

## EFFECTS OF E.U. REGULATIONS ON THE DISSEMINATION OF CADASTRAL INFORMATION (I)

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The recently published Proposal for a Directive of the European Parliament and of the Council establishing an infrastructure for spatial information in the Community (INSPIRE)[1] opens up an interesting debate on how the European regulation affects, or might affect, the dissemination of public-sector land information, and particularly, of cadastral information. If the terms of the proposal are confirmed, cadastral databases will have to be incorporated –at the level of metadata– into the Spatial Information Infrastructure in the space of three years following adoption of the Directive. Although these metadata will not directly include cadastral data *per se*, they must provide sufficient information on the adaptation of cadastral data to the harmonised specifications for spatial data, the provisions for data exchange, rights of use, available services, and the assessment of data quality and validity, to name only the most relevant elements.

In addition to this initiative, other Directives exist that have already been adopted and are now in full force and that affect or may affect dissemination of cadastral information. In terms of greatest impact, we should concentrate on Directive 2003/98/EC of the European Parliament and of the Council, of 17 November 2003, on the re-use of public sector information, containing important provisions that must be taken into account in the design of a suitable model for the dissemination of cadastral information. The relationship between this Directive and INSPIRE is evident, and is explicitly recognised in the latter, in *Whereas* number 7, which states that the objectives of both regulations are complementary, although the proposed text recommends that the Commission should take

further measures to address issues relevant for the re-use of the specific category of public sector land information covered therein. This forebodes the adoption of future regulations that will expressly affect the dissemination of cadastral information. This reference acquires the rank of regulation when the second paragraph of Article 3, the proposal states literally that “this Directive is without prejudice to Directive 2003/98/EC”.

Using both Directives (the one already in force and the proposed INSPIRE directive) as principal references, the objective of this paper is to analyse the degree to which the model for dissemination of cadastral data, described in Title VI (articles 50 to 54) of Royal Decree Law 1/2004 of 5 March, adopting the Merged Text of the Law of Real Estate Cadastre (hereinafter, *TRLRMI*), adapts to the provisions of said Directives. Put more simply, to analyse if the current dissemination model used by the Spanish Cadastre adapts to existing and imminent future E.U. provisions.

### GENERAL CRITERIA FOR THE DISSEMINATION OF INFORMATION HELD IN PUBLIC SECTOR DATABASES: DIRECTIVE 2003/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, OF 17 NOVEMBER 2003, ON THE RE-USE OF PUBLIC SECTOR INFORMATION.

#### Aims and definitions

As stated in the Directive, its objectives have regard to the Treaty establishing the European Community, and in particular Article 95, which 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. Moreover, 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. The Directive also establishes that 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.

In this context, broad cross-border geographical coverage will also be essential. 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.

Per the definition contained in Article 2.4 of the Directive, “re-use” of public sector information 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

(1) INSPIRE is the English acronym of the name “Infrastructure for Spatial Information in Europe”. The proposed Directive suggests the creation of a legal framework for the establishment and operation of this spatial infrastructure, whose aim would be the formulation, implementation, monitoring and evaluation of Community policies at all levels, as well as the supply of public sector territorial information. A key objective of INSPIRE is to make more and better spatial data available for Community policy-making and implementation of Community policies in Member States at all levels. INSPIRE focuses specifically on environmental policy, but its vocation is to be used and made extensive to other users of territorial information.

*documents between public sector bodies purely in pursuit of their public tasks does not constitute re-use.*" These sentences raise the first question for which a position needs to be defined: does the scope of this Directive exclude all cadastral information aimed at satisfying the need for territorial data to perform public tasks, whatever these may be, when the request for such information is made by public bodies with specific competencies in the performance of these public tasks? Or, on the contrary, would the scope of this Directive only exclude the information provided within the scope of compulsory collaboration, in the terms established in article 37.2 of the TRLCI: that is, the information supplied by the Cadastre to other tax bodies for the administration, liquidation, collection and inspection of their own taxes? In other words, does the capture of territorial data to satisfy all types of public sector needs, including currently unknown future needs, form part of the "initial purpose" of the Cadastre, or on the contrary, should we understand that the "initial purpose" for which the data were captured was exclusively for their use in tax administration?

The choice between these two options will be decisive, since it will determine whether or not the Directive will apply to the cadastral information supplied to public bodies for the purpose of satisfying needs other than taxation.

We are in favour of considering, as part of the "initial purpose" the capture of territorial information to satisfy any public sector need, and not only the needs of tax administration. This can be deduced from Article 2 of the TRLCI, whereby Cadastral information will not only "serve the principles of fiscal equity and justice and of the fair distribution of public resources", but also be "at the service of public policies ... requiring territorial information, in the terms established in title VI" which sets out the general criteria for access to cadastral information over an above the terms of compulsory collaboration defined in Article 37.2 of TRLCI. This option means that, in our opinion, the Directive is not applicable to the supply of cadastral information to public bodies for the performance of their competencies, and that its provisions should therefore be limited exclusively to the access to information by companies and individuals.

A second argument further justifies this position. As stated previously, the Directive has regard to Article 95 of the Treaty establishing the European Community, which provides for the creation of an internal market and of a system ensuring that competition in the internal market is not distorted. It is therefore aiming for the existence of a free market for the use of cadastral data, a situation that does not exist within the scope of relationships between public bodies which, by definition, operate on a substantially different plane to that of the market.

### Current situation

The Directive recognises that 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. Traditional practice in

public sector bodies in exploiting public sector information has developed in very disparate ways, and this must be taken into account. 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.

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. If this trend is not corrected, 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.

This situation had already been detected relative to cadastral information by a group of professionals responsible for cadastre in different E.U. countries, who recommended extending the scope of relationships and increasing the exchange of experiences. These recommendations, and other reasons, led to the creation of the Permanent Committee on Cadastre in the European Union, established in 2002 as a conclusion of the First Congress on Cadastre in the European Union, held in Granada during the Spanish presidency of the E.U. The principal goal of the Committee is to become a network for excellence in matters of Cadastre, facilitating for this purpose the exchange of information, expertise and best practice among its members. [2]

### Conditions for re-use and licenses

After recognising the need for a general framework for the conditions governing re-use of public sector documents in order to ensure fair, proportionate and non-discriminatory conditions for such re-use, the Directive goes on to say that Member States' policies may go beyond the minimum standards established in the Directive, thus allowing for more extensive re-use. There is therefore nothing to stop national regulations from establishing a wider framework for the dissemination of cadastral information than the one provided for in the Directive, which is effectively the case in Spain.

The Directive does not contain an obligation to allow re-use of documents. A "list" of information for re-use does not exist. The decision on whether or not to authorise re-use will remain with the Member States or the public sector body concerned. However, once this decision is adopted, the Directive should apply to documents that are made accessible for re-use when public sector bodies license, sell, disseminate, exchange or give out information. Given that

(2) Detailed information on the mission and activities of the Permanent Committee on Cadastre in the European Union is available on [www.eurocadastre.org](http://www.eurocadastre.org)

paragraph 1 of Article 2 of the Merged Text of the Law of Real Estate Cadastre already establishes, as part of the underlying principles of the institution, that the Cadastre will make cadastral information available to satisfy citizens' needs, this decision therefore becomes subject to the rules of the Directive.

The Directive expressly states that its provisions do 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. In this regard, the contents of the first paragraph of Article 53 of TRLCI might apply, and particularly letters c), d) and e), which refer to three specific scenarios of access to cadastral information for purposes of particular interest:

- c) *For the identification of neighbouring parcels, excluding information on the cadastral value of the parcels, by those registered as titleholders in the Real Estate cadastre.*
- d) *By the titleholders or co-title holders of rights of entitlement or lease or tenancy affecting real estate registered in the Real Estate Cadastre, with regard to said estates.*
- e) *By heirs or successors regarding the real estate properties of the of the owner or donor registered in the Real Estate Cadastre."*

On the other hand, the scenario described in letter b) of the Law raises some doubts. In our opinion, this type of particular interest (understood as different from the general interest) should be acknowledged when cadastral information is requested for the identification of estates by public notaries in order to draw up a deed of conveyance, to name an example. What is beyond doubt is that this is not the situation when a notary or registrar requests the information in order to comply with and execute the provisions of Title V, relative to documentary proof of the cadastral reference, since this function falls within the public interest. Given that in this case notaries and registrars are acting "within the framework of their public service activities" they should be considered to these effects as public bodies, and therefore the supply of data in these instances would fall outside the scope of the Directive.

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 re-use of the documents should be made clear to the potential re-users. In this regard, the General Directorate of Cadastre should continue its efforts to ensure that the conditions for access to cadastral information are clearly explained on the institution's web page, and use this medium to publish the internal memoranda and instructions issued to regulate this activity [3]. Within this policy of transparency, 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. This leads us directly to the concept of metadata, discussed in further detail in the analysis of the Directive to establish an infrastructure for spatial information infrastructure in the Community (INSPIRE). Lastly, applicants for re-use of documents should be informed of available means of redress relating to decisions or practices affecting them. In the context of the Spanish Cadastre, these means include the right to appeal provided for in Article 54 of the TRLCI, and the right to register complaints with the Council for the Defence of the Taxpayer.

The Directive contains a series of specific mandates applicable when the public sector information is provided via a "license" understood as the establishment of a series of conditions on the re-use by the licensee dealing with issues such a 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 licenses", available on line, are specially recommended. The Spanish translation is confusing with regard to the scope of what should be considered as "licence", since while the first part of the rule refers to the existence of a series of criteria limiting the use of the information after receipt, the second part of the rule appears to suggest the existence of some type of document issued or used in relation with it.

The model for re-use of data defined by the General Directorate of Cadastre includes a list of criteria restricting the right to access and subsequently use cadastral information. It can therefore be considered that a licence regime exists in the terms described in the Directive. These restrictive criteria can be grouped into four themes:

- *Respect for the exclusive competency of the State:* Dissemination of cadastral information is the competency of the General State Administration. This function is performed by the General Directorate of Cadastre, either directly or through diverse systems of collaboration established with third parties. Therefore, the supply of cadastral information only authorises the applicant to use it to fulfil his/her own needs, and does not initially authorise its subsequent re-use by others. To obtain this authorisation, thus allowing the applicant to re-distribute the data obtained from the Cadastre, the applicant must follow the procedure defined in paragraph 2 of Article 52 of the TRLCI, which expressly requires the applicant to indicate the number of copies intended for distribution of the product containing the cadastral information.
- *Application of the model established for the defence of protected cadastral data:* As explained later, the system of re-use is different depending on whether or not the application for information includes protected data.
- *Protection of rights that the law governing Intellectual Property assigns to the General State Administration:* This defines a double system of protection in combination with that of the public competency described above.

(3) The web page of the General Directorate of Cadastre, [www.catastro.minhac.es](http://www.catastro.minhac.es), contains the conditions for access in different languages. Further, the "regulations" section contains Memorandum no. 10.01/2004, of 21 July, dictating instructions for the processing of common requests for cadastral information.

- *Payment of the Cadastral Certification Fee:* Chapter II of Title VII of the TRLCI regulates the Cadastral Certification Fee. This regulation is necessarily complex, since it addresses the different situations that may arise depending on the type of product requested, the use to which the information will be put, and the method of access used to obtain the information. The combination of these factors gives rise to different scenarios whose detailed description would require a lengthy departure from the purpose of this paper. It is sufficient to say that payment of the fee, when obligatory, forms part of the conditions of access to cadastral information.

Conditions for re-use should be non-discriminatory for comparable categories of re-use. This means that all parties should have access to the information on equal terms, especially if the re-user might obtain economic or commercial gain through the indirect use of the information. This should 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. This is already the case in the Spanish cadastral model, where information supplied to public bodies is exempt from payment of the Cadastral Certification Fee, charged for the supply of documents on request by the interested party. The Spanish model also features positive discrimination, supplying information through the e-Cadastre free of charge, to further stimulate the development of the information society.

One last idea relative to the general conditions for access to information. 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. The Directive thus questions the legality of possible agreements between the public entity that administers cadastral information and private partners which grant the latter exclusive access to certain cadastral information, or allow them access in better conditions than those established for other interested private agents. This situation does not arise in the model applied by the Spanish General Directorate of Cadastre, which does not enter into this type of exclusive relationships. Notwithstanding the above, the Directive establishes one exception: 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. Obviously, these exceptional circumstances must be properly documented.

### **Definitions of public sector body subject to the Directive**

The definition of *public sector body* and *body governed by public law* used in the Directive derive

from other European rules governing public contracts [4]. These definitions do not apply to public companies. To avoid going to unnecessary length, it is sufficient to say that both the General Directorate of Cadastre and the entities administering cadastral information in the Basque Country and Navarre, are clearly included within the scope of application of the Directive.

### **Definition of document**

The Directive establishes a generic definition of the term *document*, in line with the evolution of the information society. This definition covers all forms of representation of acts, facts or information, and any collection of such data, regardless of its medium, held by public sector bodies. A document held by a public sector body is any document whose re-use may be authorised by said public sector body. Specifically, Article 2 defines *document* as:

- 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.

It is therefore quite clear that all available cadastral information, as described in Articles 62 and 66 of Chapter II of Title VII of the TRLCI, regulating the Cadastral Certification Fee, fulfil the condition of *document* as defined in the Directive.

### **Time Limits**

Whereas number 12 of the Directive indicates that “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 regime”. The Directive completes this statement of intent with an idea that is particularly relevant to cadastral information: “Once a request for re-use has been granted, public sector bodies should make the documents available in a timeframe that allows their full economic potential to be exploited. This is particularly important for *dynamic content*, the economic value of which depends on the immediate availability of the information and of regular updates.”

This concept of information with “dynamic content” is fully relevant to cadastral data since the absence of permanent and regular updates, including the immediate availability of updated information to users, converts even the best Cadastre into a useless inventory in the space of a few years.

(4) In particular:

- DO L 209 of 24.7.1992, p. 1; Directive last modified by Directive 2001/78/EC of the Commission (DO L 285 of 29.10.2001, p. 1).
- DO L 199 of 9.8.1993, p. 1; Directive last modified by Directive 2001/78/EC.
- DO L 199 of 9.8.1993, p. 54; Directive last modified by Directive 2001/78/EC.
- DO L 101 of 1.4.1998, p. 1.

Article 4 of the Directive establishes specific rules regarding time limits, which must be taken into account. Specifically, paragraph 2 indicates: "Where no time limits or other rules regulating the timely provision of documents have been established, public sector bodies shall process the request and shall 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."

Is this time limit applicable to requests for information made to the General Directorate of Cadastre? The initial answer is yes, since in Title VI of the TRLCI which, as previously indicated, regulates the criteria for access to cadastral information, no express reference is made to delivery time limits. Nor are applicable references found in Royal Decree 1485/1994, of 1 July, approving the rules for access and public distribution of cartographic and alpha-numerical cadastral information of the General Directorate of Cadastre. This lack of reference is not surprising, since part of these rules were implicitly annulled by the Second Additional Provision of Law 24/2001, of 27 December, on Measures of Taxation, Administration and the Social Order, and by article 33 of Law 13/1996, of 28 December, both of which are now obsolete following the merge of their contents into the afore-mentioned Law of Real Estate Cadastre. We should also consider the implications of S.T.C. 290/2000 requiring a rule of legal rank to regulate the access to files and archives containing personal data, which serves to confirm, in case any doubt still remained, that articles 3, 4, 7 and 8 of the mentioned Royal Decree are no longer in force. The resolution time limits of 3 and 6 months established in Royal Decree 803/1993, modifying certain tax procedures, would not appear to apply either, since these refer to measures for the processing of statements presented to the Cadastre, but not to requests for information, which is logical if we consider that a request for information can hardly be classified as a tax procedure.

The absence of a specific regulation in force therefore raises the question of whether subsidiary application should be made to Law 30/92, of 26 November, of the Legal System of Public Administrations and Common Administrative Procedure. It is in paragraphs 2 and 3 of said Law where an applicable reference can be found. These state:

"2. The maximum time limit for notification of a specific resolution will be the time limit established by the rule regulating the corresponding procedure. This time limit shall not exceed six months, unless a longer period is established by a rule of legal rank or is provided for in European Community regulations.

3. When the rules regulating procedures do not establish a maximum time limit, *this time limit will be three months.* This limit and those established in the preceding paragraph will be calculated:

- a)....
- b) For procedures initiated on request by the interested party, as of the date of entry of the application in the register of the competent processing entity."

Interestingly, law 30/92 expressly allows the extension of the period for resolution of a procedure when so authorised by European regulations, but makes no reference to reducing said period when the time limit established by the E.U. is shorter, as is the case here.

The situation described above confirms our initial opinion that the 20 days time limit established in the Directive for delivery of requested cadastral information, counting from the date of receipt of the request in the appropriate register, is fully applicable. Consideration should therefore be given to the advisability of implementing the provisions of Article 12 of the Directive, which establishes the criteria for incorporation of its contents into internal law by stating that the Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 1 July 2005. This suggests inclusion of the 20 days time limit established in the Directive either via specific modification of the contents of Title VI of the TRLCI, or, assuming sufficient legal rank, its express inclusion in the future regulation for application of the Merged Text, preparation of which is pending.

One final reflexion on the subject of time limits for the delivery of information. There is one category of document, the Cadastral Certificate, for which a specific delivery time limit exists that is shorter than 20 days time limit established by the Directive. This time limit has not been established via regulation, but rather as a result of the commitments acquired in the Cadastral Services Charter, which expressly require the organs of the General Directorate of Cadastre to:

- Deliver literal certificates (containing only literal information on area, boundaries, tenure, location, title holder, use, cadastral reference, etc.), in 90% of cases, immediately on request, in exchange for payment of the corresponding fee which can take place in the same operation.
- Deliver descriptive and graphic certificates, in 90% of cases, within 15 days.
- Send certificates by mail when requested by the interested party. In 90% of cases this will be done immediately for literal certificates, or in 15 days for descriptive and graphic certificates. These time limits will be counted from the date of receipt by Cadastral administration of proof of payment of the corresponding fee.

Due to the fact that these certificates, which by a large margin represent the majority of requests for cadastral information, are directly accessible via the e-Cadastre, the delivery of required information is already immediate via Internet. In this regard, the forthcoming enlargement of the e-Cadastre, which will allow partial download of cartography and other information, leads us to conclude that the maximum time limit of 20 days for delivery of cadastral information can be achieved without apparent difficulty.

## Formats

The Directive makes express mention of certain criteria regarding the definition of formats for the re-use of information, establishing that public sector bodies shall make their documents available in any pre-existing format or language, through electronic means where possible and appropriate. However, 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. In regard to this recommendation, we can refer to paragraph 4 of Article 50 of the TRLCI, which indicates that cadastral information "shall be provided *exclusively* in the formats available to the General Directorate of Cadastre, whenever possible using electronic techniques and media". Are the two regulations compatible? In our opinion, they are. Firstly, because the tools currently used to disseminate information have been based on pre-existing formats and languages. And secondly, because electronic means are used in virtually all instances, it is possible to continuously adapt them to the new needs and demands for information formats thanks to the progressive development of the services offered by the e-Cadastre.

But what about the supply of information in other languages –Galician, Catalán and Basque, and eventually, English, French or other Community languages–? And along the same lines, what about the issue of certain highly complex "extracts", such as the summary formats of Value Statements or the access to information on a specific sector or portion of territory?

With regard to the official Spanish languages –Catalán, Galician and Basque– it is merely a question of the necessary technology becoming available to allow the supply of formats in these languages in order to comply with the provisions of Article 36 of Law 30/1992, of 26 November, of the Legal System of Public Administrations and Common Administrative Procedure, in the text provided by Law 4/1999, of 13 January [5]. These technological limitations must be overcome in coming years so that citizens can obtain official information in any of the official languages. This right is not demandable with regard to other languages, even to the languages of E.U. Member States, although the intent to obtain a system of cadastral information that fulfills the aims defined in the Directive –development of the internal market and the information society in Europe– would recommend planning for a future point of arrival wherein said information can be obtained at least also in English.

(5) Remember that said Article states that "1. The language of procedures processed by the General State Administration is Spanish. Nevertheless, interested parties addressing organs of the General State Administration based in the territory of an Autonomous Community may also use the co-official language established for that Community. In this case, the procedure will be processed in the language chosen by the interested party."

With regard to the issue of "extracts" of cadastral information, it is clearly the prerogative of the General Directorate of Cadastre to define when the production of such extracts represents a "disproportionate effort", as expressed in the Directive. When this is not the case, it is advisable to define new formats for the delivery of information, or to make existing formats more flexible, in order to fulfil these needs.

The Directive contains one other important concept that deserves mention. It states that, to facilitate re-use, public sector bodies should make their own documents available in a format which, as far as possible and appropriate, is not dependent on the use of specific software. This aims to prevent the creation of "exclusive" systems that require the user to purchase a specific software application in order to access public information. This mandate is significant, since it definitively conditions systems design for the supply of cadastral information via Internet and demands the use of open systems that are compatible with several different software applications. Access to the information contained in the e-Cadastre does not require the installation of proprietary applications in the user's PC. Thus, information can be accessed using any standard navigator and does not require the download of any additional programmes, meaning that the Spanish model is fully compliant with the Directive.

## Charges

The Directive contains two groups of rules relative to charges: the first lays down the criteria for establishing the amount of charges, and the second addresses the transparency of such charges.

With regard to defining their amount, Article 6 indicates that "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." Assuming first of all that the Cadastral Certification Fee is included within the concept of "charge" used in the Directive, although it is not the same thing in the Spanish legal system, this mandate should be understood as a criterion to set the upper limits of charges, but not as an obligation to require payment for the dissemination of public information. In fact, *Whereas* number 14 expressly states that "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", further developing this concept, as mentioned previously, in *Whereas* number 19 which, after requiring that the conditions for re-use should be non-discriminatory, goes on to say: "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."

We may therefore consider that the criteria applied by the General Directorate of Cadastre are fully aligned with the Directive, since:

- The amounts of the Cadastral Certification Fee, by nature, are based on the theoretic cost of collection, production, reproduction and dissemination of this information. The "reasonable return on investment" permitted by the Directive is not applied.
- A differentiated charging policy is established for requests for information by public sector bodies for the exercise of their competencies, which are free of charge in this instance, since they are exempt from payment of the Cadastral Certification Fee.
- The Spanish model further waives all charges, for both public sector users and private users, when the information is obtained via the e-Cadastre, since access to the information through this medium is exempt from payment of the Fee.

With regard to the transparency of charges, in Article 7 the Directive indicates that "any applicable conditions and standard charges for the re-use of documents held by the public sector shall be pre-established and published, through electronic means where possible and appropriate. On request, the public sector body shall indicate the calculation basis for the published charge." Both of these criteria are fulfilled in the dissemination policy applied by the General Directorate of Cadastre. The catalogue of available Cadastral products, the amounts of the Cadastral Certification Fee, and the conditions for access to such products are defined in a rule of legal rank that fully complies with the criteria governing publicity demanded by the Constitution. Moreover, these criteria are generally available via a simple consultation on the institution's web page.

### Processing of personal data

Paragraph 4 of Article 1 of the Directive indicates that "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."

Directive 95/46/EC of the European Parliament and of the Council, of 24 October 1995, on the protection of individuals in relation to the processing of personal data and the free circulation of such data, was transposed into Spanish law through Organic Law 15/1999, of 13 December, of Protection of Personal Data. The TRLCI is of course respectful of this regulation and establishes a specific system for data protection that covers the first name, family names, and address of the cadastral title holder, and the cadastral value, of both land and buildings, of his/her properties. These data are subject to special access procedures and other protection guarantees. Moreover, given the tax nature of such information, the TRLCI extends the protection system to legal

entities owning real estate property and the title holders of certain real rights on property registered in the Cadastre.

### Intellectual property rights

Article 1 of the Directive indicates, in paragraph 5, that "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 this instance also, cadastral regulations governing the dissemination of information are correctly aligned with the provisions of the Directive. Thus, paragraph 2 of Article 50 of the TRLCI establishes that "the delivery and use of graphic and alpha numerical cadastral information is subject to legislation on intellectual property. Copyright corresponds, in any case, to the General State Administration." These rules are complemented by those included in paragraph 2 of Article 52 establishing that "the General Directorate of Cadastre may authorise the transformation and subsequent distribution of cadastral information in the terms established in Article 2 of the merged text of the Intellectual Property Law, approved by Royal Decree Law 1/1996, of 12 April, (this latter is the recipient of the transposition of the E.C. regulation) upon request by the interested party stating the number of copies of the transformed product he/she intends to distribute.

### Community scope of action

It is important to take into account the contents of *Whereas* number 25 for its description of the relevance given by the European Parliament and the Council to the subject matter covered by the Directive. This rule states that "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 distortion of competition in 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."

The preceding paragraph clearly announces that the Council reserves the right, by means of the Directive, to intervene directly in this field, establishing obligations for immediate implementation by the Governments of the Member States. This intent is already becoming apparent, as we shall see below, with

the preparation of a Directive to establish an infrastructure for spatial information.

### **Incorporation into internal law**

Article 12 of the Directive indicates that: "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2005. 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".

### **Conclusions on the level of compliance of Spanish regulations governing the dissemination of cadastral data with the contents of the Directive.**

To summarise the contents of the preceding paragraphs, we can conclude that the model defined by the TRLCI for the dissemination of cadastral

information is compliant with the provisions of Directive 2003/98/EC. No opposing provisions are observed, nor do elements exist that are contrary to the spirit or regulatory content of the Directive. Therefore, the 1 July 2005 deadline for adaptation will neither condition nor require reforms in the model for dissemination of cadastral data in force today.

Just two recommendations should be proposed for consideration:

Firstly, consideration should be given to the possibility of establishing a specific upper limit of 20 days for the delivery of requested information, thus incorporating the rule provided in the Directive into the national regulation. This upper limit is fully adoptable, considering that the principal channel of dissemination of information is and will continue to be the e-Cadastre.

Secondly, the TRLCI has not included any express reference to the Directive nor to the fact that the TRLCI is fully concordant with the Directive, as it might have done in accordance with the aforementioned Article 12 of the Directive. It would be advisable, in our opinion, to include such a reference in a future reform, even if it is also included in the Regulation to be prepared for application of the Merged Text. ■

**DIRECTIVE 2003/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 17 November 2003  
on the re-use of public sector information**

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. Traditional practice in public sector bodies in exploiting public sector information has developed in very disparate ways. That should be taken into account. 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.

(8) A general framework for the conditions governing reuse 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 programmes. 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. At Community level, Articles 41 (right to good administration) and 42 of the Charter of Fundamental Rights of the European Union recognise the right of any citizen of the Union and any natural or legal person residing or having its registered office in a Member State to have access to European Parliament, Council and Commission documents. Public sector bodies should be encouraged to make available for re-

(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 (OJ C 159 E, 8.7.2003, p. 1) and Position of the European Parliament of 25 September 2003 (not yet published in the Official Journal). Council Decision of 27 October 2003.

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 (5), 93/36/EEC (6) and 93/37/EEC (7) and 98/4/EC (8)). Public undertakings are not covered by these definitions.

(11) This Directive lays down 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. Reasonable time limits throughout the Union will stimulate the creation of new aggregated information products and services at pan-European level. Once a request for re-use has been granted, public sector bodies should make the documents available in a timeframe that allows their full economic potential to be exploited. This is particularly important for dynamic content (e.g. traffic data), the economic value of which depends on the immediate availability of the information and of regular updates. Should a licence be used, the timely availability of documents may be a part of the terms of the licence.

(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. To facilitate re-use, public sector bodies should make their own documents available in a format which, as far as possible and appropriate, is not dependent on the use of specific software. Where possible and appropriate, public sector bodies should take into account the possibilities for the re-use of documents by and for people with disabilities.

(5) 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).

(6) OJ L 199, 9.8.1993, p. 1. Directive as last amended by Commission

Directive 2001/78/EC.

(7) OJ L 199, 9.8.1993, p. 54. Directive as last amended by Commission

Directive 2001/78/EC.

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

(14) Where charges are made, the total income should not exceed the total costs of collecting, producing, reproducing and disseminating documents, together with a reasonable return on investment, having due regard to the self-financing requirements of the public sector body concerned, where applicable. Production includes creation and collation, and dissemination may also include user support. Recovery of costs, together with a reasonable return on investment, consistent with applicable accounting principles and the relevant cost calculation method of the public sector body concerned, constitutes an upper limit to the charges, as any excessive prices should be precluded. 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 precondition 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. Applicants for re-use of documents should be informed of available means of redress relating to decisions or practices affecting them. This will be particularly important for SMEs which may not be familiar with interactions with public sector bodies from other Member States and corresponding means of redress.

(16) Making public all generally available documents held by the public sector — concerning not only the political process but also the legal and administrative process — is a fundamental instrument for extending the right to knowledge, which is a basic principle of democracy. This objective is applicable to institutions at every level, be it local, national or international.

(17) 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.

(18) If the competent authority decides to no longer make available certain documents for re-use, or to cease updating these documents, it should make these decisions publicly known, at the earliest opportunity, via electronic means whenever possible.

(19) 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.

(20) 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.

(21) 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 (9).

(22) 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.

(23) Tools that help potential re-users to find documents available for re-use and the conditions for re-use can facilitate considerably the cross-border use of public sector documents. Member States should therefore ensure that practical arrangements are in place that help re-users in their search for documents available for reuse. Assets lists, accessible preferably online, of main documents (documents that are extensively re-used or that have the potential to be extensively re-used), and portal sites that are linked to decentralised assets lists are examples of such practical arrangements.

(24) 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 (10) and Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (11). It spells out the con-

ditions within which public sector bodies can exercise their intellectual property rights in the internal information market when allowing re-use of documents.

(25) 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 and the practical means of facilitating reuse of existing documents held by public sector bodies of the Member States.

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 and is without prejudice to the existing access regimes in the Member States.

(9) OJ L 281, 22.11.1995, p. 31.

(10) OJ L 167, 22.6.2001, p. 10.

(11) OJ L 77, 27.3.1996, p. 20.

This Directive shall not apply in cases in which citizens or companies have to prove a particular interest under the access regime to obtain 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 audiovisual 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 noncommercial 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, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in Chapters III and IV. Where possible, documents shall be made available through electronic means.

## 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, public sector bodies shall process the request and shall 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. On request, the public sector body shall indicate the calculation basis for the published charge. The public sector body in question shall also indicate which factors will be taken into account in the calculation of charges for atypical cases. Public sector bodies shall ensure that applicants for reuse of documents are informed of available means of redress relating to decisions or practices affecting them.

#### 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.

#### Article 9: Practical arrangements

Member States shall ensure that practical arrangements are in place that facilitate the search for documents available for reuse, such as assets lists, accessible preferably online, of main documents, and portal sites that are linked to decentralised assets lists.

### CHAPTER IV: NON-DISCRIMINATION AND FAIR TRADING

#### Article 10: 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 11: 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 31 December 2008.

### CHAPTER V: FINAL PROVISIONS

#### Article 12: Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2005. 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 13: Review

1. The Commission shall carry out a review of the application of this Directive before 1 July 2008 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 14: Entry into force

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

#### Article 15: Addressees

This Directive is addressed to the Member States.

Done at Brussels, 17 November 2003.

For the Parliament  
P. COX  
The President

For the Council  
G. ALEMANNO  
The President

