

THE ROMANIAN PARLIAMENT

CHAMBER OF DEPUTIES

SENATE

LAW

on the re-use of information from public institutions

The Parliament of Romania hereby adopts this Act.

Article 1 - The purpose of this law is to lay down rules for the re-use of information from public institutions with a view to creating new information products and services.

Article 2 - This law lays down the legal framework for the re-use of public sector documents created and held by public institutions in the exercise of their public activity, and which may subsequently be used for commercial or non-commercial purposes. This law shall not apply to the media.

Article 3 - This Law shall not apply to the following types of documents:

- a) documents the supply of which is an activity falling outside the scope of the public service provided by the public sector institutions concerned, as defined by law
- b) documents for which third parties hold intellectual property rights;
- c) documents referred to in Article 12(1) of Law No 544/2001 on free access to information of public interest, as amended;
- d) documents held by public service radio and television broadcasters and their subsidiaries, and by other bodies or their subsidiaries fulfilling a public service radio and television broadcasting remit, insofar as intellectual property rights are affected;
- e) documents held by educational and research institutions such as schools, universities, archives, libraries and research institutes, including where relevant organisations established for the transfer of the results of research, insofar as intellectual property rights are affected;

f) documents held by cultural institutions such as museums, libraries, archives, orchestras, operas, ballets and theatres, insofar as intellectual property rights are affected;

g) documents that individuals or legal persons demonstrate they have a legitimate interest in accessing, in accordance with the law.

Article 4 - For the purposes of this Law, the terms and expressions below have the following meanings:

a) public institution:

1. any central or local authority of public administration;

2. any public institution of general or local interest, whether autonomous or under the subordination or control of a public authority;

3. any legal person, other than those referred to in subparagraphs 1 and 2, that was established to perform non-commercial activities in the public interest and which is in at least one of the following situations: it is financed from public funds, it is under the subordination or control of a public authority or institution, or its board of directors/executive or supervisory board has more than half of its members appointed by a public authority or institution;

b) document - any content or part of such content, whatever its medium, be it on paper, stored in electronic format, or as sound, video or audiovisual recording;

c) re-use – the commercial or non-commercial use by an individual or legal person of documents held by public institutions. The use of documents for the personal information of individuals or legal persons and the use of information in journalistic work shall not constitute re-use; the exchange of documents between public institutions as a result of the fulfilment of public tasks shall not constitute re-use;

d) commercial purpose – the seeking of a direct or indirect economic benefit or pecuniary gain. The use of information by non-profit entities shall not constitute re-use;

e) third party - any individual or private or public law legal person that is the holder of an intellectual property right over the information contained in the requested document.

Article 5 - (1) The non-commercial re-use of documents held by public institutions shall be free of restriction.

(2) The commercial re-use of the documents referred to in paragraph (1) shall be done with the agreement of the public institution holding the documents, on the basis of an application submitted to that institution.

(3) In the event that the documents are re-used by a public institution for the performance of commercial activities that do not fall within the remit of public tasks, the same conditions shall apply as for any other user.

Article 6 - (1) Applications for the re-use of documents shall be made in writing, either on paper or, if the public institution holding the document has the technical capability, electronically. Applications must include the following elements:

- a) the public institution to which the application is addressed;
- b) the information requested, so that the public institution is able to identify the documents;
- c) the identification and authentication data of the applicant, and the address to which the reply should be sent;
- d) the purpose for which the requested information is to be used.

(2) Applications for the re-use of documents shall be dealt with no later than 20 days after they were received by the department designated for that purpose within the public institution in question.

(3) For applications with a high level of complexity, the deadline laid down in paragraph (2) may be extended by a further 20 working days. In such cases, the applicant shall be informed no later than 15 working days after receipt of the application of the necessity of extending the deadline.

(4) The information to be re-used may be made available to the applicant either in full or in part; if the information is presented in part, justification should be given for such a decision.

(5) If the application is rejected, the public institutions shall inform the applicant in writing that the application has been rejected and shall state the grounds for the decision.

(6) Any application rejection, whether total or partial, must be accompanied by a reference to the means of redress, if the applicant wishes to appeal the decision.

(7) If the application is rejected for the reason referred to in Article 3(b), the applicant shall be provided with details of the third parties (whether individuals or legal persons) in possession of intellectual property rights over the information, if such details are known. If such details are not known, the applicant shall be provided with details of the authorised individual or legal person from which the public information obtained the material in question. If the applicant demonstrates that all of the relevant third parties agree to the document being used, the application shall be re-examined and dealt with as if it was a document that does not fall within the scope of Article 3(b).

(8) Decisions dealing with applications for the re-use of documents may be appealed by the applicant, in accordance with the conditions laid down in Law No 554/2004 on administrative litigation, as amended. The complaint concerning the decision and the second appeal shall be heard on a fast-track basis and shall be exempted of stamp duty.

(9) The provisions of paragraphs (1) to (8) shall not apply to the public institutions referred to in Article 3(d), (e) and (f).

Article 7 - (1) Where the public institutions approve the re-use of the documents in their possession, these shall be made available to the applicant in the form in which they are held.

(2) Public institutions shall not be required to create, adapt, expand or translate documents for the purposes of dealing with an application for re-use.

Article 8 - (1) Public institutions may establish charges for services relating to the commercial re-use of documents. Public institutions shall not charge for non-commercial re-use.

(2) Where public institutions charge for the commercial re-use of their documents, such charges must not exceed the costs of producing and preparing the documents and supplying the information. Charges should be cost-oriented over the appropriate accounting period and calculated in line with the accounting principles applicable to the public sector bodies involved. Upon request, public institutions must state the principles governing the calculation of the charges requested, and the factors that must be taken into account in calculating charges for atypical situations.

(3) The method for fixing the charges shall be established by Government decision.

(4) The revenues generated from payment of these charges shall in their entirety constitute a revenue for the state budget.

(5) Charges for the re-use of documents must not be discriminatory.

(6) In the event that the documents are re-used by a public institution for the performance of commercial activities that do not fall within the remit of public tasks, the same charges shall apply as for any other user.

Article 9 - Public institutions must provide the conditions for facilitating access to documents available for re-use, particularly by drawing up lists and directories, in cases where electronic methods are used, containing the most important documents intended for re-use, and by designating contact persons and indicating information points.

Article 10 - (1) The re-use of documents must be free for all potential market participants, even if one or more of the participants has already marketed new products obtained on the basis of those documents.

(2) Documents whose re-use is necessary for the performance of a public service may form the subject of an agreement concerning the granting of an exclusive right.

(3) In the event that an agreement is concluded concerning the granting of an exclusive right, every three years a check must be carried out to determine whether the reason for the agreement is still valid. If the reason for granting the exclusive right no longer exists, the right shall be terminated.

(4) Exclusivity agreements concluded in accordance with the conditions laid down in paragraph (2) must be transparent and made public on the website of the public institution concerned or by any other means.

(5) Agreements on the granting of an exclusive right concluded before the entry into force of this Law shall cease to apply on the expiry date of the validity period laid down in the contract, but no later than 31 December 2008.

Article 11 - (1) This Law shall enter into force 60 days after its publication in Part I of the Official Gazette of Romania.

(2) No later than 60 days after the publication of this Law, the Ministry of Communications and Information Technology, together with the Ministry of Economic

Affairs and Finance, shall draw up implementing rules for this Law, which shall be approved by Government decision.

This Law transposes Directive 2003/98/EC on the re-use of public sector information, published in Official Journal of the European Union L 345 of 31 December 2003.

This Law was adopted by the Romanian Parliament in accordance with the conditions laid down in Article 77(2) of the Romanian Constitution, republished, and in compliance with Article 75 and 76(2) thereof.

PRESIDENT OF THE CHAMBER OF DEPUTIES

Bogdan Olteanu

PRESIDENT OF THE SENATE

Nicolae Văcăroiu

Bucharest, 25 April 2007, No 109.