

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 April 2006

on the re-use of Commission information

(2006/291/EC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

and services and which could provide a useful content resource for companies and citizens alike.

Having regard to the Treaty establishing the European Community, and in particular Article 218(2) thereof,

(4) The right to access Commission documents is regulated through Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽²⁾.

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

Having regard to the Treaty on European Union, and in particular Article 28(1) and Article 41(1) thereof,

(5) Directive 2003/98/EC of the European Parliament and of the Council ⁽³⁾ sets minimum rules for the re-use of public sector information throughout the European Union. In its recitals it encourages Member States to go beyond these minimum rules and to adopt open data policies, allowing a broad use of documents held by public sector bodies.

Whereas:

(1) The new information and communication technologies have created unprecedented possibilities to aggregate and combine content from different sources.

(6) In its Communication 'Europe 2002: Creating an EU framework for the exploitation of public sector information', the Commission announced an update of the policies on the re-use of information of the EU institutions. Several positive steps have been made in this respect, such as the new Eurostat policy on dissemination of information and the move towards a freely accessible Eurlex portal.

(2) Public sector information is an untapped resource that could be the basis of new, added-value, information society products and services. The Commission underlined the economic potential of public sector information in its Communication of 23.10.2001 ⁽¹⁾ 'eEurope 2002: Creating an EU framework for the exploitation of public sector information'.

(7) The new Commission initiative 'i2010 — a European Information Society for growth and employment', aims among other things at facilitating the creation and circulation of European content. As part of i2010, this Decision determines the conditions for the re-use of Commission documents, with a view to achieving a broad re-use.

(3) The Commission and the other Institutions are themselves holders of many documents of all kinds which could be re-used in added-value information products

⁽¹⁾ COM(2001) 607 final.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

⁽³⁾ OJ L 345, 31.12.2003, p. 90.

- (8) An open re-use policy at the Commission will support new economic activity, lead to a wider use and spread of Community information, enhance the image of openness and transparency of the Institutions, and avoid unnecessary administrative burden for users and Commission services.
- (9) This Decision should be implemented and applied in full compliance with the principles relating to the protection of personal data in accordance with Regulation (EC) 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾.
- (10) This Decision should not apply to documents for which the Commission is not in a position to allow re-use, e.g. in view of third party intellectual property rights or where the documents have been received from the other Institutions,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

This Decision determines the conditions for the re-use of documents held by the Commission or on its behalf by the Office for Official Publications of the European Communities (Publications Office) with the aim of facilitating a wider re-use of information, enhancing the image of openness of the Commission, and avoiding unnecessary administrative burden for re-users and the Commission services alike.

Article 2

Scope

1. This Decision applies to public documents authored by the Commission or by public and private entities on its behalf:
- (a) which have been published by the Commission or by the Publications Office on its behalf through publications, websites or other dissemination tools; or
- (b) which have not been published for economic or other practical reasons, such as studies, reports and other data.

2. This Decision shall not apply:

- (a) to software or to documents covered by industrial property rights such as patents, trademarks, registered designs, logos and names;
- (b) to documents for which the Commission is not in a position to allow re-use in view of intellectual property rights of third parties;
- (c) to the research results of the Joint Research Centre;
- (d) to documents made accessible to a party under specific rules governing privileged access to documents.

3. This Decision shall be implemented in full respect of the rules on the protection of individuals with regard to the processing of personal data, and in particular Regulation (EC) No 45/2001.

4. This Decision is without prejudice to and in no way affects Regulation (EC) No 1049/2001.

Article 3

Definitions

For the purposes of this Decision, the following definitions shall apply:

1. 'document' shall mean:

- (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;

2. 're-use' shall mean the use of documents by persons or legal entities of documents, for commercial or non-commercial purposes other than the initial purpose for which the documents were produced. The exchange of documents between the Commission and other public sector bodies which use these documents purely in the pursuit of their public tasks does not constitute re-use;

3. 'personal data' shall mean data as defined in Article 2(a) of Regulation (EC) No 45/2001.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

*Article 4***General principle**

Subject to the restrictions set out in Article 2(2) and 2(3) all documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out below. Where possible, documents shall be made available through electronic means.

*Article 5***Processing applications for re-use**

1. In order to limit the need to make individual re-use applications the Commission services shall, where appropriate, indicate whether documents are re-usable (e.g. by general notices on web pages).

2. An application for the re-use of a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the Commission service or Publications Office shall either allow re-use of the document requested, and, where relevant, provide a copy of the document, or, in a written reply, indicate the total or partial refusal of the application, stating the reasons.

3. In exceptional cases, for example in the event of an application relating to a very long document to a very large number of documents or in case the application needs to be translated, the time-limit provided for in paragraph 2 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

4. In the case of a refusal, the Commission service or Publications Office shall inform the applicant of the right to bring an action before the Court of First Instance of the European Communities or to lodge a complaint with the European Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively, or Articles 146 and 107(d) of the Euratom Treaty.

5. Where a refusal is based on Article 2(2)b of this Decision, the reply to the applicant shall include a reference to the natural or legal person who is the rightholder, where known, or alternatively to the licensor from which the Commission has obtained the relevant material, where known.

*Article 6***Available formats**

Documents shall be made available in any existing format or language version, through electronic means where possible and appropriate.

This does not imply an obligation to create, to adapt or to update documents in order to comply with the application, nor any obligation to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation.

Neither does this Decision create any obligation for the Commission to translate the documents requested into any other language versions than those already available at the moment of the application.

On the basis of this Decision, the Commission or the Publications Office may not be required to continue the production of certain types of documents or to preserve them in a given format with a view to the re-use of such documents by a natural or legal person.

*Article 7***Principles governing charging**

1. The re-use of documents shall in principle be free of charge.

2. In specific cases, marginal costs incurred for the reproduction and dissemination of documents may be recovered.

3. In cases where the Commission decides to adapt a document in order to satisfy a specific application, the costs involved in the adaptation may be recovered from the applicant. The assessment of the need to recover such costs shall take into account the effort necessary for the adaptation as well as the potential advantages the re-use may bring to the Communities, for example in terms of spreading information on the functioning of the Communities or in terms of the image of the Institution to the outside world.

*Article 8***Transparency**

1. Any applicable conditions and standard charges for the re-use of documents shall be pre-established and published, through electronic means where possible and appropriate.

2. The search for documents will be facilitated by practical arrangements, such as asset-lists of main documents available for re-use.

*Article 9***Licenses**

The re-use of documents may be allowed without conditions or conditions may be imposed, where appropriate through a license or through a disclaimer. Typical conditions for re-use include the obligation for the re-user to acknowledge the source of the documents, the obligation not to distort the original meaning or message of the documents, and non-liability of the Commission for any consequence stemming from the re-use. The conditions shall not unnecessarily restrict possibilities for re-use.

*Article 10***Non-discrimination and prohibition of exclusive arrangements**

1. Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use.
2. The re-use of documents shall be open to all potential actors in the market. No exclusive rights shall be granted.
3. 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 after three years. Any exclusive arrangement shall be transparent and made public.

*Article 11***Implementation**

In accordance with Article 14 of the Commission's rules of procedure, the power to take decisions on behalf of the

Commission on applications for re-use is delegated to the Directors-General and Heads of Service. They shall take the necessary measures to ensure that the procedures in relation to documents for which they are responsible meet the requirements of this Decision. To this end, they shall designate an official to consider applications for re-use and coordinate the response of the Directorate-General or Service.

*Article 12***Review**

This Decision shall be reviewed three years after its entry into force. The review shall in particular look into the possible application of this Decision to the research results of the Joint Research Centre.

*Article 13***Entry into force**

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

Done at Brussels, 7 April 2006.

For the Commission

Viviane REDING

Member of the Commission