expressed in amendment 32 specifying the review clause in Article 12(2), but preferred a different wording. Moreover, the part of the amendment making a reference to a recital in an article was not considered appropriate.

2. **European Parliament amendments accepted by the Commission but not adopted by the Council**

— The Council has not adopted amendments 1, 27 and 28 as it feels that the notion of 'information' is too vast and that the word 'document' better reflects the essential concept of the Directive and is a clearer term with regard to its implementation. To the extent they concern the same change, other amendments of the European Parliament were not accepted either.

— The Council did not incorporate amendments 7 and 18, which the Commission only accepted in part. The Council felt that these amendments go beyond the Directive's scope, both as regards the references to data-gathering systems and the presentation of information.

— The Council felt that the change proposed by amendment 13 into Article 1(2)(d) is not necessary since it defined the term 'held by' in recital 11 of the common position.

— The Council could not adopt the addition into Article 5(1) proposed in amendment 20, since it was too vague and prone to cause problems in the transposition of the Directive.

— The first change proposed in amendment 21 was incorporated into Article 4(3) of the common position albeit with a redrafted wording. The Council could not, however, accept the second modification proposed by this amendment. It felt that presuming cases of 'bad faith' within a public sector body would not be appropriate and proving eventual cases of 'bad faith' might prove difficult.

— The Council did not consider it necessary to specify the right to request of review of charges (amendment 24), which would infringe the principles set out in Article 6. This does not, however, make the obligations of Article 6 any less binding. This is consistent with other provisions of the common position in which specific references to appeal have not been made either.

— The Council felt that amendment 31 was not an appropriate addition. However, the substance of the first part of the amendment is covered in recital 15. Moreover, the substance of the second part of the amendment is a matter to be decided by the Member States themselves.

3. **European Parliament amendments not adopted by either the Commission or the Council**

— Amendments 2, 15 and 17 were not accepted since they refer to access issues and transparency of access vis-à-vis the citizens in general, whereas the Directive concerns the re-use of documents. The Council considered that the reference to electronic means in amendment 17 is already covered in Article 5.1 of the common position.

— Amendment 30, which would have added to Article 9 of the original proposal a legal obligation to encourage re-use, was not accepted because it was considered much too vague with regard to transposition and implementation. The principle of this point was taken up in the last two sentences of recital 9 of the common position.

— The Council did not adopt amendment 33 because it considered that the principal concerns of the European Parliament on this subject are already covered, in particular in Articles 6 and 7 of the common position.