## FEDERAL OFFICIAL JOURNAL

#### OF THE REPUBLIC OF AUSTRIA

2005 Published on 18 November 2005

Part I

135. Federal Act of the Re-use of Information from Public Sector Bodies (IWG)

The National Council has decided as follows:

#### Section I

#### **General Provisions**

## **Purpose**

**Article 1.** The purpose of this Federal Act is to facilitate the re-use of documents of public sector bodies, in particular in order to thereby promote the production of new information products and services.

### Scope

- **Article 2.** (1) This Federal Act establishes the legal framework for the commercial and non-commercial re-use of documents that are held by public sector bodies and have been drawn up as part of their public duties, to the extent that they supply them for re-use.
- (2) Legal provisions regulating access to documents of public sector bodies are not affected by this Federal Act.
- (3) This Federal Act does not affect the provisions of the Data Protection Act 2000, Federal Official Journal I, No 165/1999, last amended by the Federal Act BGBl. I, No 13/2005, and statutory obligations of secrecy.

# **Exceptions**

## **Article 3.** (1) This Federal Act does not apply to documents

- 1. whose production is outside the official remit of the relevant public sector body;
- 2. which are not accessible, in particular on grounds of national security, comprehensive national defence or public security or because they contain company or business secrets or are otherwise subject to confidentiality;
- 3. which are accessible only in the case of proven special interest;
- 4. which are the intellectual property of third parties;
- 5. which are covered by commercial protection rights;
- 6. which are in the possession of the Austrian Broadcasting Corporation (ORF) or its subsidiaries and serve for the performance of tasks under public law;

- 7. which are in the possession of training and research establishments;
- 8. which are in the possession of cultural establishments.
- (2) Article 5(3)(2) and (4) and Article 5(4) to (6) shall apply to the processing of requests for re-use of documents mentioned in paragraph 1(1) to (5).

#### **Definitions**

**Article 4.** For the purpose of this Federal Act, the following definitions shall apply:

- 1. "public sector body" means
- a) the Federation;
- b) self-governing authorities under federal law;
- c) bodies based on federal law such as foundations, private foundations, funds and institutions as well as other corporations under public law which
  - have been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
  - have at least partial legal capacity; and
  - are financed for the most part by the Federation, by other bodies based on federal law or by other public sector bodies (Article 2(1) of Directive 2003/98/EC on the re-use of public sector information (OJ L 345, 31.12.2003, p.90) or are subject to management supervision by those bodies or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the Federation, by other bodies based on federal law or by other public sector bodies (Art. 2(1) of Directive 2003/98/EC);
- d) undertakings within the meaning of Article 126b(2) of the Federal Constitutional Act (B-VG), Article 127(3) of the B-VG and Article 127a(3) of the B-VG which
  - have been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; and
  - are financed for the most part by the Federation, Regions, municipalities or other bodies based on federal or regional law or are subject to management supervision by those bodies or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the Federation, Regions, municipalities or other bodies based on federal or regional law, disregarding the 20 000 inhabitants requirements in the municipality for undertakings in accordance with Article 127a(3) of the B-VG;
- e) associations which are for the most part composed of two or more public sector bodies in accordance with subparagraphs a) to d).
- 2. "Document" means:
- a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording);

- b) any part of such content.
- 3. "A document held by public sector bodies" means any document which the public sector body may make available for re-use.
- 4. "Re-use" means the use by legal persons of documents held by public sector bodies, for commercial or non-commercial purposes other than the initial purpose within the public task for which the documents were produced. Exchange of documents between public sector bodies within the meaning of Article 2(1) of Directive 2003/98/EC purely in pursuit of their public tasks does not constitute re-use.

#### **Section II**

#### Re-use

# Requirements applicable to requests for re-use and further processing of such requests

- **Article 5.** (1) Requests for the re-use of documents shall be lodged in writing with the public sector body holding the document requested. This may be done in any technical form which the public sector body is capable of receiving.
- (2) If the content, extent or type of re-use of the documents requested are not sufficiently clear from the request within the meaning of paragraph 1, the public sector body shall immediately ask the applicant to clarify the request within a period of not more than two weeks. If the applicant complies with the request for clarification by the time limit, the period referred to in paragraph 3 shall recommence upon receipt. Where this is not the case, the request shall be deemed not to have been made.
- (3) Within the time limit to be met for processing requests and applications for access to documents under the rules on access, or if no such time limit has been laid down, the public sector body shall process the request within four weeks of receiving the request, and, indicating legal remedies (Articles 12 and 13),
- 1. supply the requested documents in full for re-use; or
- 2. supply part of the requested documents for re-use and inform the applicant in writing that part of the documents requested cannot be supplied, giving reasons why; or
- 3. make a proposal for a contract in cases in which it is necessary for the re-use of the requested documents to agree conditions in accordance with Article 8(1); or
- 4. inform the applicant in writing that his request cannot be met, giving the reasons why.
- (4) If the request is rejected (paragraph 3(2) and (4)) on the grounds that the requested document is the intellectual property of third parties, the public sector body shall refer the applicant to the rightholder or alternatively to the person from which the public sector body has obtained the relevant material.
- (5) For extensive or complex requests, the time limit mentioned in paragraph 3 may be extended by four weeks. In this case, the applicant shall be notified as soon as possible that the time limit has been extended, but not later than three weeks of the receipt of the request.

(6) Public sector bodies shall use electronic means where possible and appropriate to process requests for re-use and to supply the documents requested for re-use.

#### **Available formats**

- **Article 6.** (1) To the extent that public sector bodies allow the re-use of documents held by them, they shall supply them in any available format or language. Under this Federal Act, public sector bodies have no obligation to reproduce, adapt or further develop documents for the purpose of their re-use.
- (2) If extracts from documents are requested, these need not be supplied where this would involve disproportionate effort going beyond a simple operation.
- (3) On the basis of this Federal Act, public sector bodies are not obliged to continue the production of a certain type of document with a view to the re-use of such documents.

## **Charges**

**Article 7.** Where public sector bodies make charges for the re-use of documents held by them, the total income from supplying and allowing re-use of documents shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment.

#### Conditions of re-use

- **Article 8.** (1) Public sector bodies may lay down conditions for re-use of documents held by them in a contract containing provisions on relevant issues of re-use.
- (2) The conditions referred to in paragraph 1 shall not unnecessarily restrict possibilities for re-use of the documents requested and shall not be used to restrict competition.

## Transparency and practical arrangements

- **Article 9.** (1) Public sector bodies shall pre-establish and duly publish standard conditions and standard charges relating to re-use of documents, on the Internet where possible and appropriate.
- (2) On request, public sector bodies shall indicate the calculation basis for the published charges and also indicate which factors are taken into account in the calculation of charges for atypical cases.
- (3) Public sector bodies shall make practical arrangements to facilitate access to documents available for re-use, in particular by
- 1. publishing lists and registers of the main documents held by them that are available for re-use, where possible on the Internet;
- 2. indicating persons to contact and offices from which information can be obtained.

#### **Non-discrimination**

**Article 10.** (1) Any charges and other conditions applicable to the re-use of documents held by public sector bodies shall be non-discriminatory for comparable categories of re-use.

- (2) If documents held by public sector bodies are re-used by these bodies as input for their commercial activities which fall outside the scope of their public tasks, the same charges and conditions shall apply to the supply of the documents for those activities as apply to other users.
- (3) If documents that are held by public sector bodies are available for re-use, the re-use shall be open to all potential actors in the market even if one or more market players already exploit added-value products based on these documents.

## **Prohibition of exclusive arrangements**

- **Article 11.** (1) Any contracts or other arrangements between public sector bodies and third parties granting exclusive rights for the re-use of documents falling within the scope of this Federal Act (exclusive arrangements) are inadmissible.
- (2) Paragraph 1 does not apply where an exclusive right is necessary for the provision of a service in the public interest. The validity of the reason for granting such an exclusive right shall be subject to regular review, and shall in any event be reviewed every three years. In any case, a provisions shall be included in the exclusive arrangement giving the public sector body a special right to terminate the arrangement if the regular review shows that the reason that justified the exclusive arrangement is no longer valid. Any exclusive arrangements made after 31 December 2003 shall be transparent and shall be duly published, where possible on the Internet.
- (3) Existing exclusive arrangements that do not qualify for exception under the first sentence of paragraph 2 shall be terminated at the end of the contract but shall be invalid after 31 December 2008.

#### **Section III**

## Legal remedies

#### Conciliation

- **Article 12.** (1) Before lodging an appeal in accordance with Article 13, an applicant may turn to a conciliation body to seek an amicable settlement of a legal dispute concerning the re-use of documents held by public sector bodies.
- (2) The conciliation body shall be composed of three members. Each party shall appoint a member, and these two members shall elect the chairman. The chairman must be a person who is not involved in the matter at issue and must not have any relationship to either party that may cast doubt on his impartiality.
- (3) The applicant shall inform the public sector body of his intention to refer the matter for conciliation and name the member he has appointed. If the public sector body does not inform the applicant within two weeks of the name of the member it has designated or if the two members appointed by the parties do not choose a chairman within two weeks of the date on which the public sector body appointed its member, the appeal under Article 13 may immediately be lodged at the end of these periods.
- (4) If a conciliation body has been engaged, an appeal in accordance with Article 13 shall be admissible only if no amicable settlement has been reached within three months from the date on which the chairman was chosen.

(5) Save as otherwise agreed between the parties, the costs of conciliation shall initially be borne by the applicant. If no amicable settlement can be reached, the costs shall in the legal proceedings be treated as pre-procedural costs.

#### Referral to the courts

**Article 13.** The courts are competent to decide in legal disputes concerning the re-use of documents of public sector bodies under this Federal Act.

#### **Section IV**

# **Final provisions**

# **Implementation**

- **Article 14.** The following are responsible for the implementation of this Act:
- 1. the Federal Minister of Justice in respect of Article 13;
- 2. the member of the Federal Government in respect of matters within the remit of only that member; and
- 3. the Federal Government for the remainder.

#### References

**Article 15.** References in this Federal Act to provisions of other Federal Acts shall be to the latest versions.

## Equal treatment as regards language

**Article 16.** References in this Federal Act to persons where only the masculine form is used shall refer equally to men and women. If reference is made to particular persons, the relevant gender shall be used.

## **Transposition**

Article 17.	This	Federal	Act	transposes	Directive	2003/98/EC	on	the	re-use	of	public
sector inforn	nation	(OJ L 3	45, 3	31.12.2003,	p. 90).						

Schüssel