

Act LXIII of 2012
on the Re-Use of Public Sector Information*

Having regard to the disclosure of data of public interest and the protection of intellectual property rights in accordance with the provisions of the Fundamental Law of Hungary, Parliament hereby enacts the following act on the rules for making public sector information managed by public bodies available for re-use:

Chapter I
GENERAL PROVISIONS

1. Scope

- Section 1 (1) This Act covers the re-use of public sector information managed by public bodies which may be made available for re-use pursuant to Section 2.
- (2) Public bodies shall act in accordance with the provisions of this Act only where the applicant requesting the re-use of public sector information declares that it is requesting public sector information for the purposes of re-use.
- (3) If an applicant fails to make the declaration to the effect laid down in paragraph (2), the public body may not inquire as to either the purpose of the request or whether it pertains to the re-use of public sector information.
- (4) The scope of this Act shall not cover:
- a) requests for access to data of public interest defined in the Act on Informational Self-Determination and Freedom of Information;
 - b) the right to distribute public sector information or data disclosed due to public interest;
 - c) the provision of data between public bodies for the sole purpose of performing their public functions.

2. Public sector information that may be made available for re-use

- Section 2 (1) The implementing decree issued pursuant to this Act shall determine which public sector information may be made available for re-use.
- (2) The manager of a public body may decide to authorise the release for re-use of public sector information other than the public sector information defined under paragraph (1) upon receipt of a request or requests to that effect.
- Section 3 The following may not be released for re-use, and no law shall provide that the following data may be released as public sector information:
- a) information whose release falls outside the scope of public duties of the particular public body;

* This Act was adopted by Parliament on 21 May 2012.

- b) works protected by copyright or other content protected by an intellectual property right and containing public sector information which are subject to copyright or other intellectual property rights held by third parties;
- c) public sector information to which access is denied or restricted pursuant to the Act on Informational Self-Determination and Freedom of Information or any other Act;
- d) public sector information managed by public service broadcasters and their subcontractors that is required for the performance of public service broadcasting duties;
- e) public sector information managed by institutes of education and research, schools, universities, archives, libraries and research institutes and organisations set up to forward research findings;
- f) public sector information managed by public collections, institutes of public education and performing arts.

3. Definitions

Section 4 For the purposes of this Act:

1. 'applicant' means any natural person, legal entity, economic association without legal personality or private firm applying for the re-use of public sector information under the provisions of this Act;
2. 'public sector information' means data of public interest and data made public on grounds of public interest as defined in the Act on Informational Self-Determination and Freedom of Information;
3. 'public body' means bodies or persons performing central or local government functions or other public functions laid down in legal regulations;
4. 're-use' means the use of public sector information for commercial or non-commercial purposes outside the scope of the original objective set forth for the performance of the public function for which the public sector information was produced;
5. 'making public sector information available for re-use' means granting the applicant access to public sector information so that the applicant can re-use the public sector information requested, including in particular the one-off or recurrent transfer of the public sector information onto a storage medium or electronically, granting direct access to the database containing the public sector information, and any other lawful means of access stipulated in the re-use agreement between the public body and the applicant.

CHAPTER II

PRINCIPLES GOVERNING THE RE-USE OF PUBLIC SECTOR INFORMATION

4. Enforcement of requirements

Section 5 Public bodies shall ensure that the requirements laid down in Chapters I-III are enforced when those bodies define the terms of re-use under Section 2 and when information is made available for re-use.

5. Transparency

Section 6 In order to ensure that applicants for public sector information are kept properly informed and that the conditions for making information available for re-use are transparent, public bodies shall, pursuant to the provisions of the Act on Informational Self-Determination and Freedom of Information, publish by electronic means information relating to public sector information that can be made available for re-use.

Section 7 (1) Upon request, public bodies shall indicate the basis for calculating the fee charged for making information available for re-use.
(2) Upon a request to that effect, the body concerned shall also indicate the factors taken into account when calculating the fee charged for providing information on the basis of an individual request.

6. Non-discrimination

Section 8 (1) When determining the terms of re-use, making information available for re-use and setting the fees, public bodies shall not discriminate arbitrarily between applicants requesting the re-use of public sector information.
(2) Where a public body makes a request to re-use public sector information during an activity that falls outside the performance of its public duties, the fees and terms applied in respect of providing such information shall be the same as for other applicants.

Section 9 (1) Contracts and other agreements between public bodies may not grant exclusivity in respect of the re-use of public sector information.
(2) Notwithstanding paragraph (1), exclusivity for the re-use of public sector information shall be granted if it is essential for the provision of a service of public interest relating to the performance of a particular public function. In that case, however, the justification for exclusivity shall be reviewed regularly, at least once a year.
(3) Where the review defined under paragraph (2) finds that the provisions of exclusive right are no longer justified, the public body shall terminate the relationship providing exclusivity without delay.

CHAPTER III

PROVISION OF INFORMATION FOR RE-USE

7. Launching the procedure, submission of a request

Section 10 (1) Applicants may initiate the procedure for providing public sector information for re-use by submitting a request in accordance with the provisions of this Section.
(2) The request shall be submitted to the public body which is responsible for managing the public sector information.
(3) The request shall contain:
a) an explicit declaration by the applicant that the public sector information indicated is requested for re-use;
b) the applicant's name, postal address (registered office), contact telephone number and e-mail address;
c) an exact specification of the public sector information requested for re-use;

- d) the desired format of the public sector information requested for re-use, including an indication of the technical means and the method which the applicant intends to use;
 - e) the required frequency, where recurrent access is requested.
- (4) The public body may manage the personal data of the applicant made available under Section 3(b) for the fulfilment of the request. The public body shall delete the personal data of the applicant immediately after fulfilment of the request, or if it is performed later, following the payment of fees under Section 15.

8. Processing applications

- Section 11 (1) (1) Where the request does not contain the applicant's declaration as specified in Section 10(3)(a), the request shall be fulfilled according to the rules laid down in the Act on Informational Self-Determination and Freedom of Information governing access to public sector information.
- (2) Where the request contains the applicant's declaration as specified in Section 10(3)(a), the public body shall examine the request promptly within five working days of receipt.
- (3) During the examination of the request, the public body shall check whether:
- a) the request satisfies the mandatory content requirements stipulated in Section 10(3)(b)-(e);
 - b) the public body has access to the information indicated in the request, and whether the information may be made available for re-use.
- Section 12 (1) If the request is missing any of the particulars stipulated under Section 10(3)(b)-(e), such that the request cannot be acted on, the public body shall, within the time limit under Section 11(2), notify the applicant of which information is missing, informing them that the request may not be acted on without this information and inviting them to supply the missing information within 5-10 working days.
- (2) If the applicant fails to respond to the invitation to supply the missing information within the time limit, the request shall be deemed not to have been submitted. Failure to respond to such invitations shall not prevent applicants from submitting another request at a later date for the same public sector information.
- (3) If the requested public sector information specified in the request is managed by another public body, and the organisation authorised to manage the requested public sector information can be identified based on the request, the public body shall transfer the request to the organisation authorised to manage the requested information within the time limit referred to in Section 11(2), notifying the applicant at the same time.
- Section 13 (1) The public body shall decide on the merits of a request within 20 days of the request being received in full.
- (2) The public body may extend the time limit referred to in paragraph (1), in justified cases, with regard to long or complex requests, once before expiration, by no more than 20 working days, notifying the applicant at the same time.
- Section 14 (1) In its decision, the public body shall:

- a) decide to fulfil the request and propose concluding a re-use agreement under its general terms of agreement;
 - b) decide to fulfil the request in part and propose concluding a re-use agreement under its general terms of agreement;
 - c) reject the application;
 - d) request compliance with additional conditions in order for the request to be fulfilled and propose concluding a re-use agreement under its general terms of agreement, or, where the additional conditions applied so require, propose concluding an alternative re-use agreement not compliant with its general terms of agreement.
- (2) Unless otherwise provided in the re-use agreement, where a public body makes a decision according to points (a), (b) or (d) of paragraph (1), it shall make the requested information available to the applicant upon the signing of the re-use agreement by both contracting parties.
- (3) The public body may reject a request only in the cases listed below:
- a) the requested public sector information is information that may not be made available for re-use;
 - b) the requested public sector information is not available and the request cannot be transferred to another public body as envisaged in Section 12(3).
- (4) The public body shall provide a written explanation for rejecting a request. The explanation shall specify:
- a) the reason for the rejection;
 - b) if the request is rejected with reference to paragraph (3)(b), the name of the person with competence to conclude an agreement for use in respect of the subject matter of the request, provided the public body knows that such a person exists;
 - c) information on legal remedies available in respect of the rejection.
- (5) Decisions made under this Section by a public body, the conditions applicable to making information available and the applicable fees shall be deemed to constitute data of public interest.

9. Fee requirements

- Section 15
- (1) A public body may charge a fee for making available for re-use the public sector information managed by it.
 - (2) In setting the applicable fees, the public body shall take into account the following criteria:
 - a) the applicable fee shall not exceed the costs of collecting, producing, processing and distributing the available public sector information, plus a profit margin of no more than 5%;
 - b) the accounting policy of the public body setting the fee shall be taken into account for the purpose of calculating the costs referred to in point (a).
 - (3) The implementing decree issued pursuant to this Act may establish further detailed rules in accordance with paragraphs (1) and (2) on the size of the fees, the criteria for setting the fees, the method of payment of the fees, and the discounts on and exemption from payment.

10. Formats

- Section 16 (1) The public body shall provide the applicant with public sector information made available for re-use in response to a request specified in Section 10 in the format, manner and language requested by the applicant.
- (2) If the format of the public sector information available at the public body has to be converted in order to make the public sector information available within the meaning of paragraph (1), the public body may charge the costs of conversion as a fee while taking account of the provisions of Section 15. However, the conversion work shall not prevent the public body from performing its public functions.
- (3) If the public sector information cannot be made available as defined in paragraph (1), or if it would involve a disproportionate effort, go beyond a simple operation or hinder the public body from performing its public functions, then the public body shall make the public sector information available for the applicant in the available language electronically to allow automatic processing using IT equipment.
- (4) If the public sector information cannot be made available as defined in paragraph (3) either, or if it would involve a disproportionate effort, go beyond a simple operation or hinder the public body from performing its public functions, then the public body shall make the public sector information available for the applicant in the format, manner and language available.
- (5) Pursuant to paragraphs (1) and (2), the public body shall not be required to:
- a) reproduce, adjust in line with requests received or make extracts from public sector information, if this would incur disproportionate difficulties;
 - b) produce analyses or documents on the basis of public sector information.

11. Re-use Agreement

- Section 17 (1) The public body shall conclude a re-use agreement with the applicant about releasing public sector information for re-use.
- (2) The re-use agreement shall contain at least:
- a) the names of the parties;
 - b) a description of the information made available for re-use;
 - c) the date of delivery of information specified in point (b), and the manner and format of delivery;
 - d) the fee determined for making the information specified in point (b) available for re-use;
 - e) the deadline for and the method of paying the fee defined in point (d);
 - f) the detailed conditions for the use of the information where the re-use defined in point (b) is subject to conditions.
- (3) The conditions under paragraph (2)(f) shall not restrict the possibilities for re-use without justification, limit competition or contradict other provisions of this Act on re-use.
- (4) The public body may specify the conditions for re-use under the general terms of agreement on making public sector information available for re-use.

12. Legal remedy

- Section 18 (1) The applicant may institute court proceedings if its request for making public sector information available for re-use is rejected or if the public body fails to fulfil the request within the time limit for fulfilment or by the extended deadline set by the public body under Section 13(2), or for a review of the fees set for making the public sector information available for re-use.
- (2) The public body shall provide evidence to demonstrate that the rejection of the public sector information re-use request was lawful and that the fees set for making the public sector information available for re-use are well-founded.
- (3) Lawsuits shall be filed against the public body that has rejected the request within 10 days of notification on the rejection, or of the failure to comply with the time limit for the processing of the request, or – where a lawsuit is filed for a review of the fee amount – of the deadline set for the payment of the fees. Litigation may be started even if the fee has been paid. No lawsuit may be filed after the respective deadline unless justification is offered.
- (4) A lawsuit against a public body with nation-wide competence falls within the jurisdiction of a general court. Cases within the jurisdiction of local courts shall be decided by the local court at the seat of the general court or, in the case of Budapest, by the Central District Court of Pest. The court with jurisdiction shall be determined on the basis of the seat of the respondent public body.
- (5) If the court confirms a request for making public sector information available for re-use, in its resolution it shall order the public body to make the requested public sector information available for re-use.
- (6) The court may alter the fees set for making the public sector information available for re-use or may, with regard to the setting of the fees, order the public body to commence a new procedure.
- (7) If the applicant has already paid the fee originally set by the public body at the commencement of the lawsuit and that fee was higher than the fee set pursuant to the lawsuit, the court shall order the public body to reimburse the difference to the applicant.

*CHAPTER IV
FINAL PROVISIONS*

- Section 19 (1) This Act shall, with the exceptions laid down in paragraph (2), enter into force on the day following its publication.
- (2) Sections 1-18, 20-23 and 25 shall enter into force on 1 January 2013.

Section 20 Agreements in force on 1 January 2013 that provide exclusive rights and are contrary to the provisions of Section 9(2) shall terminate when the agreement expires or on 1 January 2014, whichever is the sooner.

- Section 21 (1) The ministers shall, after seeking an opinion from the National Authority for Data Protection and Freedom of Information, be authorised to specify by decree which public sector information managed by bodies controlled or overseen by them may be made available for re-use.
- (2) The ministers shall be authorised to set out in a decree detailed rules governing the amount of the fees payable for making information available for re-use, the criteria for setting those fees, the payment method of the fees,

and the discounts on and exemptions from payment in accordance with the provisions of this Act.

- (3) The council of representatives of the local government shall be authorised to set out in a decree:
 - a) which public sector information managed by bodies controlled by the council may be made available for re-use after seeking the opinion of the National Authority for Data Protection and Freedom of Information;
 - b) further detailed rules on the amount payable in fees for information made available for re-use, the criteria for determining the payment method, and the discounts on and exemptions from paying such fees in accordance with the provisions of this Act.

- (4) The President of the National Media and Info-communications Authority (NMIA) shall be authorised to set out in a decree:
 - a) which public sector information managed by bodies controlled by the NMIA may be made available for re-use, after seeking the opinion of the National Authority for Data Protection and Freedom of Information;
 - b) further detailed rules on the amount payable in fees for information made available for re-use, the criteria for determining the payment method, and the discounts on and exemptions from paying such fees in accordance with the provisions of this Act.

- (5) The President of the Hungarian Financial Supervisory Authority shall be authorised to set out in a decree:
 - a) which public sector information managed by the Hungarian Financial Supervisory Authority may be made available for re-use, after seeking the opinion of the National Authority for Data Protection and Freedom of Information;
 - b) further detailed rules on the amount payable in fees for information made available for re-use, the criteria for determining the payment method, and the discounts on and exemptions from paying such fees in accordance with the provisions of this Act.

Section 22 Section 1 of Act CI of 2007 on the provision of access to information required for drawing up decisions is replaced by the following:

‘Section 1 The budgetary authority and business organisation with majority state ownership (hereinafter: ‘data manager’) shall forward the public sector information managed by them to central public administration bodies and to the Hungarian Financial Supervisory Authority, without charging costs to be reimbursed, within 15 days, provided the applicant requests such information in order to perform its public function.’

Section 23 The following rows 19-23 shall be added to the table entitled ‘II. Data concerning activity and operation’ of Annex 1 to Act CXII of 2011 on Informational Self-Determination and Freedom of Information:

[II. Data concerning activity and operation]

	<i>[Data]</i>	<i>[Update]</i>	<i>[Storage]</i>
19.	List of public sector information managed by a public body and made available for re-use pursuant to the Act on the Re-Use of Public Sector Information, along with the available formats	Within 15 days of the changes	By keeping previous record on file for 1 year
20.	Electronically editable version of the general terms of contract for the re-use of public sector information under row 19	Within 15 days of the changes	Delete previous record
21.	General list of fees payable for making public sector information under row 19 available for re-use	Within 15 days of the changes	Delete previous record
22.	Information on legal remedy under the Act on the Re-Use of Public Sector Information	Within 15 days of the changes	Delete previous record
23.	Indication of the contracting parties to the agreements providing exclusive rights under the Act on the Re-Use of Public Sector Information concluded by the public body, the duration and subject of exclusivity, and other major elements of the agreement	Within 15 days of the changes	Delete previous record

Section 24 The words ‘and the detailed rules governing the use of funds’ in Section 27(1)(k) of Act XXI of 1996 on regional development and regional planning are hereby repealed.

13. Legal harmonisation clause

Section 25 This Act shall serve to ensure compliance with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.

János Áder [signed],
President of the Republic

László Kövér [signed],
Speaker of the National Assembly