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PUBLIC SECTOR INFORMATION : A KEY RESOURCE FOR EUROPE

GREEN PAPER ON PUBLIC SECTOR INFORMATION
IN THE INFORMATION SOCIETY

TABLE OF CONTENTS

Introduction:	The issue	1
Chapter I :	Why is public sector information a key resource for Europe?	3
I.1	Importance of access for European citizens	3
I.2	Public sector information: Opportunities for economic growth and employment	5
Chapter II :	The Information Society and the public sector	8
II.1	Electronic Government	8
II.2	Electronic Government and public sector information	9
II.3	Electronic access for all?	10
Chapter III :	Issues linked to access and exploitation of public sector information	11
III.1	Definitions	11
III.2	Conditions for access to public sector information	11
III.3	Practical tools for facilitating access	12
III.4	Pricing issues	13
III.5	Competition issues	15
III.6	Copyright issues	15
III.7	Privacy issues	16
III.8	Liability issues	16
III.9	EU information	17
	Concluding remarks	18
	List of questions	19
Annexe 1:	Current situation in Member States regarding legislation and policy on access to public sector information.	20
Annexe 2:	European Commission action relating to public sector information The background to this Green Paper	26
Annexe 3:	Current situation in the US: the legal framework	28

The issue

1. Public sector information¹ plays a fundamental role in the proper functioning of the internal market and the free circulation of goods, services and people. Without user-friendly and readily available administrative, legislative, financial or other public information, economic actors cannot make fully informed decisions.

2. Public information in Europe is often fragmented and dispersed and so in many instances it is less clear than intended. This situation is mainly due to differing national legislation² on the ways information can be accessed and exploited, and to various practices which hamper the availability of data. The issue at stake is not that Member States should produce more information, but that the information which is already available to the public should be clearer and more accessible to potential users.

3. The ready availability of public information is an absolute prerequisite for the competitiveness of European industry. In this respect, EU companies are at a serious competitive disadvantage compared to their American counterparts, which benefit from a highly developed, efficient public information system at all levels of the administration.³ The timely availability of public sector information is also increasingly important to further the networked economy and valorise its economic potential.

4. In Europe the issue is particularly crucial to SMEs, which have fewer resources to devote to an often difficult search for fragmented information. Ultimately, this has a negative bearing on job creation. The same goes for the difficulties European content firms encounter in comparison to their American counterparts as far as the exploitation of public sector information is concerned.

5. Moreover, in today's economy and society in which the Euro fosters the integration process, the fact that EU citizens and consumers cannot make better use of public information available in other EU Member States is something of an anachronism. In effect, this situation constitutes a challenge to the rights of citizens under the EC Treaties.

¹ The definition of the public sector is an issue for discussion and is further analysed in Chapter III. However, state-owned companies operating under market conditions and subject to private and commercial considerations are clearly not meant to be covered by this Green Paper.

² See summary of legislation in Annexe 1

³ Since the Freedom of Information Act was enacted in 1966, the US government has pursued a very active policy of both access to and commercial exploitation of public sector information. This has greatly stimulated the development of the US information industry. Annexe 3 gives a picture of the current legal framework in the US.

6. Whereas the increasing use of electronic media to store and to disseminate public sector information can serve to improve this situation, this has also tended to magnify still further the differences that already exist between Member States. Certain Member States have begun to examine the effects of new technologies on the public service and in particular on access to and exploitation of public sector information.⁴

7. This topic is also important for the enlargement of the EU, where candidate Member States will have to adapt their legal systems and public services to comply with the requirements of the EU membership. Better access to public sector information will contribute to this process.

8. The need for launching a concerted debate at the European level is now more clear and urgent than ever. The objective of this Green Paper is to undertake a broad public consultation involving all the actors concerned with a view to examining the main issues at stake and also to triggering a political discussion at European level. The Green Paper draws on the results of an extensive preliminary consultation process that started in June 1996 and has involved representatives from the Member States, from citizens' and users' groups and from the private sector and more specifically the information industry. All those consulted considered it appropriate to launch a debate on this issue.

9. The subjects addressed in the Green Paper were drawn from the results of this extensive consultation. The reactions to this Green Paper and to the questions it poses will guide future action on this issue. It is clear that further discussion and an exchange of best practice will be necessary with the Member States and the other key actors.

10. Some issues may require technical solutions; some may be dealt with by improving administrative procedures; others will require political solutions. Depending on the results of the public consultation process, proposals for action could be formulated by the Commission to improve the situation at European level in specific fields. Such proposals will, of course, only be considered where consistent with the subsidiarity and proportionality principles. The type and intensity of any response must be limited to what is necessary to achieve the objectives of the Treaties.

11. Nothing in this Green Paper, nor in any future action which it might lead to, should be

⁴ e.g. The UK's Freedom of Information White Paper, the Dutch memorandum 'Towards the Accessibility of Government Information' and the French Action Programme "Preparing France's entry into the Information Society"

seen as an attempt to prejudice national rules governing the system of property ownership, nor the role of any public body in the Member States.

All interested parties, both from the public and private sectors, are strongly encouraged to provide their views on the issues raised in this document. The Commission would be pleased to provide additional background information on existing Commission or national access to public information policies upon request. Answers, comments and requests should be sent to the following address before 1st June 1999

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Hard copies of all submissions will be made available at the conclusion of the consultation, unless a request for confidentiality is received. A Web site has been opened for the posting of both the Green Paper and submissions received at the address:

<http://www.echo.lu/legal/en/access.html>

Chapter I : Why is public sector information a key resource for Europe?

I.1 Importance of access for European citizens

Taking advantage of EC rights

12. The EC Treaty has conferred a number of fundamental freedoms on EU citizens. There are, however, **considerable practical difficulties** that can prevent people from exercising those rights. These difficulties result primarily from a **lack of transparency for citizens, employers and administrations at all levels**.⁵

13. In many cases, the information may be spread over different databases or information points of local administrations. A better transparency of public sector information can therefore strengthen the rights conferred by the EC Treaty by improving the practical conditions for their application.

14. The existence of different languages in Europe will continue to hamper to some extent EU-wide access to public sector information. However, the provision of a multilingual information could be facilitated in particular through the use of ICT-technologies.⁶

15. Access to public sector information is **essential for the mobility** of both workers and categories like students and retired people within the EU. A better knowledge of opportunities, circumstances and procedures in countries throughout Europe can help them to make more informed choices about mobility and to take full advantage of the right to move to another EU country.

16. The following example shows that efforts are being made at European level to improve information flows, thus enhancing mobility perspectives for individual **workers** within the European Union.

*The European Commission has created, together with the Member States the **EURES** Network, with the support of the EU's Interchange of Data between Administrations (IDA) programme. This network aims to interconnect job vacancy databases in every European country to a common European network. This system not only provides job-seekers with job offers, but also with other relevant information that they will need to work in another EU country. At the same time it gives employers the chance to seek the skills they need Europe-wide.*
<http://europa.eu.int/jobs/eures/>

17. Access to public sector information goes beyond mobility issues. It also has an impact on the way citizens can take advantage of the **internal market**. Lack of information on administrative procedures or on prices, quality and safety conditions of products is one of the barriers that prevent consumers from buying goods and enjoying services from other Member States. It is, for example very difficult to obtain information on importing right-hand drive vehicles (or left-hand, as appropriate) from the British Isles to the Continent or vice-versa.⁷ Another example is the field of taxation, where taxpayers find it enormously difficult to obtain full information on international tax arrangements.⁸

18. At the Cardiff European Council, a programme was launched called 'Dialogue with Citizens and Business'. This Community programme is a follow-on to the Citizens First initiative. It addresses citizens and business alike in an effort to encourage greater awareness of the opportunities offered by the Single Market. A better access to public sector information is extremely important in this respect.

Participation in the European integration process

19. A **Citizens' Europe** will only come about if citizens are to participate effectively in the building of the European Union. Such participation implies that they are well informed on issues related to the functioning of the EU and its activities. Access to information at both European and national level can greatly facilitate this.

⁵ See for example the Single Market Scoreboard of May 1998, p.14ff.

⁶ The language engineering activities in Framework Programme IV and V for R&D address the technological aspects of this issue. The R&D-actions are complemented by the market oriented MLIS programme: multiannual programme to promote the linguistic diversity of the Community in the Information Society, O.J. N° L306, 28.11.1996, p. 40.

⁷ 'Listening to Citizens; The difficulties that people face in exercising their rights within the Single European Market'.

⁸ Ibidem. This report contains more example where lack of information makes life difficult for European citizens that exercise their internal market rights.

In the last elections of the European Parliament the lack of information on new election rights of European citizens had a negative influence: participation of non-national voters in their Member State of residence was relatively low and only one non-national candidate was elected in her Member State of residence.⁹

20. Indeed, an adequate access to information of and on the European Union can largely benefit the European integration process. The conclusions of the Cardiff European Council have therefore once more stressed the importance of the need to bring the European Union closer to the citizens by **making it more transparent and closer to everyday life** through the EU's commitment to allowing the greatest possible access to information on its activities.¹⁰ This is a concern for the EU and the Member States together since a significant part of the information related to the European Union activities is actually held at national level. It seems thus important that European citizens have a right of access not only to documents held by the Institutions, but also to EU-related information, in the broadest sense, available in the Member States.

21. To enhance the transparency of EU-action for European citizens, the Treaty of Amsterdam has firmly anchored their right to access documents of the European Parliament, Council and Commission in the EC Treaty.¹¹ The provisions are particularly important in supporting the democratic process and in increasing the understanding of the European integration. They are an important step, given that a considerable number of the complaints lodged to the European Ombudsman deal with transparency and the access to information

22. The EU institutions pursue an **active policy in the field of dissemination of information** on its functioning and the issues within its

⁹ See the Second report of the European Commission on Citizenship of the Union, COM/97/230 final.

¹⁰ Conclusions of Cardiff Council, 15/16 June 1998

¹¹ New article 191a of the EC Treaty provides that :

"1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 189b within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents."

Declaration no. 17 attached to the Maastricht Treaty had already prepared the field for this development.

responsibility. Annexe 2 gives an overview of the initiatives in this field. The EUR-Lex website is one example.

EUR-Lex displays, for example, free of charge the Official Journal for a period of forty-five days following publication, the Treaties, the legislation in force and the case-law. It is updated daily in 11 languages with the latest editions of the Official Journal. These are available on the Internet a few hours after the paper version is published.

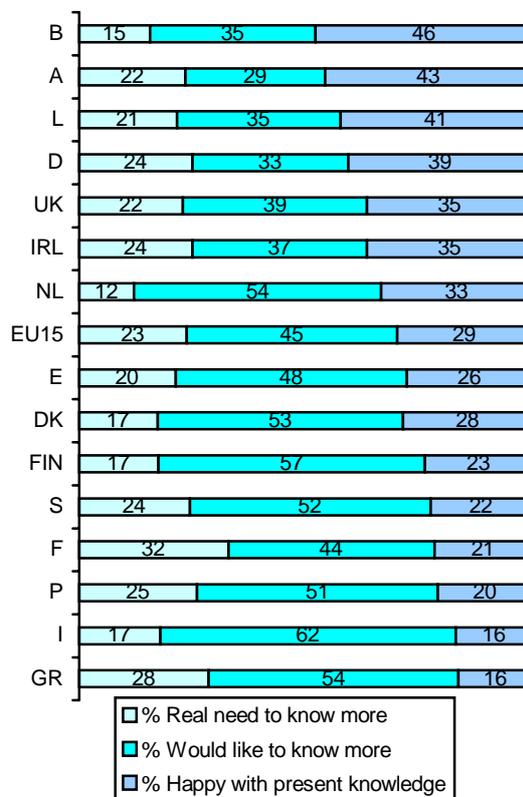
<http://europa.eu.int/eur-lex>

23. In spite of these efforts many European citizens would like to have more information on the EU. There is obviously a growing interest for EU-issues that have an impact on citizens' lives.

68% of the surveyed persons need or would like more information on the European Union. Europeans want to know in particular more on their rights as citizens of the Union (49%), on the Single currency (45%) and on employment (42%), issues that are all absolute priorities for the European Union

Source : Euro barometer n°49, September 1998.

Fig.1 :Desire to know more about the EU



Source : Eurobarometer 49, 1996

24. Another aspect of a Citizens' Europe is a better access to information on other Member States. It will contribute to citizens' knowledge of other European countries, which in its turn can

arouse a **greater interest in the European integration process**. To this end public sector bodies in the different Member States could make information with an interest for non-nationals more accessible to them.

I.2 Public sector information: Opportunities for economic growth and employment

Why is access to public sector information important for businesses ?

25. Access to public sector information in the different Member States is a necessity to **take advantage of the existing possibilities for all types of businesses** operating in more than one Member State.

26. The information relevant to business is in the first place of an **administrative** nature. At the moment it is still hard to get hold of a full picture of the rights, duties and procedures that allow a company to operate without difficulties in other European countries.

58% of companies think that it is likely that access to information would enable them to expand their activities within the European Union. For instance, 66% of firms identified their need for precise information about administrative procedures. 25% of companies think that the persistence of obstacles to trade and business activities could be attributed to a lack of information about EU rules.

Source : Single Market Scoreboard, October 1998

27. The lack of administrative information particularly harms the SMEs that do not have the means to find pieces of information that are often dispersed.

28. But also information of a **non-administrative nature** can be extremely important for the decisions of firms. Statistical, financial and geographic information are some examples. This information plays a **key role for businesses** in all sectors of activity in particular when defining business strategies, marketing decisions, export or investment plans. Quick and easy access to such information helps businesses to make informed choices. A lack of information may considerably delay decisions on transborder operations.

29. The relevant business information throughout Europe as collected by the Chambers of Commerce is for example not readily available. An initiative at European level has been taken to improve the situation in this field (see the box below).

EBR II Project

*The European Business Register project has been established because the absence of a fully integrated information service on European Companies is a **potential threat to the effective operation of the Single European Market**.*

Aim of the project is to ensure that basic information on all companies in Europe is available throughout Europe without barriers due to differing technologies, languages, registration systems, networks etc

The EBR that is funded under the EU's Telematics Applications Programme (TAP) has become fully operational in December 1998 and now allows electronic access to business data of 10 EU Member States plus Norway. [Http://www.ebr.org](http://www.ebr.org)

30. Also statistical information on European markets and economic trends is in many cases not timely available. This problem is however rather linked to the collection of national statistics (differing national methodologies, deadlines for submission to Eurostat, quality of indicators, decrease burden for SMEs, ...) than to the issue of access per se.

31. The absence of accessible public sector information may **create a competitive disadvantage** for the foreign firms compared with local firms that can draw upon their own experience on the local situation. This is, for example true for insurance services that largely depend on specific local information on risks etc.

32. It also has a negative effect on companies that, by their nature, have a transnational vocation. International transport companies offering their services throughout Europe are an example of this. Accurate local information - geographic information, traffic information and information on the weather amongst others- , is important for their daily operations.

33. Both administrative and non-administrative information are also relevant for **public procurement**¹². Transparency of Government action in this field is a prerequisite to the achievement of a real internal market. Access to information on the local situation is necessary to make the rules work efficiently and to optimise fair chances for all firms involved. Since the information at stake is not always transparent, public procurement is often in practice still a national affair notwithstanding EU legislation.

34. Another example where the absence of transparency of the information leads to

¹² The Special sectorial report on public procurement, November 1997, illustrates the importance of access to information for this issue. See the report on European Commission, DG XV web site at the address <http://europa.eu.int/comm/dg15/en/publproc/>

negative results at European level, is patent information. The European Patent Office estimates that every year more than 18 billion Euro is spent on research that has been done before. Better accessibility of information on the state of the art of research, could decrease this amount.

Esp@cenet

Together with the Member States of the European Patent Organisation and the European Commission, the European Patent Office has launched a new service called esp@cenet, which is accessible via the Internet. The main aim of this new service is to provide users with a readily accessible source of free patent information (over 30 million patent documents). It also aims to improve awareness at national and international level, in particular among small and medium-sized enterprises, of the kind of information that is publicly accessible. <http://www.european-patent-office.org/>

35. The conclusion that **access to public sector data is highly relevant for businesses throughout Europe** is backed by the recent Report 'Managing Change' of the High level Group on economic and social implications of industrial change.¹³ It indicates as an immediate priority to 'enhance competitiveness by fully opening the European market in telecommunications and data services, and to increase freedom of access to government and other state owned data'.

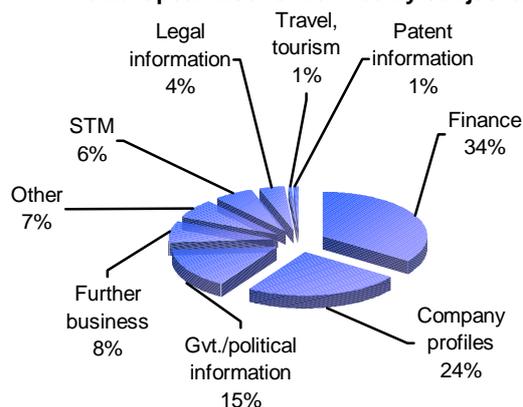
Public sector information: A potential to further explore and exploit

36. The public sector, by nature of its size and scope of activities, represents the **biggest single information content resource** for the creation of value-added information content and services. Studies have shown that the bulk of commercial information services in the EU information market consists of services in areas where the public sector holds very important resources.

37. Figure 2 clearly shows that public sector information is a **key resource for a very large part of information services** being either the core subject (government/political information, legal information) or an essential raw material (company profile, patent information, scientific, technical and medical –STM- information, etc.).

¹³ 'Managing change', High level group on economic and social implications of industrial change, Final Report, November 1998. The Special European Council of Luxembourg (21-22 November 1997) invited this Group to analyse industrial changes in the EU and to look at ways of anticipating and dealing with change and its economic and social effects.

Fig.2 : Revenues of electronic information services in the European Economic Area by subject area



Source : MS Study of the markets for electronic information services in the EEA, 1994 (Total revenues in 1994 : 5517 MECU)

38. Public sector information is therefore a **prime information content**, essential to the information industry and a key enabler for electronic commerce applications¹⁴.

39. The information content industry is growing at an impressive rate and some four million people are employed in the content sector in Europe¹⁵. Much of this growth will be within SMEs trying to exploit the potential to manage and add-value to information. The emergence and development of these highly dynamic companies need to be fostered in particular, as they are **essential for the creation of new jobs in the 21st century**.

40. The European information industry is competing in a global market. During the preparatory process that has led to this Green Paper, European information industry representatives have strongly and repeatedly expressed their concerns about the **competitive disadvantage of European publishers vis-à-vis their counterparts**.

41. Better **possibilities for the exploitation of public sector information could partly redress this situation** and would lead to new opportunities for job creation. In the US the favourable conditions for this type of exploitation has already boosted the information industries.

¹⁴ For a further analysis on recent trends and critical roles of content and the content industry within the network economy, see CONDRINET Study (CONtent and Commerce DRiven Strategies in Global NETworks), October 1998, commissioned by the European Commission and conducted by Gemini Consulting, at <http://www2.echo.lu/condrinet/>

¹⁵ European Information Technology Observatory, 1998, Content data include media, publishing, marketing and advertising sectors.

42. There are **hardly any rules in Europe on conditions for exploitation of public sector information by the private sector**. Guidelines for the synergy of Public and Private Sectors in the Information Market were published by the Commission in 1989. Similar guidelines were produced by the UK Department of Trade and Industry in 1985. In 1994, a French Prime Minister's circular was published and a Memorandum of Understanding was adopted by the Dutch government in 1997.

43. Although these are good initiatives, there is no clear and consistent set of principles throughout Europe. This **lack of clear and consistent principles** means that European industry finds itself in a competitive disadvantage vis a vis its US competitors. In some cases this has led to leading European companies investing in products based on US public sector information.

The British/Dutch Reed Elsevier plc group, has acquired the US based LEXIS-NEXIS company, a leading provider of online information services and management tools for a variety of professionals (1.4 billion documents in more than 8,692 databases, 1.5 million subscribers, 1200 employees world wide). They are amongst others specialised in legal information.

44. Pilot projects within the European INFO2000 programme¹⁶ have shown that private partners **are interested in cross-border collaboration with public sector bodies** to exploit public sector information and that there **is a real potential to be further explored and exploited at European level**.

The EU potential as shown by INFO 2000 call for proposals

In 1998, in the framework of the INFO2000 programme, the European Commission invited proposals for shared-cost pilot, or exploratory projects. The objective of the Call was to make the information resources held by the public sector more readily available for exploitation in European multimedia content services

A total of 141 proposals was received by the closing date. The total cost of work proposed amounted to 109.7 MECU, and the total EU contribution requested came to 50.6 MECU. The over subscription of the Call was, therefore, in the order of 7, given the indicative budget resource of 7 MECU.

45. In some cases, the commercial reuse of public sector information may however raise questions as to the **boundaries and limitations on the roles of the different actors**. Once private sector interests enter the market for

public information the safeguarding of **access for all** citizens may become more difficult. At the same time, if the public sector adds value to its own information, launching commercial information products onto a hitherto private information market, the issue of **fair competition** may be raised.

46. These issues and possible obstacles at European level to the exploitation of public sector information will be addressed in chapter III.

¹⁶ INFO2000 programme (Council decision of 20 May 1996, O.J. N° L 129, 30.5.1996, p. 24)

Chapter II : The Information Society and the public sector

47. The discussion on public sector information should be seen in the context of the **emerging Information Society**. The new Information and Communication Technologies are quickly changing the ways public sector bodies operate, which makes a **timely debate on public sector information** all the more important.

II.1 Electronic Government

48. The emerging Information Society, largely driven by an ever increasing and pervasive use of information and communication technologies is more and more affecting the public sector. Administrations follow the example of the private sector and benefit from the enormous potential of these technologies to improve their efficiency. This development is often labelled 'Electronic Government' and covers both the internal and external application of Information and Communication Technologies (ICT) in the public sector.

49. The importance of this development is increasingly acknowledged in many countries around the world. In Europe experiments are being conducted at all levels of government - local, regional, national and European - to improve the functioning of public services concerned and to extend their interaction with the outside world.

50. Indeed, the use of Information and Communication Technologies does not only smoothen public administration internal operations, but also strongly supports the communication between different administrations as well as the interaction with citizens and businesses. This is one of the key elements of 'Electronic Government': it brings public sector bodies closer to citizens and businesses and leads to better public sector services. At EU level programs like IDA and the actions within Framework Programme V for R&D addressing Administrations enhance the progress in this field.

51. Electronic government services can generally be distinguished according to the three main functions they serve.

Information services to retrieve sorted and classified information on demand (e.g. WWW sites).

Communication services to interact with individuals (private or corporate) or groups of people (e.g. via e-mail or discussion fora).

Transaction services to acquire products or services on line or to submit data (e.g. government forms, voting).

Table 1 gives an overview of possible services and their application areas.

Table 1

A typology of Electronic Government services

	Information services	Communication services	Transaction services
Everyday life	Information on work, housing, education, health, culture, transport, environment, etc.	Discussion for a dedicated to questions of everyday life ; Jobs or housing bulletin boards	e.g. ticket reservation, course registration
Tele-administration	Public service directory Guide to administrative procedures Public registers and databases	e-mail contact with public servants	electronic submission of forms
Political participation	Laws, parliamentary papers, political programmes, consultation documents Background information in decision making processes	Discussion for a dedicated to political issues e-mail contact with politicians	referenda elections opinion polls petitions

Source: Institute of Technology Assessment, Austrian Academy of Sciences and Centre for Social, Background Paper to "the Information Society, Bringing Administration Closer to the Citizens Conference", November 1998 (organised by the Centre for Social Innovation on behalf of the Information Society Forum/Work Group 5/Public Administration).

52. Transaction services are generally seen as the future of electronic government, since forms have a key role in all administrative processes. In a recent German Delphi study, transaction services were regarded by the experts interviewed to become reality in the next ten years. It is estimated that in the US already 40 percent of all forms of the public administration are available electronically. This way of dealing with government can considerably lower the administrative burden for citizens and businesses alike.

The TESS (Telematics for Social Security) project, funded under the IDA programme, aims at simplifying and accelerating administrative procedures in order to ensure citizen's access to their rightful social security benefits. The objective is to replace paper forms for information provision by electronic exchange. The two major areas currently addressed by TESS are old age pensions (to ensure that migrant workers get the pensions due to them) and to facilitate reimbursement of sickness benefits in kind (in case the Member State where the benefit in kind was advanced is different to that where the person is insured).

53. Reengineering public services may require substantial investments by government bodies at all levels as well as a change in culture. However the results are worth it. 'Electronic government' leads to a public service that performs better and is closer to the citizens.

54. The EU is itself involved in considerable reengineering efforts to benefit from the possibilities offered by 'electronic government'. Transactions with and information to citizens will have an ever increasing 'electronic' character. One example: before long the Commission will be able to handle electronic project proposals within the Fifth Framework Programme for Research and Development. Legal barriers at EU level have to be solved to turn these transactions into reality.

55. One aspect of Electronic Government that is often forgotten is its potential **impact on the information market**. By applying new technologies and innovative concepts, public authorities at all levels of government can have a **role as a driver of the Information Society**. The Report on job opportunities in the Information Society¹⁷ presented to the Vienna European Council of December 1998 has once more stressed this role of governments. Their example as a leading edge customer will convince citizens and businesses to adopt new technologies themselves and will invite the ICT-industries to explore new pathways.

¹⁷ "Job opportunities in the Information Society: Exploiting the potential of the information revolution" COM (1998) 590 final.

II.2 Electronic Government and public sector information

56. The use of new technologies can considerably increase the efficiency of the **collection of information**. It gives public bodies the possibility to share available information when this is in conformity with data protection rules, rather than duplicating its collection from citizens and businesses. This can notably **reduce the administrative burden** on citizens and business, and in particular SMEs.

57. At the same time, sharing information leads to better informed public bodies, that have access to all data relevant for their functioning. In the EU context, more and more information is exchanged between Member States in areas like customs, agriculture, environment, health, statistics, etc.

58. The 'electronic revolution' also has a major impact on the **accessibility and dissemination of information**. The Internet has a huge potential as a platform where citizens and business can easily find public sector information. All Member States in the EU are taking advantage of this potential.

59. As part of their dissemination policies, the EU-institutions increasingly use the possibilities offered by the Internet. They maintain a family of web sites offering a large amount of information on the EU and its activities.

60. More and more people find their way to these web sites, which is shown by the following example: In September 1998 almost 7 million of Commission documents were consulted electronically, more than double the number of consultations of September 1997.

61. The new technologies will also allow the provision of information and services in a **more integrated form**. Such integration is especially desirable where a specific information need necessitates contacts with a number of different administrative bodies. This objective goes under the name of "one stop service" or "one stop shopping". The europa.eu.int website forms a single access point for information on all EU institutions.

62. The digitisation of public sector information facilitates not only access, but also **possibilities for its exploitation**. A better access to information together with its digital format makes it easier to combine data from different sources. This will allow for the creation of new information products that have public sector information as their raw material.

63. The digitisation process makes the differences that exist between public sector bodies in Europe in terms of access and exploitation of public sector information more visible and more relevant. These differences

create barriers to the full use of the opportunities offered by the new technologies and make a debate on public sector information at European level all the more necessary.

II.3 Electronic access for all?

64. Our societies are moving towards a situation where everyone has access to the new electronic tools. The penetration of Internet is happening at a much faster pace than the penetration of other information tools like the telephone or television earlier this century. Nevertheless **it will take time until a generalised access is realised.**

65. Dissemination of public sector information on the Internet does not automatically imply that all citizens have an equal access to it. Substantial differences exist in access to the tools of the Information Society (computers/modems etc.) and the ability to use them. In this context the Report on job opportunities in the Information Society¹⁸ stresses that the access to such tools and the skills to use them are prerequisites for job creation and need to be prioritised.

66. This observation points to the need of **investing in infrastructures** that provide access for all to the electronic networks. Libraries seem to be particularly fit to fulfil this public role, but other possibilities should also be explored.

Infocid

In Portugal a network of 'Cyber-kiosks' has been installed throughout the country to give citizens access to the Internet and in particular to information on the public sector. The global, integrated multimedia Infocid system, gives access to government information on a wide range of subjects like employment and training, education, the Law and Courts, housing etc.

<http://www.infocid.pt/>

67. In addition this point stresses the importance of **investment in Information and Communication Technology-skills**. Lacking investment may lead to a society fundamentally split between people that can and people that cannot use the new information tools. Several projects at European level already address this problem, tackling it at the base.

EUN - The European Schoolnet

The aim of the project, funded by the Task Force "Educational Multimedia" and coordinated by the SOCRATES programme, is to establish a European school information network – the European Schoolnet – as a multimedia and communication platform at the services to schools in Europe and as a framework for collaboration at a European level among national educational authorities, universities and industry to develop ICT in schools as regards content, pedagogical approaches and technology.

<http://www.eun.org/>

68. Improved skills will in the long run also lead to a **better use of public sector information**. More informed, computer-literate citizens and businesses will ask for more and better information and will act as an incentive for the public sector to provide better information services and for the information industry to create more value-added information products and services.

¹⁸ "Job opportunities in the Information Society: Exploiting the potential of the information revolution" COM (1998) 590 final.

Chapter III : Issues linked to access and exploitation of public sector information

69. The access to public sector information as well as the commercial exploitation of this information entail a whole range of issues that need careful consideration. They vary from the definition of public sector information to issues related to privacy and liability.

70. The questions that follow each section are for guidance only. Readers are invited to take an open and innovative approach, considering all areas discussed here and other issues which they consider to be of relevance.

III.1 Definitions

Public sector information

71. A definition of public sector information is important because it will help to determine the scope of the replies to this Green Paper and a possible follow-up.

72. The definition of **public sector** varies from one Member State to another. In the laws and discussions on access to public sector information three possible approaches appear to emerge:

- **The functional approach**, in which the public sector includes those bodies with state authority or public service tasks¹⁹.
- **The legalist/institutional approach**: only bodies that are explicitly listed in the relevant law(s) have a public sector character.
- **The financial approach**, whereby the public sector includes all bodies mainly financed by public funds (i.e. not operating under the normal rules of the market).

Whatever methodological approach will be chosen, the information of public bodies at different levels of government, central, regional and local, shall be taken into consideration.

In all cases, state owned companies operating under market conditions and subject to private

¹⁹ Directive 90/313/EEC on the freedom of access to environment information excludes from the definition of public sector, bodies acting in a judicial or legislative capacity. It provides that national, regional or local public authorities having responsibilities and holding information relating to the environment should place this information at the disposal of any natural or legal person requesting it, regardless of whether that person has a legal interest. As its purpose is to promote the protection of the environment, commercial issues are not addressed. Specific provisions of this Directive are referred to in appropriate sections of Chapter II. Any actions resulting from this Green Paper will not prejudice access to information concerning the environment as provided for by this Directive, which will possibly be reviewed in 1999, nor the relevant "acquis communautaire".

and commercial laws are not meant to be covered by either of these definitions.

Types of public sector information

73. Public sector information may be classified along different lines. A first possible distinction is the one between **administrative** and **non-administrative** information. The first category relates to the function of Government and the administration itself and the second category to information on the outside world that is gathered during the execution of public tasks (Geographic Information, information on businesses, on R&D etc.).

74. Within administrative information a further distinction can be made between information that is **fundamental for the functioning of democracy** (like laws, court cases, Parliamentary information) and information that **does not have such a fundamental character**.

75. Another possible distinction draws a line between information that is **relevant for a general public** (like Parliamentary information) or for a very limited set of **persons that have a direct interest**.

76. From a market perspective, information can be divided according to its (potential) **economic value**. It should be noted that both administrative and non-administrative information can have a considerable market value.

77. The above mentioned distinctions may have consequences for the way the different types of information are treated: They can have a considerable bearing on issues like pricing and copyright and touch upon delicate issues like data protection.

Question 1 :

Which definition of public sector is the most appropriate in your view?

What categories of public sector information should be used in the debate?

III.2 Conditions for access to public sector information

78. The existence of an access right does not mean automatically unlimited and unconditional access to public sector information. In this regard different Member States and the EU apply different rules and have different practices.

79. The different conditions for access raise a number of questions that are relevant for both **citizens** and for the competitiveness of **businesses**. Views related to both perspectives are welcome.

Existence of an interest

80. The large majority of national laws do not require a person or company need to have a particular interest as a condition for access to public sector information. However, since this may be the case in certain circumstances, the issue merits discussion.

Exemptions to the right of access

81. All national regulatory frameworks provide for exemptions to the right of access. Such exemptions may roughly be distinguished in four categories:

- exemptions in the **interest of the state** for example relating to national security, public order, economic interests, international relations, legislative procedures, etc. ; these are mostly of exclusive Member State competence.
- exemptions in the **interest of third parties**, for example relating to privacy, intellectual property, commercial secrets, judicial procedures, etc.
- exemptions to **protect the decision making process**, for example, preliminary or 'internal use' of information etc.
- exemptions to **avoid unreasonable costs or workload** in the administrations concerned, for example information already published or excessive requests.

Directive 90/313/EEC provides a list of possible exemptions which cover all of the above areas of concern.²⁰

82. Exemptions and their interpretation differ to some extent between Member States. Some commentators consider that this may interfere with the ability of companies and citizens to access the information which they need on a pan-European basis.

Time, quantity, format

83. The emergence of new technologies and faster networks makes issues of time, quantity and format of information less relevant. If information is available over electronic networks instantaneously, citizens can download what they need and when and where they need it.

84. However, as not all public sector information will be available in electronic format in the foreseeable future, the question remains of how quickly the public authorities should react to requests and how much information they should provide. These issues are related to the need to avoid unreasonable requests and excessive workload.

Time

85. National access laws vary as to the deadlines set for the public sector to respond to an access request. The French law gives a 2 month deadline, while the Swedish law stipulates a "prompt response". In some cases, there is no reference to time limits. Directive 90/313/EEC gives a two month time limit.

Quantity and Format

86. The question of whether there should be limits to the quantity of information requested is more complex. In principle, some quantity limitations may be imposed if information in manual format requires an excessive effort to assemble. The need to ensure low cost access for citizens to information needs to be balanced against the need to avoid excessive burdens on the public services. In cases where public sector information is available and can be accessed in electronic format, quantity limitations are more difficult to justify.

87. In the execution of its primary tasks, the public sector produces a vast amount of raw data. The format of this public sector information may often be unattractive and difficult to access. Having taken this issue into account, many public sector bodies are engaged in tailoring raw data to customer needs.

88. This also draws the attention to another interesting issue: the right of citizens to have access to the raw data and data at intermediate levels and not just to the data in their final, elaborated form.

Question 2 :

Do different conditions for access to public sector information in the Member States create barriers at European level?

If so, what elements are concerned: requirement of an interest, exemptions, time, format, quantity?

What solutions can be envisaged?

III.3 Practical tools for facilitating access

89. Citizens and businesses alike can be seen as the 'clients' of the information services that are offered by the public sector. The concept of client implies that the needs of citizens and businesses are being taken into account when the services are conceived and that **user-friendly search mechanisms** are put in place.

90. The data sets available in the public sector are numerous.

²⁰ See footnote 19, p 11

A recent estimate of the number of public databases in the Netherlands alone came up with a figure of some 36.000²¹

To help the 'information clients' in finding their way in this mass of data it may be necessary to establish meta-data and directories. This leads to the following question:

Question 3 :

Could the establishment of European meta-data (information on the information that is available) help the European citizens and businesses in finding their way in the public sector information throughout Europe?

If so, how could this best be realised?

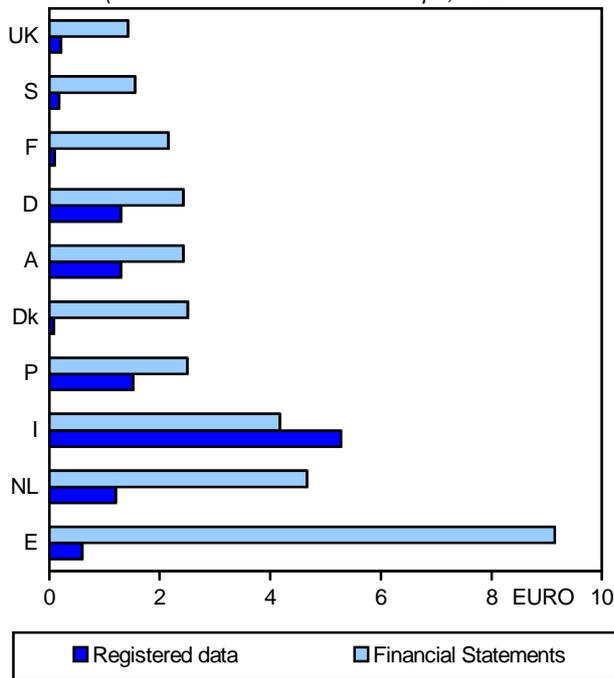
What categories of content should directories of public sector information resources contain?

III.4 Pricing issues

91. Pricing as well as pricing models vary enormously in different Member States and in different public sector bodies of the same

Fig.3 : Unit Price for information on business in different countries

(Source : Dun & Bradstreet Europe, 1998)



Member-State. As an example, figure 3 shows the wide range of prices Dun&Bradstreet, a business information provider, must pay when accessing companies registered data and financial statements throughout Europe.

Pricing Models

The 1994 **French circular** distinguishes between information collection and production costs (which are not charged for) and other costs, such as printing, updating, data retrieval and transmission (which can be charged for). Furthermore it distinguishes between types of information and types of use.

The **UK guidelines** 1985 DTI guidelines favour a market approach: "Where an established market exists for Government-held tradable information provided by them already, Departments should charge a reasonable market price. In the case of tradable information which has not previously been exploited, contracts may initially be on the basis of charging only for costs incurred over and above those that would be incurred normally in handling the data or information for their own purpose".

The 1989 **European Commission Synergy Guidelines** favour a distribution cost approach: "Pricing policies may vary depending on the nature of the information; A price should be established which reflects the costs of preparing and passing it to the private sector, but which does not necessarily include the full cost of routine administration. The price may be reduced if provision of the resulting information service is deemed to be necessary in the public interest".

The **US law** allows charging for search, duplication and review costs but not for the value added by the public sector to the raw data. The US public sector should see the adding of value only as a tool to increase efficiency, not as a means for profit making.

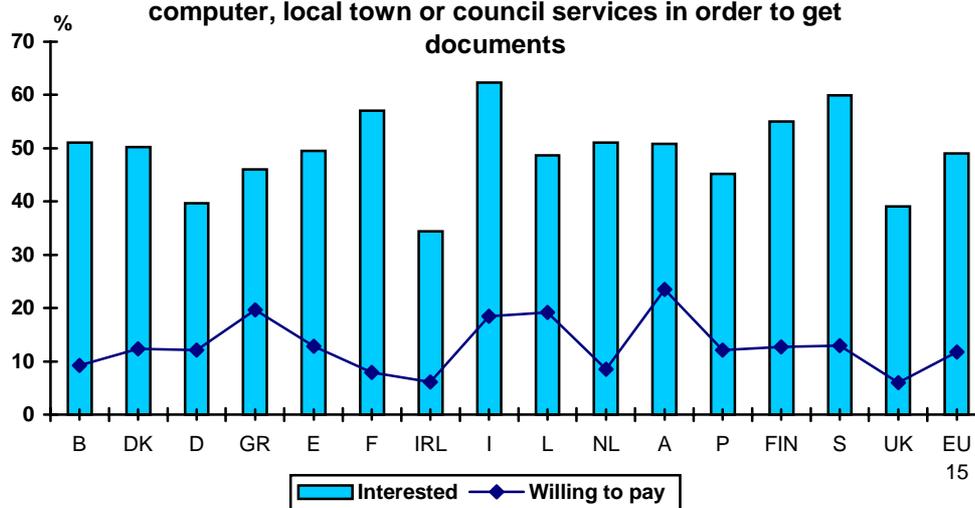
92. In the long run, the current trend to make public sector information increasingly available free of charge on the Internet may have an effect of prices and pricing models.

93. Studies and discussions have shown that the dual purpose of a public sector information policy - access and exploitation - calls for a pricing policy that should take into account a number of interests:

- **affordable access for all**
- **exploitation potential**
- **fair competition** (treated in the next paragraph)

²¹ BDO Consultants, Electronische bestanden van het bestuur, 1998

Figure 4: People interested in consulting from home, via a computer, local town or council services in order to get documents



Source : Eurobarometer 47

94. Pricing conditions are in the first place important in the discussion on **access**. Public information is produced at the expense of taxpayers. The question may therefore be raised whether public organisations have a right to charge for the provision of information. It may be argued, however, that it is usually a small section of the public who wish to use a particular public sector information product and that they should not be subsidised by the rest of the population. In fact, people are willing in certain circumstances to pay for the (information) services offered. Figure 4 clearly shows this.

95. But pricing should be such that it does not preclude the access for all. In this respect mention should be made of the French initiative to identify categories of public sector information considered to be “essential” in view of the exercise of democratic rights by citizens. In principle, such public sector information is provided for free.

96. At the **exploitation** side, it is important that efforts made by the public sector to render information accessible for commercial exploitation are recognised and rewarded. At the same time, if the private sector is to develop competitive products from public sector information, the raw materials must be available to them at a reasonable price.

97. Pricing is therefore a crucial issue for the exploitation of public sector information by the content industries. It largely determines whether they will find an interest in investing in value added products and services based on public sector information. American companies benefit from the fact that they can obtain US public sector information for free.

An American software firm is about to release a business mapping software product allowing users to find and illustrate points on the map, integrate maps in their documents and identify the trends of their business on the map. The objective is to make it easy for business users in organizations of any size to use maps to make better-informed business decisions. Over 15 million addressed street-level segments are included for all US and worldwide country-level boundaries. The estimated retail price of the product is \$109.

As an element of comparison, a German mapinfo company is offering geodata for one German state unit only for a total of 9.728 DM + VAT 16%.

A UK based environmental pressure group has complained after the Ordnance Survey, Britain’s national mapping agency, tried to charge the organisation more than £365.000 for digital mapping base-data of the country.

Question 4:

What impact do different pricing policies have on the access to and exploitation of public sector information?

Does this create differences in opportunities for citizens and businesses at European level?

III.5 Competition

98. Public sector bodies have cost structures which may differ from those of private businesses. In certain circumstances, it is possible that they offer products at less than the market price, or cross-subsidise other areas of their operations through the sale of information.

99. Fair competition may thus be adversely affected once public sector organisations offer added-value information products on the market. This may also be the case when exploitation rights or exclusive contracts are ceded to semi-private or private sector bodies. Unfair competition situations may also result from information being released at different speeds to different parties.

National legislation

100. All Member States enforce some general competition rules. Some legislation specifically deals with competition issues in respect of commercialisation of public sector information. The UK guidelines state that government departments should not aim to compete with the private sector. According to French rules a public body should not directly intervene in the market and may only provide value added information services if this is in line with their legal mission. Divergent application of competition rules in different Members States may create market distortions.

EU competition rules

101. EU competition rules are determined by articles 85-94 of the EC Treaty. Several competition issues in this field are interrelated:

- State aid ²²: market distortion through public subsidies should be avoided
- Abuse of dominant position ²³: access to data not available elsewhere should be under reasonable conditions, on a cost-oriented basis (essential facility doctrine)
- Agreements between companies ²⁴;
- Monopolies ²⁵.

102. In the context of the State aid rules, public information providers may be, under certain circumstances, in competition with the private sector. Public financing could then constitute a state aid²⁶ that could benefit from certain derogations²⁷. Article 6 of the EC Treaty

22 article 92

23 article 86

24 article 85

25 article 90

26 within the meaning of Article 92(1)

27 not only under Articles 92(2) and 92(3) (categories of aid that are or may be considered compatible with the

which prohibits discrimination on grounds of nationality is also relevant. Furthermore, the 1989 Synergy guidelines published by the Commission make reference to competition rules.

103. For competition policy purposes, a distinction is often drawn between information for which only one source exists, which must generally be made available at reasonable conditions, and information which is available from different sources (diversity principle), for which market prices may apply.

104. Competition is also an essential principle of public procurement. It applies both to publishing contracts (where the public institution pays for publication or subsidises it) and to distribution contracts (in those cases where there are limitations to the number of distributors, in order to reach certain targets, e.g. geographical coverage).

105. New technologies change fixed and variable costs, new national and multinational players appear on the market which creates opportunities to reduce prices or to increase the distributions targets. This may require changes in procurement policies and in tendering terms.

Question 5 :

To what extent and under what conditions, could activities of public sector bodies on the information market create unfair competition at European level?

III.6 Copyright issues

106. The Bern Convention (Art. 2 (4)) leaves Member States the freedom to determine the protection to be granted to official texts of a legislative, administrative or legal nature, and their official translations.

107. The vast majority of Member States have used this provision to exclude these texts from any copyright protection. As to information of a different nature produced by the public sector, most Member States have extended the previous exclusion also to this information material. However, the extent to which copyright is granted to these materials does not limit in itself access by the public to the information.

common market), but also under Article 90(2) if the undertaking is entrusted with a service of general economic interest. In the latter case, all of the conditions of Article 90(2) would have to be fulfilled : the undertaking must be entrusted with a service of general economic interest ; the amount of the aid must not exceed the net cost of ensuring the service of general economic interest ; and the development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

108. The public sector has two main reasons to protect its information. In the first place it may be a source of income. This may pose however questions in the field of competition. It may create market distortions between companies in the different Member States that want to reuse the information.

109. Another reason for public sector bodies protecting their information could be the wish to maintain the integrity of the content. This is relevant in the perspective of liability questions

Question 6 :

Do different copyright regimes within Europe represent barriers for the exploitation of public sector information?

III.7 Privacy issues

110. Part of the commercially interesting information held by the public sector is of a personal nature, i.e. relates to or allows the identification of individual persons. This is for example the case with respect to population, company, vehicle or credit registers. It also applies to information on medical, employment or social welfare data. Access to such information may be of use to private industry for marketing, research or other purposes. In such cases the right to information needs to be balanced with the individual's right to privacy. All national access laws show awareness of the need for such a balance.

111. On 24 October 1995 Directive 95/46/EC²⁸ was adopted on the protection of individuals with regard to the processing of personal data and on the free movement of such data. This Directive establishes binding rules for both the public and the private sectors and achieves the necessary balance between the principle of access to public sector information and the protection of personal data. It must be fully observed in cases of personal data held by the public sector.

112. It is up to the public bodies responsible to apply the agreed balances between the need for open access for commercial or other purposes on one hand and the right to privacy on the other, taking into account the principles established by the EC Directive, in particular the principle of purpose limitation. In addition, national supervisory authorities have an important role and courts are expected to decide in cases of dispute.

113. In the specific case of statistical data, the well-established statistical confidentiality principle reinforces the data protection level. Statistical

confidentiality prevents not only access to any other private users but also the transmission of confidential data to administrative bodies other than statistical offices.

114. The emergence of the Information society could pose new risks for the privacy of the individual if public registers become accessible in electronic format (in particular on-line and on the Internet) and in large quantities.

Question 7 :

Do privacy considerations deserve specific attention in relation to the exploitation of public sector information?

In what way could commercial interests justify access to publicly held personal data?

III.8 Liability issues

115. Clarity as to the liability issues may have a positive impact on access to and the exploitation of public sector information. In fact, liability may be a reason for the public sector to operate a prudent information policy. If the public body provides information to a requestor directly it could, in principle, be liable (in accordance with national liability laws) for any damages caused to the citizen concerned.

116. The issue becomes more complex when more than two parties (public body, requester) are involved in the processing and dissemination of information. This is the case, for example, when the public sector has ceded the information to a private company. In that case, public bodies could still be liable for the information provided, unless they have limited this liability by contract.

117. The more actors are involved, the more difficult it becomes, in cases of conflict, to identify the one who has defaulted or acted unlawfully. Some commentators believe that coordinated European approaches to this issue are particularly important in view of the difficulty of establishing which national law applies in cases involving several countries²⁹.

²⁹ The proposal for a directive on certain legal aspects of electronic commerce in the Internal market submitted by the Commission on 18 November 1998 recognises the need to clarify the responsibility of on-line service providers for transmitting and storing third party information (i.e. when service providers act as "intermediaries") in the context of commercial communications. To eliminate the existing legal uncertainty and to bring coherence to the different approaches that are emerging at Member State level, the proposal establishes a "mere conduit" exemption and limits service provider's liability for other "intermediary" activities.

²⁸ O.J. N° L281, 23.11.1995, pp. 31-50

Question 8 :

To what extent may the different Member States' liability regimes represent an obstacle to access or exploitation of public sector information?

III.9 EU information

118. As indicated in paragraph I.1 and in annexe 2 of this Green Paper, the EU is developing policies to improve the access to its information and the dissemination of this information. All EU institutions maintain for example a family of WWW sites accessible through one single gateway (<http://europa.eu.int>) and offering a large amount of information.

119. It would help these policies if, in reaction to this paper, comments were received on the actions in this field and the way they are perceived. This leads up to the following question.

Question 9 :

To what extent are the policies pursued by the EU institutions in the field of access and dissemination of information adequate?

In what way can they further be improved?

Concluding remarks

120. The lack of transparency of public sector information throughout Europe forms a substantial barrier for citizens and business alike that want to exercise the rights granted by the EC Treaty and benefit of the advantages of the internal market.

121. At the same time the European information industry is faced with a plethora of different laws and practices which the Commission believes may be preventing them from fully exploiting Europe's information potential.

122. Subject to the responses to this Green Paper and, in particular, comments on the regulatory or other barriers and obstacles which may hinder the possibilities for access and exploitation of public sector information, consideration can be given to what, if any, response may be required at European level.

123. Such response could for example address:

- **Legislation** (e.g. need for recommendations, guidelines or binding measures).
- **Information exchange** throughout Europe, allowing public bodies to learn from each others experiences.
- **Awareness** raising at all levels (citizens, business and administrations) concerning the existing information sources.
- **Demonstration and pilot** projects allowing the spread of technologies supporting new information services and experiments with new models of public/private partnerships.
- **Education and Training** initiatives enhancing the information management capacities of administrations and individuals.

124. Comments are invited on these possible fields for action or concerning any other type of measures felt to be appropriate.

Question 10 :

Which actions should be given priority attention at European level?

List of Questions

The following list recapitulates the questions raised in Chapter III.

- 1** Which definition of public sector is the most appropriate in your view?
What categories of public sector information should be used in the debate?
- 2** Do different conditions for access to public sector information in the Member States create barriers at European level?
If so, what elements are concerned: requirement of an interest, exemptions, time, format, quantity?
What solutions can be envisaged?
- 3** Could the establishment of European meta-data (information on the information that is available) help the European citizens and businesses in finding their way in the public sector information throughout Europe?
If so, how could this best be realised?
What categories of content should directories of public sector information resources contain?
- 4** What bearing do different pricing policies have on the access to and exploitation of public information?
Does this create differences in opportunities for citizens and businesses at European level?
- 5** To what extent and under what conditions, could activities of public sector bodies on the information market create unfair competition at European level?
- 6** Do different copyright regimes within Europe represent barriers for exploitation of public sector information?
- 7** Do privacy considerations deserve specific attention in relation to the exploitation of public sector information?
In what way could commercial interests justify access to publicly held personal data?
- 8** To what extent may the different Member States' liability regimes represent an obstacle to access or exploitation of public sector information?
- 9** To what extent are the policies pursued by the EU institutions in the field of access and dissemination of information adequate?
In what way can they further be improved?
- 10** Which actions should be given priority attention at European level?

Annexe 1: Current situation in Member States regarding legislation and policy on access to public sector information.

Austria

There is constitutional law (1987/285) of 15.5.1987, which stipulates a general right of access. This constitutes a minimum framework: All officials at the federal, regional or local level entrusted with administrative duties as well as the officials of other public law corporate bodies should impart information about matters pertaining to their sphere of competence in so far as this does not conflict with a legal obligation to maintain secrecy. Citizens' access is usually free but in some cases a charge is made covering, inter alia, the reproduction and dissemination costs. Each department defines its commercialisation policy under the control of the Minister responsible, on a case-by-case basis. There are some cases of public and private sector co-operation, in the telecoms, debt recovery, judicial and government information sectors, for example.

Belgium

There are laws, at the federal (11.4.1994) and regional level (Flanders 23.10.1991 and 13.6.1996), on civil transparency, providing a general right of access to documents held by a public authority. These laws, however, provide that administrative documents thereby obtained may not be further distributed or used for commercial ends. There is no general law on commercialisation of public sector information. In the context of the civil transparency law, access is given free of charge or at marginal cost. Commercialisation policies are pursued by some government departments on the basis of case-by-case contract relationships. Public and private co-operations have been established, for example in the vehicle registration, statistics and geographic information sector. In the latter sector, however, there have also been cases of litigation involving the relevant state body.

As regards active dissemination, Postbus 3000 distributes information of the Federal government by means of television and radio and by means of advertising in newspapers and magazines. These forms of communication contain pointers to brochures freely available to the public. The brochures hold contact information and additional information on the subjects and the services involved. Furthermore, citizens can obtain additional information via

Postbus 3000. Postbus 3000 is a service provided by the Federal Information Service.

As of 24 March 1995, the Federal government maintains an extensive Internet website in four languages (Dutch, French, English and German) at <http://belgium.fgov.be>. This 'umbrella website' contains pointers to all Federal departments. A wide variety of information is available, such as: general information on Belgium, decisions of the Council of Ministers, useful addresses of governmental organisations and initiatives regarding public sector information. The Communities and Regions also maintain their own websites. These are accessible through the Federal website by means of hyperlinks.

At present the establishment of a call center is being prepared (at Federal level), enabling citizens to submit questions to the government. The Flemish Community is undertaking comparable actions; In the Walloon Region such centre is already in its operational phase.

Under a recommendation of the Council of Europe, As of 1997 the Council of State is under the legal obligation to publish most of its decisions, which are made available by means of CD-ROM and Internet."

Denmark

A law is underway to replace two existing freedom of information laws which give a general right of access to government documents. The Bill covers all the society and is close to the EC 95/46 Directive statements. Pilots are planned concerning open public mailing lists ; a standard about electronic publishing is published, and all public publications will gradually be electronically accessible. All public institutions have e-mail and are represented through the Internet. Still more public electronic based self-service possibilities are present. Access to electronic legal data and information is freely available.

As regards citizens access to print documents, the principle is that citizens should only pay for the cost of access which is stipulated to be 10 DKR for the first page and 1 DKR for each additional page. There is no specific law on commercialisation of public sector information although the Info-Society 2000 Programme makes some reference. There has also been a 1992 Ministry of Finance Budget Guide covering the public sector in general and setting "long term average costs" and "fair competition" principles. Since the Danish market for electronic information services is still relatively small, most of the public sector information

dissemination, both in print and electronic form, is carried out by the public sector. Some commercial interest has been expressed in the fields of population, company and land registers, law and statistics in which there have been cases of public and private sector co-operation and competition.

A new pricing model concerning sale of public data is now worked into the Budget Guide covering the public sector and decision has been taken on principles about quality of and access to public data and the ongoing development activity. The tendency is that new steps to create the open information society are quickly done.

Finland

There is a Publicity of Official Documents Act (83/9.2.1951), providing a general access right to any document prepared and issued by a public authority, as well as any document sent or given to a public authority and in its possession. In 1987 this right was extended to documents produced "by the use of punch marks, magnetisation or other comparable means and intended to be read, listened to or otherwise understood by means of technical devices". The law is currently being revised and modernised. The new law will promote the use of authorities' information matter outside the administration.

The Finnish market and commercialisation situation is otherwise similar to that in Denmark. Private sector interest is still rather small and the main dissemination initiatives are still within the public sector.

A 1995 report "Developing a Finnish Information Society" makes a brief reference to encouraging commercial reuse by the private sector. Pricing policies were established by the 1992 Act on Charging Criteria for the State which distinguishes three types of government goods and services: a) those in the public interest, provided free of charge b) those offered by monopoly bodies, or following a legal requirement, provided at cost price and c) others, provided at commercial price.

France

There is a general law on access to administrative documents (part of a wider law concerning relations between the administrations and the public, 78-753/17.7.1978, amended in 1979), which excludes the possibility of reproducing, disseminating or commercially exploiting the documents concerned. Access "in situ" is free of charge, while copying costs are

charged to the requester. There is also a Prime Minister's circular of 14.2.1994 concerning the dissemination of public data which establishes some policy principles for the commercialisation of such data, distinguishing between raw data (being freely accessible) and value-added data (in certain cases protected by copyright) and discussing the information dissemination roles of the public and the private sectors including competition and pricing issues.

There is a large private sector participation in the public sector information market. This has been more successful in some areas (geographic, company information) than in others (agricultural, judicial information). There is a policy of providing public concessions to private sector companies which, some commentators feel raises competition issues.

In the Government action programme "Preparing France's entry into the information society" published on 16 January 1998, the French Government announced that "essential public data" will be freely available on the Internet. This initiative recognises that the development of the networks has profoundly changed the traditional distinction between access to public information and its dissemination. Furthermore it stresses the fact that the ability to access public sector information sources is vital to the development of the information market and thus the information industry.

Germany

Germany has neither a general access law nor a law on commercialisation of public sector information. A large number of sectoral laws offer access to specific types of information (e.g. administrative complaints, environmental information). Some Länder have constitutional provisions and are in the process of preparing general access laws. Commercialisation practices have been developed by different authorities separately. In some cases (e.g. financial-commercial statistics) there are examples of successful public/private sector co-operation while in others (e.g. company information) there have been difficulties. Pricing policies also differ widely, depending on the legal basis of the request, the public sector agency in question and the intended use of the information. This variety of policies is accentuated by the federal structure of the state.

Greece

Greece has a law providing general access (1599/1986), which does not allow for the commercial exploitation of the public sector documents concerned. Although there is no general law or policy concerning commercial dissemination of public sector information, the

Ministry of the Interior and Public Administration is working on its legal framework. The electronic information market is very small and the market potential of public sector information has not yet been established (apart from a few exceptions in the cultural, tourism, agriculture and legal fields). Several government bodies are already in a process of developing information systems to make their content accessible both to business and citizens.

Ireland

The Freedom of Information Act, 1997, was the first significant piece of legislation that obliged government Departments and Offices to publish details of their information holdings. This Act asserts the right of members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy.

Under the Act, public bodies are required to publish certain information about themselves and also to make available details of their internal rules, procedures, interpretations, etc. used in decision making. Many Departments and Offices publish this information on the Internet. The central purpose of this information is to assist the public in ascertaining the information held by each organisation and how to access it.

In respect of non-personal information, fees may be charged in respect of the time spent in efficiently locating and retrieving records, based on a standard hourly rates. Photocopying charges may also apply. In respect of personal records, copying charges only will apply, save where a large number of records are involved. No charges may apply in respect of the time spent by public bodies in considering requests.

In addition, most government Departments and Offices produce publications relating to their interests. These are generally issued free where it is desirable for purposes of public policy, or are priced on a cost recovery basis.

While there is no general law or policy on the commercialisation of public sector information some organisations (e.g. Land Registry, Ordnance Survey, etc.) market information. Where this happens pricing policy is, in general, market-led with the commercial rate being charged. Commercialisation and public/private sector co-operation occur mainly in the field of law and statistics.

The 1996 report "Information Society Ireland – Strategy for Action" envisages free or low cost access to public databases and information services, coupled with the use of information and communications technologies in the public sector to deliver citizen-centred applications to the public. All newly published government information is to be made available electronically and on paper at the same time from a specified data ; low cost ("lo-call") telephony access to government Departments and Offices has already been introduced and will be enhanced with self-service over the Internet, fax on demand, etc.; government web sites will be developed with a view to increasing interactivity and potential for service-delivery.

Italy

There is a general access law (241/7.8.1990), although in many cases access depends on the existence of a legal interest. There is no general law or policy concerning commercialisation of public sector information. Access based on the aforementioned law is free of charge. Pricing policies for commercial purposes differ in the various public sector bodies. Examples of public/private co-operation exist in areas like company information and statistics. In some cases there have been complaints relating to competition rules.

Luxembourg

There is neither a general access law nor any general rulings regarding commercial exploitation of public sector information, although a working group has been set up to examine this issue. In practice, when available, public sector information is either given free of charge or at distribution cost price. There are, as yet, no examples of public/private sector co-operation. The tiny size of the market probably discourages strictly national initiatives.

Netherlands

There is a Government Information Act (entered into force in 1980, amended in 1992) which compels administrative authorities to disseminate government information actively, and to provide information upon request. There are, however, exemptions from and restrictions to these obligations. These exemptions and restrictions are comparable to those under other general access laws (e.g. exemptions in the interests of the state, third parties and the protection of the decision making process).

The Ministry of the Interior has a co-ordinating role regarding public sector information policy. As yet, there is no general policy on the exploitation or commercial reuse of public sector information. Consequently, administrative authorities set out their own

policies. However, steps have been taken towards the development of a general policy.

As a first step the Cabinet issued a memorandum "Towards the accessibility of government information, Policy framework for increasing the accessibility of government information through information and communication technology" in June 1997. The key topic in the memorandum is which public sector information should be made available electronically, who for, why, how and at what price. In the Cabinet's view, so-called basic information of the democratic constitutional state (legislation and regulation, statements by the judiciary courts and parliamentary information) should be made accessible as much as possible since this category of information is generally speaking, public. ICT may be an important instrument in this. Regarding electronic data files of administrative authorities, the Cabinet has noted in the memorandum that a policy needs to be developed governing access to file data, in particular the access by the private sector.

As a follow-up to the memorandum, electronic data files of administrative authorities are currently being examined on type, use, origin of the data and legal status. The aim is to categorise electronic data files in order to develop policy measures for the access to specific types of data files. Such measures are considered necessary since it is unlikely that exploitation or commercial reuse of electronic public sector data files, given their diversity, can be covered by a general rule.

Portugal

There is a general access to public sector information law (65/26.8.1993), but no general rules or policies concerning commercialisation. In general, information is charged at the lowest possible price, in view of the public service mission of the public authorities. There is a public citizens access project providing kiosk-type access to specific areas of public sector information, the technical execution of which is to some extent entrusted to the private sector. Some further examples of public/private sector co-operation exist in the company and legal information areas, although the small size of the market and the relative lack of electronic government databases does not encourage such commercial initiatives.

Spain

Spain has a general access law (30/26.11.1992) which does not currently apply to computerised information. A legal

interest in the requested information is required. A royal decree has recently been adopted regulating the use of electronic information techniques by the central general administrations. Reference is included to the relationship between administration and citizen. Recent studies have shown that information on 34% of public services is accessible to the public, access being provided in certain cases in collaboration with the private sector. There is no general commercialisation policy. Tariffs vary from zero(40% of the cases) to market prices. There are many examples of public/private sector co-operation especially at regional and local level in areas like external trade, finance, culture, education and science while in areas like company information and statistics, co-operation has been either non-existent or unsuccessful.

Sweden

Sweden has the oldest access law in the world (the 1766 Freedom of the Press Act, last amended in 1994) giving access to documents kept by a public authority, including electronic documents. All documents drawn up or received by an authority are included. Access to documents is free of charge, although a charge is made for documents over 9 pages. There is no obligation to make available records for electronic data processing in any form other print-outs.

Access can be denied only with reference to a specific clause in legislation demanding secrecy (the Secrecy Act).

In principle, this legislation also covers information held in databases and registers of public authorities. Access to information in data systems and registers are in practice limited to such data that can be extracted and delivered with routine procedures. There are special provisions in the Data Protection Act for a citizen to get information on what data are recorded concerning him/herself in public registers.

A new Personal Data Act will come into force in October 1998. The Act is largely based on the EU directive on protection of personal data. The new legislation does not impinge upon the constitutional right of public access to official documents.

A limited number of larger national databases and public registers are by law authorised to be used for commercial information services (addresses to persons and companies, real estate and land information, vehicle information, etc.). Within the business sector, such information can then be used for value added services. Pricing of the public information is normally based on a cost

recovery principle. No other commercial sales of public register information is allowed.

Government and municipal authorities are organising their information resources so that they can provide more information electronically, and not only with reference to the Freedom of Press Act, which presently only guarantees access to documents in paper form, but as a service to the public and to business.

A Committee has been given the task of reviewing the constitutional rules on the public's right of access to official documents from an IT perspective.

The Government IT Bill, passed by Parliament in Spring 1996, outlines the direction in the Government policy for further opening up public sector to electronic access. The Bill stresses the power of IT to strengthen transparency, democracy and to create economic advantages for society, and sets out general guidelines for public and business sector access to information, as well as for the citizens.

In the Government Public Administration Bill of 1998 information service in the public sector is one of the main issues. As a basic principle pricing of public information should be based on recovery of distribution costs. The Government also sets the direction of the further work in this field, including how to define national basic data and how to make information from public registers more easily accessible in electronic form. The authorities whose work is primarily at dealing with companies and individuals should offer electronic services for self-service as a complement to traditional services.

There is a proposal from the Ministry of Justice for renewal of the Legal Data Information System, Rixlex 2000, which is currently subject for consultation. The system has a decentralised structure. Each of the suppliers of information to the system is responsible for the accuracy of the contents of submitted material.

Within the general framework outlined above, a number of practical and legislative activities are continuing to further adapt and develop information management, openness, synergy and liability in the new electronic environment.

United Kingdom

There is no law giving a general right of access to information held by central government. A Code of Practice, published in 1994, gives rights of access to information broadly comparable with statutory regimes

in other countries. These include a commitment for government departments to voluntarily disclose certain types of information of public interest. The Code is not legally enforceable but is policed by the Parliamentary Ombudsman, who is independent of government. A separate Code of Practice on Openness in UK health services was issued in 1995.

The present Government took office in May 1997 with the clear commitment to a Freedom of Information Act. A White Paper entitled "Your right to know" was published in December 1997, setting out proposals for Freedom of Information legislation which would go significantly beyond the Code of Practice in its openness requirements.

A draft Freedom of Information Bill is due to be published by the Government in 1999.

The Government has also established an Internet service for government information (at www.open.gov.uk). All new statutes and statutory instruments are published on the Internet (at www.hmsso.gov.uk). There is a right of access to information held by local government (Local Government Act 1985) and to various types of personal information, such as medical records and information held by social services departments.

The Department of Trade and Industry guidelines on Government-Held Tradable Information were first published in 1986 to provide guidance to government departments on making their information available to the private sector. These were last revised in 1990 and, because of recent changes, the Government considers there may now be scope for further revision. They cover issues like identifying the tradable information, costs and charges, contract matters, Crown copyright obligations, security and privacy, liability, competition, non-exclusivity and non-discrimination towards EC service providers.

The development of government executive agencies run on cost recovery lines has reinforced the tendency for Government to make information available in a number of ways, both commercially and non-commercially. The level of charging depends on the type of material and the degree to which it is being sold for commercial re-use.

There have been calls from the private sector for liberalisation of the copyright licensing regime in order to facilitate the non-exclusive licensed reproduction by the private sector of various types of information and the government has announced various initiatives in copyright policy governing reproduction of statutory material and the use of class licences. In the UK, which has the biggest and longest established electronic information market in the

E.U., there have been many examples of public/private sector co-operation such as geographic, legal and company information. A Green Paper entitled "Crown Copyright in the Information Age" dealing with access to public sector information, was published in January 1998.

Annexe 2: European Commission action relating to public sector information - The background to this Green Paper

1. Some Milestones

In September 1996, in its resolution on the Commission's Action Plan for the Information Society, the European Parliament requested that new forms of electronic distribution be exploited for the dissemination of public information to all citizens at European and national level.

In October 1996, in its resolution on new policy priorities in the information society, the Industry Council urged Member States to improve access to public information, through the accelerated use of information society tools and partnerships between the public and private sector.

Access to public sector information has been one of the priority issues addressed by the ministerial declaration issued at the conference on Global Information Networks, which took place in Bonn on 6-8 July 1997.

Non-governmental actors have also been encouraging action in this area. A strong request for an access to public information initiative has recently been made by the Information Society Forum (Vienna Declaration of 13-11-1998).

In addition, mention should be made of initiatives that are being undertaken in other international bodies, for instance, the activities of the Council of Europe.

2. Openness of EU institutions

Since the signing of the Maastricht Treaty, the openness of EU institutions has been substantially improved. Considerable efforts have been made to ensure an easier access to the Institutions documents. In 1994 the Commission issued, for example, a decision on public access to Commission documents (decision of 8 February 1994 as modified on 19 September 1996).

In the Amsterdam Treaty the importance of this issue was underlined by the inclusion of a specific provision regarding transparency of the European institutions. A new article has been inserted into the Treaty, stipulating that any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the European institutions (Parliament, the Council and the Commission), subject to principles and conditions to be defined in Council legislation and in the rules of procedure of each institution, with a view to the greatest possible openness. In terms of

the transparency principle, the Amsterdam Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Treaty also states that the Council, when acting in its legislative capacity, is under an obligation to make votes and explanations of vote public.

A user's guide available in print and on the World Wide Web sets out the practical details of the current Commission's access policy (<http://europa.eu.int/en/comm/accdoc/contents.html>).

3. An active information dissemination policy

All EU institutions maintain a family of WWW sites accessible through one single gateway (<http://europa.eu.int>) and offering a large amount of information.

Within the framework of PRINCE, the information programme for the European citizen, three "Priority Information Actions" have been launched :

- the "Building Europe Together" web site (<http://europa.eu.int/en/comm/dg10/build/build.htm>) provides thematic information on the challenges of the European integration;
- <http://europa.eu.int/euro/> is the European Commission's internet site dedicated exclusively to the euro
- a Dialogue with citizens and business is maintained at <http://citizens.eu.int/>. This initiative is a follow up to the Citizens First initiative.

The Office for Official Publications of the European Communities (EUR-OP) is the official publisher of the institutions of the European Union. The three principal functions of EUR-OP are editing, technical and administrative support and distribution. EUR-OP, with a number of representatives of European publishing houses, has created a EU - Publishers Forum. Acting on behalf of all the institutions. EUR-OP is to give access to data currently available on databases and is to encourage publishers to use unpublished EU material. EUR-OP has always recommended to the institutions to follow the 1989 Synergy Guidelines of the Commission. The conditions to which the dissemination is subject to vary with the

value-added attached to the information. For instance, EUR-Lex (<http://europa.eu.int/eur-lex/>) displays free of charge the Official Journal for a period of forty-five days following publication and is updated daily in 11 languages with the latest editions of the Official Journal, which are available on the Internet a few hours after the paper version is published.

CELEX (<http://europa.eu.int/celex/>) is a subscription-based computerised inter institutional documentation system for Union law containing the whole body of European Union law : a flat fee subscription to CELEX is available offering unlimited consumption for ECU 960/year.

4. Background initiatives to the Green Paper

The potential importance of public sector information as a resource first attracted the Commission's attention in the mid 1980s, when, in the context of the IMPACT programme for creating a Community information market and in response to a need perceived by the information industry, it started a consultation process with public and private sector information providers' and users' representatives. In addition, studies were carried out with respect to these issues. Furthermore, the Commission organised a number of preparatory discussions with the help of the Legal Advisory Board (for more information see the LAB Home Page on the European Commission WWW server I*M EUROPE at the address: <http://www2.echo.lu/legal/en/labhome.html>).

These initiatives resulted in a set of 19 guidelines for 'Improving the Synergy between the Public and Private Sectors in the Information Market'. However, subsequent studies proved that the impact of these guidelines was rather disappointing. In most Member States the guidelines seem to have had little, if any, impact.

The Commission organised a meeting in Stockholm on June 27 and 28, 1996, at which a large number of participants discussed various issues related to this Green Paper. Participants expressed their consensus on the actions undertaken so far (the proceedings are available on request).

The first legislative initiative in this area was the adoption of Directive 90/313/EEC of 23 June 1990 on the freedom of access to information on the environment, providing all legal and natural persons with a right of access to information concerning the environment held by public authorities. Further actions have been taken by the EU in the environment field. In particular the work done by the European Environment Agency

should be recalled in that respect. Furthermore, on 25 June 1998, the Presidency of the Council and the Commission have signed the UN/ECE Convention on access to information, public participation in decision-making and access to justice in environmental matters.

The United States have a long experience of **active public sector information policy**. In 1966 the Freedom of Information Act (FOIA) was enacted. The FOIA was amended in 1996 by the Electronic Freedom of Information Act (EFOIA) which guarantees **public access to federal government information electronically**.

Government Information Locator Services (GILS) have been set up with a view to ensuring **access to federal information** by identifying resources relevant to users, describing the information available and assisting in assuring access (see <http://www.gils.net/>).

Through a number of acts additional to the FOIA (like the Paperwork Reduction Act and the Government in the Sunshine Act and detailed policy documents such as the Office of Management and Budget circular A130) - the US has strongly **encouraged the private sector to exploit public sector information commercially**.

The 1986 Uniform Freedom of Information Act Fee Schedule and Guidelines issued by the Office of Management and Budget (OMB) deals amongst others with **pricing issues**. It contains provisions essentially charging for search, duplication and (possibly) review costs but not for the value added by the public sector to the raw data. The US **pricing philosophy** is that the public sector should see the adding of value only as a tool for its own efficiency purposes, and not

as an incentive for profit making. On the other hand, if the private sector is to make a commercially viable product or service, it should be able to add value beyond that added by the public sector and sell it at a profit making price. There is no copyright on government information at federal level.

In the US, the most important reference to **competition related issues** is made in the 4.1.1995 Paperwork reduction Act, Section 3506, dealing with federal agency responsibilities. It stipulates that:

“each agency shall ensure that the public has timely and equitable access to the agency's public information...”

but also indicates that it should **not**, except where specifically authorised by statute:

“A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

B) restrict or regulate the use, resale, or dissemination of public information by the public;

C) charge fees or royalties for resale or dissemination of public information; or

D) establish user fees for public information that exceed the cost of dissemination”.