

ACT

of 18 October 2012

amending and supplementing Act No 211/2000 Act No 211/2000 on freedom of access to information and amending certain other acts (Freedom of Information Act), as amended

The National Council of the Slovak Republic has resolved to adopt the following Act:

Article I

Act No 211/2000 on freedom of access to information and amending certain other acts (Freedom of Information Act), as amended by Act No 747/2002, Act No 628/2004, Act No 207/2005, Act No 477/2008, Act No 77/2008, Act No 145/2010, Act No 546/2010, Act No 204/2011, Act No 220/2011 and Act No 382/2011, is hereby amended as follows:

1. The following Sections 21b to 21k, with headings, shall be inserted after Section 21a:

"Specific provisions on the re-use of information

Section 21b

(1) Re-use of information means the use of information held by an obliged entity under paragraph 3 for commercial or non-commercial purposes different from the original purpose for which the information was created in the performance of the tasks of those obliged entities. Re-use of information shall not mean the exchange of information between obliged entities under paragraph 3 in the course of their work; this provision shall be without prejudice to Section 21f(6).

(2) Information within the meaning of paragraph 1 means any content or partial content in any form, such as a register, electronic record or audio or audiovisual recording or work, stored on any kind of data carrier; information within the meaning of paragraph 1 shall not include computer software.

(3) 'Obliged entity' means an obligee within the meaning of Section 2(1) which is a legal entity meeting the requirements set out in paragraph 4 or an association of legal entities of which at least one member is an obliged entity under paragraph 4 or Section 2(1).

(4) A legal entity within the meaning of paragraph 3 means an entity established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and which:

(a) is fully or partially dependent upon the budget of an obliged entity within the meaning of Section 2(1);

(b) is managed^{27b}) by an obliged entity within the meaning of Section 2(1), or

(c) has more than half of the members of its statutory, management or supervisory body appointed or elected by an obliged entity within the meaning of Section 2(1).

(5) Unless otherwise specified, Sections 2 to 21a shall apply *mutatis mutandis* to the disclosure of information for re-use.

Section 21c

- (1) The specific provisions on the re-use of information shall not apply to information:
- (a) which is not to be disclosed pursuant to the provisions of this Act other than Section 11(1)(c);
 - (b) whose production falls outside the scope of the tasks performed by the obliged entity;
 - (c) to which a person other than the obliged entity holds an intellectual property right under a specific law;²³⁾
 - (d) which is held by a public-law body that provides a public service in the area of radio and television broadcasting and legal bodies established to provide a public broadcasting service;^{27c)}
 - (e) which is held by an educational and research body such as a school,^{27d)} higher-education establishment^{27e)} or research and development establishment;
 - (f) which is held by a cultural body such as a museum^{27f)}, library^{27g)}, archive^{27h)} or theatre²⁷ⁱ⁾;
 - (g) which, if disclosed, might endanger the security or defence of the Slovak Republic or its foreign policy interests;
 - (h) which concerns emergency plans, evacuation plans and/or documents for ensuring the physical and material safety of the obliged entity or which, if disclosed, might endanger the security of the obliged entity's information system, such as access passwords, vulnerability analyses and risks to the information system for their duration, penetration test results, information-system security settings, security policy^{27j)} and information-security documents designated by it, and security projects.^{27k)}
- (2) Specific provisions on the re-use of information shall not apply to the use of information published in accordance with this Act or separate legislation^{27l)} or to the use of information made available on request in accordance with Section 14.

Section 21d

- (1) Under the provisions on the re-use of information, information may be disclosed only by decision of the obliged entity.
- (2) Where an obliged entity permits the disclosure of information under (1) above, it shall declare to the operator of the Central Public Administration Portal^{27m)} without delay the details of its website and any other locations where the facts pertaining to the re-use of the information are published, especially where Sections 21e(5), 21f(7) and (8) and 21k(4) apply. The operator of the Central Public-Administration Portal shall display those details without delay on the Portal.

Section 21e

- (1) Where an obliged entity permits the re-use of information, it shall make that information available to and allow its re-use by all applicants under the same conditions.
- (2) Provisions of agreements between an obliged entity and another party that include a restriction on the re-use of the information by other applicants, including exclusive access to the re-used information ("re-use restrictions"), shall be null and void.
- (3) Paragraph 2 shall not apply where the re-use restriction is essential to the provision of services in the public interest.
- (4) At least once every three years the obliged entity shall investigate the reasons for any re-use restriction within the meaning of (3) above, and shall draw up a legitimate written record of the investigation.

(5) The obliged entity shall publish agreements containing a re-use restriction within the meaning of (3) above on their website, if any, or else in accordance with Section 6(2). The obligations not to disclose the provisions of agreements containing information which, pursuant to this Act, may not be disclosed, including personal data of parties to the agreement other than the obliged entity under Section 5a(13), shall apply equally.

Section 21f

- (1) Obligated entities may permit the re-use of information without conditions or subject to conditions.
- (2) Conditions for the re-use of information shall include:
 - (a) access requirements;
 - (b) the obligations of the applicant when re-using information.
- (3) The access requirements referred to in 2(a) above shall mean in particular the technical requirements which must be met in order to provide access to information for the purposes of re-use. The technical requirements must comply with the standards for public-sector information systems.²⁷ⁿ⁾
- (4) The obligations of the applicant when re-using information referred to in 2(b) above shall mean in particular the obligation to identify the obliged entity which provided the information for re-use and the restriction of permission to change the content of the information. Changing the content of information shall not mean correcting incorrect or out-of-date information, linking information to other information, or adding further information, provided that the original information is indicated.
- (5) The conditions for the re-use of information shall be determined by the obliged entity in such a way that they are non-discriminatory and place only essential restrictions on the re-use of the information.
- (6) Obligated entities which re-use information for commercial purposes other than their own tasks shall be under the same obligations as applicants which re-use information for commercial purposes.
- (7) Obligated entities shall publish the conditions for the re-use of information on their website, if any, or else in accordance with Section 6(2).
- (8) Where an obliged entity waives the conditions for re-use of information or decides that it will no longer disclose or update information for re-use purposes, it shall announce this fact without delay on its website, if any, or else in accordance with Section 6(2).

Section 21g

- (1) An obliged entity shall disclose information for re-use in a form and manner that are technically feasible, but preferably in electronic form.
- (2) The obliged entity shall not be obliged to disclose information for re-use in a structure or in formats ^{27o)} requested by the applicant, nor shall it be obliged to provide a special technical solution for the applicant's connections or interfaces if the latter's requirements extend beyond a simple operation.

Section 21h

- (1) An applicant requesting the disclosure of information under the provisions on the re-use of information shall indicate in its application, in addition to the details set out in Section 14(2), whether
 - (a) (s)he wishes the information to be disclosed in accordance with the provisions on the re-use of information;
 - (b) (s)he is to use the information for commercial or for non-commercial purposes.

(2) If the application does not contain the details set out in (1) above, the obliged entity shall deal with it in accordance with Section 14.

Section 21i

(1) The time limit for processing applications shall be 20 working days. For compelling reasons the obliged entity may extend this time limit by a maximum of 20 working days. It shall notify the applicant of the extension of the time limit without delay, and at the latest within 21 days of the date of the submission of the application. The reasons for the extension shall be stated in the notification.

(2) Where an obliged entity has imposed conditions governing the re-use of information, it shall examine on the basis of the application whether the applicant has met those conditions and, if so, shall issue a decision to disclose the information for re-use; otherwise it shall issue a rejection decision. It may also decide to reject the application where the requested information is to be withheld pursuant to Sections 21c and 21d; where Section 21c(1)(c) applies, the obliged entity shall inform the applicant in its decision of the identity of the intellectual property rightholder, where this is known to it.

(3) Where an obliged entity has not imposed conditions for the re-use of information and discloses the information in accordance with Section 21d, it shall

(a) determine the conditions for the re-use of information by decision by the time limit for processing the application under (1) above, first sentence, and shall at the same time publish them pursuant to Section 21f(7), or

(b) by the same time limit, issue a decision to disclose the information for re-use.

(4) Where the procedure set out in (3)(a) above applies, the time limit for processing the application shall start to run on the date on which the applicant is notified that (s)he has complied with the information re-use conditions determined as above.

(5) Where an applicant no longer meets the conditions for re-use of information, the obliged entity shall issue a decision to cancel the re-use.

Section 21j

(1) An appeal may be lodged against a decision by an obliged entity

(a) under Section 18(3);

(b) to reject an application under Section 21i(2);

(c) to cancel the re-use of the information under Section 21i(5).

(2) An appeal may be also lodged where the obliged entity discloses information for re-use and the applicant considers that the equal treatment condition under Section 21e(1) has not been met.

Section 21k

(1) Payment for the re-use of information shall constitute revenue of the obliged entity and may be single or repeated.

(2) Payment for the re-use of information shall be calculated as the sum of the costs actually incurred by making information available by new or existing direct or indirect links or interfaces, by connecting the applicant to the obliged entity's information database, by producing copies, by procuring data carriers and by delivering the information to the applicant, plus a surcharge not exceeding 10% of the costs actually incurred, which the obliged entity may add to those costs.

Sections 21e(1) and 21f(5) shall also apply.

(3) The obliged entity may apply the surcharge referred to in (2) above only for improving the applicant's access to the information, e.g. by creating or inventing special technical links or interfaces, or for converting information to electronic form.

(4) Obligated entities shall publish the amount of the payment under (2) above on their websites, if any, or else in accordance with Section 6(2).

(5) Should the applicant so request, the obliged entity shall notify him or her in writing of the basis for calculating the payment under (2) above.

(6) The obliged entity shall not add the surcharge under (2) above where the applicant:

(a) is a legal person that performs services of general utility,^{27p}

(b) is requesting re-use of information for non-commercial purposes and

(c) makes a solemn declaration on oath that (s)he will not supply the information to a third party for commercial purposes.

(7) Where an applicant who has not had a surcharge added by the obliged entity under (6) above supplies information to third parties for commercial purposes, (s)he shall be required to pay the surcharge under (2) above if the obliged entity so decides.

(8) The obliged entity may waive the payment under (2) above, but must do the same for all other applications of the same type.”

Footnotes 27b to 27p shall read: „^{27b}) Section 66a of the Commercial Code.

^{27c}) Act No 532/2010 on Slovak radio and television and amending certain acts, as amended.

^{27d}) Section 27 of Act No 245/2008 on education and training (Schools Act) and amending certain acts.

^{27e}) Article 2(2) of Act No. 131/2002 on higher education and amending certain acts, as amended by Act No 363/2007.

^{27f}) Section 2(5) and (6) of Act No 206/2009 on museums and galleries and the protection of cultural objects, amending Slovak National Council Act No 372/1990 on infringements, as amended.

^{27g}) Section 3(1) of Act No 183/2000 on libraries, supplementing Slovak National Council Act No 27/1987 on care of national monuments and amending Act No 68/1997 on *Matica slovenska* [the Slovak scientific and cultural institution].

^{27h}) Section 4 of Act No 395/2002 on archives and registers and amending certain acts.

²⁷ⁱ) Section 2(1) of Act No 384/1997, as amended by Act No 416/2001.

^{27j}) Section 28(a) of Slovak Ministry of Finance Ordinance No 312/2010 on the standards for public-sector information systems.

^{27k}) Article 16 of Act No 428/2002.

^{27l}) For example, Act No 530/2003 on business registers and amending certain acts, as amended; Act No 200/2011.

^{27m}) Section 2(1) of Act No 275/2006, as amended by Act No 570/2009.

²⁷ⁿ) For example, Act No 275/2006, Slovak Ministry of Finance Ordinance No 312/2010.

^{27o}) Section 6 of Act No 275/2006 as amended by Act No 570/2009; Slovak Ministry of Finance Ordinance No 312/2010.

^{27p}) Section 2(2) of Act No 213/1997 on non-profit organisations providing generally beneficial services, as amended by Act No 35/2002.”

2. The following paragraph (3) shall be added to Section 22:

“(3) Sections 21b to 21k shall apply to access to information on the basis of an application under Section 21h only.”

3. A Section 22e shall be added after Section 22d, together with its heading to read as follows:

“Section 22e

(1) Provisions of agreements between an obliged entity and another person existing at 30 November 2012 which contain a re-use restriction shall become invalid on 1 December 2012; this shall not apply to re-use restrictions under Section 21e(3). An obliged entity shall publish agreements between it and another person concluded before 1 December 2012 and containing re-use restrictions under Section 21e(3) on its website, if any, or else under Section 6(2) no later than 31 December 2012.

(2) An obliged entity shall not subject the re-use of information to conditions where the information or its structure were or are publicly available or published by the obliged entity before 1 December 2012.

(3) Information published under this Act or under specific legislation²⁷¹⁾ or made available subject to application under Section 14 before 1 December 2012 may be used for commercial and non-commercial purposes."

4. In the annex to the Act, first point, the words "Special edition of the Official Journal of the European Union, Chapter 13, Vol. 32," shall be inserted in brackets before "OJ".

5. In the annex to the Act, second point, the words "Special edition of the Official Journal of the European Union, Chapter 15, Vol. 7," shall be inserted in brackets before "OJ".

Article II

This Act shall enter into force on 1 December 2012.

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