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42. Act: **Document Reuse Act**
XXVIII.LT: RV 46/2006, 6th sitting for 2006
43. Act: **Municipal Employees Act 2005, Amendment**
XXVIII.LT: SA 51/2006, 6th sitting for 2006
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Act

on reuse of public-sector bodies' documents
(Document Reuse Act)*

The Regional Parliament has decided as follows:

Part 1

General provisions

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Scope

1. This Act establishes the legal framework for reuse of documents held by public-sector bodies and produced by public-sector bodies in the course of their public duties.
2. This Act shall not apply where documents are used solely in the performance of public duties.
3. This Act shall apply without prejudice to any legal provisions governing access to public-sector bodies' documents.

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Exclusions

This Act shall not apply to documents:

- (a) to which access is not allowed, or is allowed only if a special interest can be established;
- (b) for which third parties hold intellectual property rights;
- (c) which are covered by industrial property rights;
- (d) which are held by an educational or research establishment or by a cultural institution.

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Definitions

For the purposes of this Act:

- (a) "document" means any representation of content, irrespective of the medium used (written on paper or stored in electronic form or as a sound, visual or audiovisual recording), or any part thereof;
- (b) "document held by a public-sector body" means any document for which that public-sector body may decide whether to allow reuse;
- (c) "public-sector body" means any agency of the region (*Land*), of a municipality, of an association of municipalities or of an institution governed by regional law;
- (d) "reuse" means any use for purposes other than those for which a document was produced in the course of public duties; exchange of documents between public-sector bodies, as defined in this Act or in equivalent federal or foreign legislation, solely in performance of public duties does not constitute reuse.

* This Act gives effect to Directive 2003/98/EC.

Part 2
Supply of documents for reuse

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Supply of documents

1. Public-sector bodies may make documents available for reuse, unless this is prevented by any other legal provisions, in particular those governing data protection and confidentiality.
2. This Act shall not establish any requirement to make documents available. If a public-sector body makes a document available for reuse, that body must not discriminate against any other applicants for it (under sections 6 and 7) or bar them from reusing it (save under section 8(2)).

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Form of supply and practical arrangements

1. If a public-sector body makes documents available for reuse, it must do so in any pre-existing format or language. Where possible and appropriate, documents must be made available in electronic form.
2. Public-sector bodies shall not be required to create or adapt documents in order to comply with an application for reuse. Nor shall they be required to produce extracts from documents, where this would involve more than just a simple operation. They shall not be required to continue producing documents either.
3. Public-sector bodies must introduce practical arrangements to facilitate access to documents made available for reuse. For this purpose they may in particular provide public lists or registers of main documents or designate information officers or information centres.

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Charging

1. Public-sector bodies may make a charge for supplying documents for reuse. The total income from supplying documents and allowing them to be reused shall not exceed the cost of collection, production, reproduction and dissemination, plus a reasonable return on investment.
2. The charge normally made for reuse of documents ("standard charge") shall be established in advance and published, where possible and appropriate on the public-sector body's Internet website.
3. Public-sector bodies must, upon request, specify the basis on which the standard charge is calculated and the factors taken into account in calculating the charge in non-standard cases.
4. Charging must not discriminate between comparable categories of reuse. If the public-sector body which produced a document reuses it, the same charge shall apply as for other users.

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Other conditions for reuse

1. Public-sector bodies may impose conditions for reuse of documents. Conditions shall be laid down in an agreement dealing with any relevant reuse issues. Conditions shall not unnecessarily limit the scope for reuse and shall not be used to restrict competition.
2. The conditions normally applicable to reuse of documents ("standard conditions") shall be established in advance and published, where possible and appropriate on the public-sector body's Internet website. The standard conditions must be available in digital format. They must be electronically processable.
3. Conditions must not discriminate between comparable categories of reuse. If the public-sector body which produced a document reuses it, the same conditions shall apply as for other users.

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Exclusive arrangements

1. Public-sector bodies must not grant anyone an exclusive right to reuse a document. This shall apply even if any added-value products based on that document are already in use.
2. Public-sector bodies may, as an exception, grant an exclusive right where necessary for the provision of a service in the public interest. The existence of the conditions which gave rise to that right shall be reviewed at least every three years.
3. Any exclusive arrangements must be transparent and be made public, where possible and appropriate on the public-sector body's Internet website.

Part 3
Applications and legal remedies

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Applications for reuse

1. Any natural or legal person may apply to reuse documents. An application shall be submitted to the public-sector body holding the document. The application must be made in writing; this may be done in any technical form receivable by the public-sector body.
2. The application must specify the document to be reused. It must also state how and for what purpose the document is to be reused.
3. The public-sector body must request without delay that any defective application be rectified in writing. The applicant shall be set a time limit of not more than two weeks within which to do so. If the application is not rectified within the time limit set, it shall be deemed not to have been submitted.

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Time limit for processing

1. The public-sector body must take a decision on the application within four weeks. That time limit shall run from the date on which the application or, in the event of a request for rectification (under section 9(3)), the timely rectification of it is received by the public-sector body.
2. The public-sector body may extend the time limit for another four weeks in the case of an extensive or complex application. It must notify the applicant of this within three weeks after receipt of the original application or of the timely rectification of it.

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Decision on the application

1. The public-sector body must within that time limit:
 - (a) make the requested documents available in whole or in part, or
 - (b) submit in writing an offer setting out the conditions (including any charge) for making the requested documents available in whole or in part, or
 - (c) give notice in writing that the application has been rejected in whole or in part.
2. Notifications under paragraph 1(b) or (c) must briefly state the reasons and must point out that an official ruling may be sought.
3. If the applicant disagrees with a notification under paragraph 1(b) or (c), he may request in writing that the public-sector body issue an official ruling giving a decision on his application. Issue of the official ruling shall be governed by the procedural rules laid down in the General Administrative Procedure Act 1991. If the application is rejected because intellectual property rights for the requested document are held by a third party, reference must be made to that third party. If the identity of the third party is not known, reference must be made to the licensor from whom the public-sector body obtained the relevant material.
4. The application for reuse must be granted only if the applicant would otherwise be improperly excluded or discriminated against.

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Legal remedies

Appeals against official rulings in accordance with section 11(3) shall be heard and determined by the Independent Administrative Tribunal. This shall not apply where the official ruling was issued within a municipality's own sphere of activity.

Part 4
Final provisions

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Municipalities' own sphere of activity

The municipal duties covered by this Act shall be those within a municipality's own sphere of activity.

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Transitional provision

In the case of exclusive arrangements established since 31 December 2003, section 8(3) shall apply *mutatis mutandis*. Any exclusive arrangements in existence at the time of entry into force of this Act which do not come within the exception in section 8(2) shall cease by 31 December 2008 at the latest.

The President of the Regional Parliament:
Gebhard Halder

The Regional First Minister:
Dr Herbert Sausgruber

43.
Act
amending the Municipal Employees Act 2005

The Regional Parliament has decided as follows:

The Act on the Service Regulations of Municipal Employees (Municipal Employees Act 2005), Regional Law Gazette (LGBI) No 19/2005, is hereby amended as follows:

1. In section 36(4), the last sentence shall read: "Close relatives shall be taken to mean the spouse and persons who are related in a direct line to the municipal employee, also brothers and sisters, step, adoptive and foster parents and parents-in-law, step, adoptive and foster children and children-in-law, as well as the person with whom the municipal employee is in a long-term relationship."
2. In section 38(1), the reference "(section 36(4), third sentence)" shall be followed by the words "or of children of the person with whom he is in a long-term relationship."
3. In section 38(6), the words "(adoptive or foster children)" shall be replaced by "(step, adoptive and foster children or children of the person with whom the municipal employee is in a long-term relationship)"; the following sentence shall also be added: "In that case, the measure pursuant to subparagraphs 1(a) to (c) shall be authorised on request for a specific period not exceeding five months; where necessary, that measure shall be extended to last for a total period of nine months."
4. After section 96, the following section 96a shall be added:

"96a

Transfer of independent employment powers

1. The municipal council may order the transfer to bodies of other legal entities to which municipal employees are assigned to serve pursuant to sections 11(1) and 29(1) of specific independent employment powers. In exercising those powers, the bodies shall be subject to the municipality's supervision and instruction rules.
2. The transfer of independent employment powers shall cover the following:
 - (a) service training and continuing training (section 9);
 - (b) laying down working hours (section 20), but excluding the issuing of Regulations;
 - (c) travel orders and reimbursement of travel expenses (section 28(2) and section 67);
 - (d) laying down annual holiday, granting special leave of up to eight working days a year or of care leave (sections 35 and 36);
 - (e) part-time work instead of unpaid leave (section 45);
 - (f) unpaid training leave (section 49);
 - (g) alteration of the level of employment (section 50);
 - (h) performance assessment (section 63);
 - (i) subsidiary allowances (section 66); rewards for exceptional performance may not exceed 30% of the salary of a municipal employee in salary class 14, salary grade 1;
 - (j) granting of a supplementary allowance (section 71(7))."

President of the Regional Parliament
Gebhard Halder

First Minister of the Region
Herbert Sausgruber

44.
Act
amending the Municipal Staff Act 1988

The Regional Parliament has decided as follows:

The Act on the Service Regulations of Municipal Staff (Municipal Staff Act), LGBl. No 49/1988, as amended by LGBl. No 29/1991, No 30/1993, No 41/1993, No 28/1994, No 5/1995, No 50/1995, No 5/1997, No 61/1997, No 64/1997, No 6/1998, No 26/1998, No 20/1999, No 24/2001, No 58/2001, No 23/2002, No 53/2002, No 27/2003 and No 20/2005, is hereby amended as follows:

1. Section 4 shall be supplemented by the following paragraph 3:
"(3) This shall be without prejudice to section 142a."
2. In section 17(1), first sentence, the words "municipal officials and municipal employees" shall be replaced by "municipal staff".
3. In section 27, the numbering of the sole paragraph as paragraph 1 shall be omitted.
4. In section 75(2), the reference "section 78(3)" shall be replaced by "section 78(2)".
5. In section 123, the reference to section 74 shall read "section 74 - grounds for termination -" and that to section 76 shall read "section 76 - dismissal from employment, premature severance of the employment relationship owing to a criminal conviction -".
6. In section 142(2)(1), the reference in brackets "(sections 76 and 79 of the Municipal Employees Act 2005)" shall be replaced by "(section 79 of the Municipal Employees Act 2005)".
7. After section 142, the following section 142a shall be added:

"142a

Transfer of independent employment powers

In the case of service assignments to other legal entities pursuant to sections 11(1) and 29(1) of the Municipal Employees Act 2005, section 96a of the Municipal Employees Act 2005 shall apply with the proviso that the transfer of independent employment powers shall also cover the granting of additional-performance payments, allowances for specific use or expense allowances as subsidiary allowances (section 123 in conjunction with section 66 of the Municipal Employees Act 2005)."

President of the Regional Parliament
Gebhard Halder

First Minister of the Region
Dr Herbert Sausgruber

45.

**Regulation
of the Regional Government amending the Regulation transferring responsibility
for local building-inspectorate affairs
to the District Chief Officers' Departments of Bludenz, Bregenz and Feldkirch**

Pursuant to section 17(3) of the Municipalities Act, LGBl. No 40/1985, at the request of the market town of Nenzing, it is hereby ordered that:

The Regulation transferring responsibility for local building-inspectorate affairs to the District Chief Officers' Departments of Bludenz, Bregenz and Feldkirch, LGBl. No 11/2004, as amended by LGBl. No 3/2005 and No 24/2006, shall be amended as follows:

1. In section 1(1), after the word "Ludesch" the word "Nenzing" shall be added.
2. In section 1(2), after the word "Ludesch" the word "Nenzing" shall be added.

**For the Vorarlberg Regional Government:
The First Minister of the Region
Dr Herbert Sausgruber**

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