

VIENNA

PROVINCIAL LAW GAZETTE

Year 2015

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29th Act

Vienna Re-use of Information Act (WIWG);
[CELEX No: 32013L0037]

Amendment

Act amending the Vienna Provincial Act on the Re-use of Public Sector Information – Vienna Re-use of Information Act (*Wiener Informationsweiterverwendungsgesetz (WIWG)*)

By decision of the Parliament of the Province of Vienna, the following is hereby enacted:

Article I

The Vienna Provincial Act on the Re-use of Public Sector Information – Vienna Re-use of Information Act (WIWG), LGBl. No 52/2005, as amended by the Act published in LGBl. No 33/2013, is hereby amended as follows:

1. In Section 1(2) the words '(Point 1 of Article 2 of Directive 2003/98/EC)' in brackets are replaced by the words '(Section 3)' in brackets.

2. Paragraphs 3 and 4 of Section 1 shall read:

'(3) Without prejudice to paragraph 4, public sector bodies must ensure that documents falling under the scope of this Act can be made available for commercial and non-commercial purposes, if possible in electronic form, in accordance with the provisions of Sections 5 to 10.

(4) Documents made available for re-use in which libraries, including university libraries, museums and archives hold intellectual property rights may be re-used for commercial or non-commercial purposes in accordance with Sections 5 to 10.'

3. In Section 2(1) the words '(Section 3)' in brackets are deleted.

4. In Section 2(2) the words 'Section 1 (3)' in the introductory phrase are replaced by the words 'Section 1(3) and (4)'.

5. Point 1 of Section 2(2) is replaced by the following:

'1. documents which are not created as part of the public task of the relevant public sector body as defined by law or other binding rules or, in the absence of such rules, as defined in line with common administrative practice, provided that the scope of the public tasks is transparent and subject to regular review;'

6. Points 4 to 10 of Section 2(2) shall read:

'4. documents which cannot be accessed, in particular for reasons of national security, general national defence, public security or because they contain commercial or business secrets or are otherwise confidential;

5. documents to which access is excluded or restricted by virtue of the relevant access regulations on the grounds of protection of personal data, and parts of documents accessible by virtue of those regulations which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data;

6. documents to which access is restricted in accordance with the rules governing access to documents of public sector bodies, including those accessible only where a particular interest is demonstrated;

7. documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

8. documents held by educational and research establishments, excluding university libraries;

9. documents held by cultural establishments other than libraries, museums and archives;

10. parts of documents containing only logos, crests and insignia.'

7. In Section 2(3) the reference 'BGBl. I No 13/2005' is replaced by the reference 'BGBl. I No 83/2013'.

8. In point 2 of Section 4(1) after the word 're-use' the full stop is replaced by a semicolon, and the following new points 3 to 6 are added:

3. '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;
4. '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;
5. '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;
6. 'higher education institution' means any public sector body that provides post-secondary-school higher education leading to academic degrees.'

9. Section 5 is replaced by the following:

'Section 5 (1) Public sector bodies shall make documents held by them 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. This does not, however, imply any obligation to create or adapt documents or to provide extracts in order to comply with a request for re-use where this would involve disproportionate effort, going beyond a simple operation.

(2) This Provincial Act does not require public sector bodies to continue to produce or store a certain type of document with a view to the re-use of such documents.'

10. The title and text of Section 6 are replaced by the following:

'Charging principles

Section 6 (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 does not apply to:

- a) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public task;
- b) 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 are defined by law or by other binding rules or, in the absence of such rules, in accordance with common administrative practice;
- c) libraries, including university libraries, museums and archives.

(3) In the cases referred to in points (a) and (b) of paragraph 2, the public sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria. Those criteria are defined by law or by other binding rules or, in the absence of such rules, 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.

(2) Where charges are made by the public sector bodies referred to in point (c) of paragraph 2, 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.'

12. Section 7 is replaced by the following:

'Section 7 (1) The standard charges for the re-use of documents, the calculation basis for such charges and any applicable conditions shall be pre-established by the public sector bodies and published in a suitable manner, on the internet where possible and appropriate.

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

(3) The requirements referred to in Section 6(2)(b) shall be pre-established. They shall be published on the internet where possible and appropriate.

(4) Public sector bodies must make practical arrangements facilitating access to information for all

documents available for re-use, in particular by naming contact persons or information points, or by keeping asset lists containing the most important documents together with their metadata. The asset lists shall, where possible and appropriate, be made accessible online and must be available in machine-readable format; alternatively, online portals may be kept with links to the asset lists. Where possible the public sector bodies shall allow cross-linguistic search for documents.'

13. Section 10 is replaced by the following:

'Section 10 (1) Unless the exception in paragraph 2 applies, the re-use of documents which are available for re-use shall be open to all potential market players, even if one or more such players already exploit added-value products based on these documents. Contracts or other agreements between public sector bodies and third parties concerning the exclusive use of documents covered by the scope of this Provincial Act (exclusive arrangements) shall not be permitted.

(2) Paragraph 1 does not apply if the granting of an exclusive right is necessary for the provision of a service in the public interest. If, in such a case, an exclusive arrangement is made, the public sector body in question must publish it in a suitable way, wherever possible and appropriate on the internet, and must check regularly, at least every three years, that the reason given to justify the exclusive agreement still applies. The exclusive arrangement shall in any case include a provision giving the public sector body a special right of termination if the regular review shows that the reason given to justify the arrangement no longer applies. Exclusive arrangements entered into after 31 December 2003 must be transparent and made public in a suitable manner, where possible and appropriate on the internet. This paragraph does not apply to digitisation of cultural resources.

(3) Notwithstanding paragraph 1, where an exclusive right relates to digitisation of cultural resources, the period of exclusivity shall in general not exceed ten years. In cases where that period exceeds ten years, its duration shall be subject to review during the 11th year and, if applicable, every seven years thereafter. The exclusive arrangement shall in any case include a provision giving the public sector body a special right of termination if the regular review shows that the grounds justifying the arrangement no longer apply. The arrangements granting exclusive rights referred to in the first sentence shall be transparent and made public. In the case of such exclusive rights, the public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. That copy shall be available for re-use at the end of the period of exclusivity.

(4) Exclusive arrangements in force until 21 September 2005 that are not covered by the exception in the first sentence of paragraph 2 shall be considered to have been terminated on 31 December 2008.

(5) Exclusive arrangements in force on 17 July 2013 that are not covered by the exceptions in paragraphs 2 and 3 shall end when the contract expires or be considered to have been terminated after 18 July 2043 at the latest.'

14. The second sentence of Section 11(1) is replaced by the following:

'This may be done in any technical form, but email may be used only where no special forms of transmission are provided for electronic communication between the public sector body and the persons concerned. Any technical requirements for or organisational constraints on electronic communication between the public sector body and the persons concerned must be made known on the internet.'

15. The following sentence is added to Section 11(4):

'Libraries, including university libraries, museums and archives shall not be required to include such a reference.'

16. Section 17 is replaced by the following:

'Section 17 This Provincial Act transposes Directive 2003/98/EC on the re-use of public sector information (OJ L 345, 31.12.2003, p. 90) as amended by Directive 2013/37/EU (OJ L 175, 27.6.2013, p. 1).'

Article II

This Act shall enter into force on 1 July 2015.

Provincial Governor:
Häupl

Director of the Provincial
Government Offices:
Hechtner