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Part I

**76. Federal Act: Amendment of the Re-use of Information Act
(No GP XXV RV 629 AB 656 p. 81. BR: AB 9394 p. 843)
[CELEX No: 32013L0037]**

76. Federal Act amending the Re-use of Information Act

The Austrian National Council has adopted the following:

The Federal Act on the Re-use of Public-Sector Information (Re-use of Information Act), Federal Law Gazette (BGBl.) I, No 135/2005, is hereby amended as follows:

1. *In § 2(1) ‘and documents issued as part of their public tasks, where they make them available for re-use’ is replaced by ‘documents’.*
2. *In § 2(3) ‘as last amended by the Federal Act BGBl. I, No 13/2005’ is deleted.*
3. *The following § 2a and its heading are inserted after § 2:*

‘General principle

§ 2a. (1) Documents falling within the scope of this Federal Act may, without prejudice to paragraph 2, be re-used for commercial and non-commercial purposes in accordance with §§ 6 to 11.

(2) Documents to which libraries, including university libraries, museums and archives, hold intellectual property rights may be re-used for commercial and non-commercial purposes in accordance with §§ 6 to 11, where they are made available for re-use.’

4. *§ 3(1), subparagraph 1, reads:*
 - ‘1. the supply of which
 - a) does not fall within the scope of the public task of the public-sector bodies concerned as defined by an Act or Regulation, or in the absence of such rules:
 - b) does not fall within the scope of the public task as defined in line with common administrative practice, provided that the scope of the public tasks is transparent and subject to review;’
5. *§ 3(1), subparagraph 2, reads:*
 - ‘2. which, in particular for reasons of national security, general national defence, public security, statistical confidentiality or because they contain commercial secrets (such as business secrets, professional secrets or company secrets) or are otherwise subject to confidentiality, are not accessible;’
6. *§ 3(1), subparagraph 3, reads:*
 - ‘3. access to which is restricted by virtue of the legal provisions governing access to public-sector documents, including documents which are only accessible if

proof of a particular interest is provided;’

7. *The following subparagraph 3a is inserted after § 3(1), subparagraph 3:*

‘3a. access to which is excluded or restricted by virtue of the legal provisions governing access to public-sector documents on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of natural persons with regard to the processing of personal data;’

8. *§ 3(1), subparagraph 7, reads:*

‘7. held by educational and research establishments, except university libraries;’

9. *§ 3(1), subparagraph 8, reads:*

‘8. held by cultural establishments other than libraries, museums and archives.’

10. *The following paragraph 1a is inserted after § 3(1):*

‘(1a) This Federal Act shall not apply to parts of documents containing only logos, crests and insignia.’

11. *In the second indent of § 4, subparagraph 1(d), ‘20 000’ is replaced by ‘10 000’.*

12. *The following subparagraphs 5 to 8 are added to § 4:*

‘5. ‘machine-readable format’ means:

a file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure.

6. ‘open format’ means:

a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents.

7. ‘formal open standard’ means:

a standard which has been laid down in written form, detailing specifications for the requirements on how to ensure software interoperability.

8. ‘university’ means:

any public-sector body that provides post-secondary-school higher education leading to academic degrees.’

13. *§ 5(4) reads:*

‘(4) Where a negative communication in accordance with paragraph 3, subparagraph 2 or 4, is based on the fact that the document requested is the intellectual property of a third party (§ 3(1), subparagraph 4), the public-sector body shall include a reference to the rightholder known to it or alternatively to the entity from which the public-sector body has obtained the relevant material. Libraries, including university libraries, museums and archives shall not be required to include such a reference.’

14. *§ 6 and its heading read:*

‘Available formats

§ 6. (1) Public-sector bodies shall make their documents available in any pre-existing format or language and, where possible and appropriate, in open and machine-readable format together with their metadata. Both the format and the metadata should, in so far as possible, comply with formal open standards.

(2) Paragraph 1 shall not imply an obligation for public-sector bodies to create or adapt documents or provide extracts in order to comply with that paragraph where this would involve disproportionate effort, going beyond a simple operation.

(3) On the basis of this Federal Act, public-sector bodies shall not be required to continue the production and storage of a certain type of documents with a view to the re-use of such documents.’

15. § 7 and its heading read:

‘Principles governing charging

§ 7. (1) Where charges are made for the re-use of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination.

(2) Paragraph 1 shall not apply to the following:

1. public-sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks;
2. by way of exception, documents for which the public-sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination. Those requirements shall be defined by Act or Regulation or, in the absence of such legal provisions, in accordance with common administrative practice;
3. libraries, including university libraries, museums and archives.

(3) In the cases referred to in paragraph 2, subparagraphs 1 and 2, the public-sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria. Those criteria shall be laid down by Act or Regulation or, in the absence of such legal provisions, in accordance with common administrative practice. The total income of those bodies from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public-sector bodies involved.

(4) Where charges are made by the public-sector bodies referred to in paragraph 2, subparagraph 3, the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public-sector bodies involved.’

16. § 9 and its heading read:

‘Transparency and practical arrangements

§ 9. (1) The standard charges for the re-use of documents, the basis for the calculation thereof and the conditions shall be laid down in advance by public-sector bodies and shall be published in a suitable manner – where possible and appropriate on the internet.

(2) Where no standard charges are laid down public-sector bodies shall indicate at the outset which factors are taken into account in the calculation of those charges. Upon request, public-sector bodies shall also indicate the way in which such charges have been calculated in relation to the specific re-use request.

(3) The requirements referred to in § 7(2), subparagraph 2, shall be laid down in advance. Where possible and appropriate they shall be published on the internet.

(4) Public-sector bodies shall make practical arrangements facilitating the search for documents available for re-use, such as

1. asset lists of main documents with relevant metadata, accessible where possible and appropriate online and in machine-readable format, and portal sites that are linked to the asset lists. Where possible public-sector bodies shall facilitate the cross-linguistic search for documents;
2. contact persons and information points.’

17. §11 and its heading read:

‘Prohibition of exclusive arrangements

§ 11. (1) Contracts or other agreements between public-sector bodies and third parties which establish exclusive rights with regard to the re-use of the documents falling within the scope of this Federal Act (exclusive arrangements) shall be inadmissible.

(2) Paragraph 1 shall not apply if the granting of an exclusive right is necessary for the provision of a service in the public interest. The grounds for such an exclusive arrangement shall be reviewed regularly, at least every three years. The exclusive arrangement shall include a provision ensuring that the public-sector body has a special right of termination if the regular review shows that the grounds justifying the exclusive arrangement no longer exist. Exclusive arrangements entered into after 31 December 2003 must be transparent and be made public in a suitable way, where possible on the internet. This paragraph shall not apply to the digitisation of cultural assets.

(3) Where an exclusive right relates to the digitisation of cultural assets, notwithstanding paragraph 1 it may in general be granted for a maximum of 10 years. Where it is granted for more than 10 years, its duration shall be subject to review in the 11th year and, where applicable, every seven years thereafter. The exclusive arrangement shall include a provision ensuring that the public-sector body has a special right of termination if the regular review shows that the grounds justifying the exclusive arrangement no longer exist. Agreements granting exclusive rights as referred to in the first sentence shall be transparent and be made public. In the case of such an exclusive right, as part of the agreement the public-sector body concerned shall be provided with a copy of the digitised cultural assets free of charge. That copy shall be made available for re-use at the end of the exclusive arrangement period.

(4) Existing exclusive arrangements which are not covered by the exceptions in the first sentence of paragraph 2 shall end when the contract expires or shall be regarded as cancelled at the latest at the close of 31 December 2008.

(5) Exclusive arrangements existing on 17 July 2013 which are not covered by the exceptions in paragraphs 2 and 3 shall end when the contract expires or shall be regarded as cancelled at the latest at the close of 18 July 2043.’

18. *In § 17 ‘as amended by Directive 2013/37/EU amending Directive 2003/98/EC on the re-use of public sector information, OJ L 175, 27.6.2013, p. 1’ is inserted before ‘implemented’.*

19. *The following § 18 and its heading are inserted after § 17:*

‘Entry into force

§ 18. § 2(1) and (3), § 2a, § 3(1), subparas. 1 to 3a, 7 and 8, § 3(1a), § 4, subpara. 1(d), § 4, subparas. 5 to 8, § 5(4), § 6, § 7, § 9, § 11 and § 17 as amended by the Federal Act in BGBl. I, No 76/2015, shall enter into force at the close of the day of their publication in the Federal Law Gazette, but at the earliest on 18 July 2015.’

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