

COMMUNITY AND REGIONAL GOVERNMENTS

FLEMISH COMMUNITY

FLEMISH GOVERNMENT
Administrative Matters

[C – 2007/36773]

8 OCTOBER 2007 – Ministerial Order on the Licence Template for the Re-Use of Public Sector Information

The Minister-President of the Flemish Government,

Having regard to the decree of 27 April 2007 on the re-use of public sector information;

Having regard to the Flemish Government order of 19 July 2007 on the re-use of public sector information by the various departments within Flemish ministries and internal independent agencies that are not legal entities, especially Article 2,

Having regard to the Flemish Government order of 27 July 2004 defining the powers of the members of the Flemish Government, as modified by the Flemish Government orders of 15 October 2004, 23 December 2005, 19 May 2006, 30 June 2006, 1 September 2006, 15 June 2007 and 28 June 2007;

Decides:

Sole article. For the administrative bodies, as stated in Article 2 of the decree on the re-use of public sector information of 27 April 2007 and in Article 2 of the Flemish Government decree of 19 July 2007 on the re-use of public sector information by the various departments within Flemish ministries and internal independent agencies that are not legal entities, a licence template is provided as shown in Appendix I to this order. An explanatory note on use of this licence template is provided in Appendix II to this order.

Brussels, 8 October 2007.

K. PEETERS

Appendix I

The licence template below shall serve as an example for the creation of licences in accordance with the order of 27 April on the re-use of public sector information. Before using the licence, you should read the accompanying note.

LICENCE AGREEMENT

Between

[...], with official address [...], represented by [...] (“the licensor”), and

[...], with official address [...], represented by [...] (“the licensee”),

The following has been agreed:

Article 1. Interpretation

Unless otherwise specified, the words or terms used in this licence shall have the same meaning as in the decree of 27 April 2007 on the re-use of public sector information.

Art. 2. Subject of the licence

The subject of this licence is as follows

[description of the administrative document, with the date of creation and last modification, or reference to the appendix of the licence], (“the product”).

The licensee shall receive the non-exclusive right to re-use the product as follows:

[description of the re-use]

Art. 3. Obligations of the licensee

The licensee undertakes to re-use the product only for the following purpose:

[description of the purpose]

and in accordance with the conditions stated in this licence.

The licensee undertakes to cease all use of the product upon expiry of the licence, in accordance with the conditions stated in the articles below.

The licensee undertakes to comply with the provisions of this licence.

[To be completed with other obligations]

Art. 4. Obligations of the licensor

The licensor undertakes to make the product available to the licensee as follows:

[description of the delivery]

The licensor undertakes to make the product available to the licensee within the following period of time:

[description of the time limit]

The licensor undertakes to comply with the provisions of this licence.

[To be completed with other obligations]

Art. 5. Intellectual property rights

The licensor shall retain all intellectual property rights for the product, barring the rights explicitly granted to the licensee in this licence.

The licensee shall retain all intellectual property rights to the work which he/she creates based on the product, without prejudice to the obligations on re-use of the product for said work, as described in this licence.

Art. 6. Duration of the licence

This licence is granted for a period of [number] months/years as from [date] up to and including [date].

This licence may be extended or renewed by mutual consent of the parties.

Art. 7. Price

The product shall be made available to the licensee free of charge.

Or

The licensee shall pay a fee calculated as follows:

[amount and calculation of the fee]

Art. 8. Payment

The amount due must be paid as follows:

[Description of the payment conditions, for example:

An invoice shall be provided to the licensee within [time limit] after signature of this licence. The licensee must pay the amount due within [time limit] by bank transfer to account number [number], in the name of [name], stating the [reference number].

The product will be delivered within [time limit] after receipt of the payment.

Art. 9. Expiry of the licence

This licence shall automatically expire at the end of the period for which it was granted.

Prior to the end of the period for which it was granted, each party may unilaterally terminate this licence without compensation for damages and without prior notice [or with prior notice of ...], in the event that the other party does not comply with its obligations, namely:

[description of the conditions for termination]

Art. 10. Transfer of the licence

The parties may only transfer this licence to a third party with the written consent of the other party.

Art. 11. Subcontractors

If the licensee makes the product available to subcontractors charged by said licensee to use or process the product in accordance with the purpose and conditions defined in this licence, the licensee must ensure that all subcontractors and/or other persons who may have access to the product give a written undertaking to comply with the conditions of this licence.

Art. 12. Liability

The product was originally created for the internal purposes of the licensor and the licensor provides no guarantee that the product is appropriate for other purposes.

The licensor shall deliver the product in its current condition and shall not be liable for damages incurred by the licensee and/or third parties as a result of re-use of the product according to the conditions of this licence.

Art. 13. Applicable law and appeals procedure

Belgian law shall apply. Disputes on the content or execution of this licence must be submitted to the Appeals Body for Administrative Transparency in accordance with the conditions stipulated in the decree on the re-use of public sector information.

Drawn up in X copies, each party having acknowledged receipt of one copy.

For and on behalf of the licensor,

For and on behalf of the licensee,

To be attached to the ministerial order of 8 October 2007 defining the licence template for the re-use of public sector information

The Minister-President of the Flemish Government,

K. PEETERS

Appendix II

Explanatory note on the licence template**1. Introduction**

In accordance with article 8 of the decree on the re-use of public sector information, bodies may give consent for the unconditional re-use of administrative documents and may stipulate conditions, if necessary through a licence in which relevant subjects are resolved. These conditions shall not unnecessarily restrict possibilities for re-use and may not be used to restrict competition. The bodies may also draft licence templates to that end.

The licence template drafted by the Flemish Government may be used as a standard licence for the processing of applications for re-use and can be adapted to the needs of the various bodies. They shall be linked to the obligation as stated in article 8.2 of Directive 2003/98/EC on the re-use of public sector information: “[i]n Member States where licences are used, Member States shall ensure that standard licences for the re-use of public sector documents, which can be adapted to meet particular licence applications, are available in digital format and can be processed electronically. Member States shall encourage all public sector bodies to use the standard licences.”

The licence template may be useful in, or can be adapted to fit, highly diverse situations.

- Firstly, the various types of bodies that could use the licences should be taken into consideration. The licence template is most useful if it can be used by as many bodies as possible i.e. by Flemish ministries, internal and external independent agencies (IVAs and EVAs) as well as by the provinces, municipalities and all other local bodies.

- Furthermore, the licence must also be adapted to the category or form of the administrative documents for which the re-use is requested. It may be a document in the traditional sense, electronic or not, but may also consist of photos, audiovisual materials, databases, etc. The licence template must be able to be used for all of these types of administrative documents and for the possible modes of delivery of such documents. In this sense, it may involve the ad hoc transmission of a specific document via e-mail or traditional post, the transmission of regular updates (for example, monthly or yearly), the downloading of a document from a website or the provision of direct access to a database.

- Lastly, the licence must be able to be used both as a traditional “paper” agreement and for the conclusion of electronic licences (so-called click-use licences). The licence template must be able to be adapted for the conditions of use associated with such online licences.

Licences may be standardised at various levels, with a more or less far-reaching effect.

- The highest level of standardisation is achieved if the licence contains clauses that can or must be included completely, word for word, in the licences signed by the bodies. Given the various situations to which a licence for the re-use of public sector information may have to be adapted, such clauses will not appear often in licences.

- A more suitable form of standardisation involves the proposal of a number of options for each subject that must be mentioned in the licence and that the bodies can include in their licences if they so wish. For example, this could pertain to conditions governing re-use, or the form and time limit for delivery or payment.

- It may also be impossible to cover the subject in one or more standard clauses. However, there can be a statement indicating that a certain subject must be mentioned in the licence, such as liability, guarantees, etc. In that case, standardisation will only mean that the licence template requires the mandatory inclusion of a section on a certain subject. The interpretation of that subject will then be left completely up to the bodies.

The Flemish licence template is a combination of the aforementioned forms of standardisation, giving bodies complete policy freedom to adapt the licence to their own needs.

2. The licence template**2.1. Parties**

The licensor shall always be a body, as specified in Article 2 of the decree of 27 April 2007 on the re-use of public sector information, which refers to the decree of 26 March 2004 on administrative transparency. In addition to the name and address of the body, the licence must also state the person competent to grant the licence and the person who will act as the contact person for further communication.

The licensee may be a natural or juristic person. Mandatory identification data is as follows:

- name, address, telephone number, e-mail address;
- company or VAT number if applicable;
- competent representative of the legal person if applicable.

2.2. Interpretation

Naturally, the concepts defined and used in the decree on the re-use of public sector information must be used in the same manner in the licence template. In particular, the concept of re-use must be clearly defined in the following clauses of the licence.

2.3. Subject of the licence

Article 2 of the licence template concerns the subject, which is always referred to using the term “product”, taking into consideration the various forms that the subject can take. The licence template should also use the term “administrative document” in compliance with the decree, though the term “product” could also possibly cover a larger number of administrative documents depending on the application.

The corresponding administrative documents (text files, photos, reports, figures, audiovisual materials, databases, etc.) may be described in the licence itself or, if necessary, in an appendix to the licence. The list must be complete and as detailed as possible, preferably stating the date of creation of the administrative documents or the date of the last revision of said documents, so that the licensee is aware of the more or less recent nature of the administrative documents.

This clause must likewise contain a description of the use that the licensee may make of the product and the limitations to that use. The bodies must provide sufficient space for this clause in order to include various conditions according to their needs. A number of sample clauses are shown below.

In principle, the right to re-use provided to the licensee is non-exclusive as exclusivity agreements are forbidden in principle by Article 14 of the decree. If, nevertheless, an exclusive right is granted as required, for example, by persons wishing to provide a service of general interest (Article 14, § 2), the licence may be adapted.

The purpose of the re-use must be described, so that the conditions may be adapted to the form or purpose of the re-use. Indeed, it is possible to stipulate various conditions for various categories of re-use. For example, re-use for commercial purposes could give rise to higher fees or more restrictive publication conditions than non-commercial re-use. A non-exhaustive list of purposes may be included from which the applicant can choose. The list can be completed with the applicant's specific activities.

2.4. Obligations of the licensee

A number of conditions may possibly be included in each licence and, as such, can be included in the licence template itself. This could include use of the product within the boundaries of the licence and termination of re-use after expiry of the licence. Still more conditions may be included, for example:

- The licensee undertakes to give added value to the product according to the stated purpose.
- The licensee undertakes not to modify the product and to use the most recent version of the product.
- The licensee undertakes to provide the following for each use of the product: logo, acknowledgement of the source, copyright statement, date of last update, statement that the product is used with the consent of the licensor, etc.
- The licensee undertakes to notify the licensor of each error or anomaly that it discovers in the product.
- The licensee undertakes to provide the licensor free access to the results of re-use of the product made available to it under the licence.

The licensee may also be subject to other/additional obligations to allow the licensor to monitor the licensee's compliance with the licence conditions. There may also be obligations relating to information about the charging policy of information services or products based on the administrative documents.

- The licensee undertakes to comply with the provisions of the law of 8 December 1992 for each re-use of the product.
- The licensee undertakes not to transfer the licence without the prior written consent of the licensor.
- The licensee undertakes to communicate to the licensor contact information for all persons who have access to the product.
- etc.

2.5. Obligations of the licensor

The most important obligation of the licensor is to deliver the requested administrative documents. In accordance with Article 12 of the decree on the re-use of public sector information, the body must make its decision as quickly as possible and, in principle, no later than fifteen (15) days after registration of the application. If the re-use is allowed, the administrative documents must be made available or a written draft licence agreement must be sent no later than within a period of thirty (30) calendar days following the application (in the event of unconditional re-use). The specific delivery terms or forms agreed upon in the licence are completely at the contracting parties' discretion.

The delivery form and time limit are defined by mutual agreement and may be managed jointly. If data is made available in a document that can be downloaded or accessed from a database, delivery can be made immediately. If CDs, DVDs or paper administrative documents have to be sent, the delivery time limits will be longer. The body must define how and when the delivery will take place, whether regular updates are included, etc.

The licence may also contain other obligations, such as:

- The licensor undertakes to notify the licensee as quickly as possible of the termination of product creation.
- The body is not, however, required to continue creating administrative documents solely for re-use.
- The licensor undertakes to treat as confidential the information provided to it by the licensee in connection with this licence, for example information about retail prices or the added value of the information products or services created.

2.6. Intellectual property rights

The licence shall not give rise to any transfer of intellectual property rights; it merely provides consent from the body to copy the product or to communicate it to the public in the manner defined in said licence. Therefore, the intellectual property rights shall remain with the body.

The licensee shall create its own information products or services which may also be qualified as works for which there are intellectual property rights. Naturally, these rights belong to the licensee, though the licensee must still comply with licence-related obligations regarding the administrative documents used as the basis for the work, such as acknowledgement of the source or other limitations.

2.7. Duration of the licence

In principle, the licence shall be concluded for a specified period of time, expressed in months or years. A licence may also be concluded for an unlimited period of time, but this may lead to difficulties in the event of termination of the production of the administrative documents and cancellation of the licence. Thus, additional clauses to that effect must be included.

This licence may always be extended or renewed by mutual consent of the parties.

2.8. Price

The body may provide its administrative documents free of charge but may also request a fee. In this case, the total earnings from providing the administrative documents may not be higher than the costs of collection, production, reproduction and circulation, increased by a reasonable return on investment, in accordance with Article 7 of the decree of 27 April on the re-use of public sector information.

Said fee may take on various forms, such as a fixed yearly or monthly fee or a fee depending on the quantity of data provided or the number of times that specific data is requested ("hits"), etc. In principle, requesting a fee based on royalties on the sale of information products or information technology services by the licensee does not comply with the spirit of the decree and directive, as the fees must be cost-oriented. In practice, this is unlikely to cause many problems since the maximum limit is set at the total earnings from the provision of the data and need not, therefore, be evaluated on a licence by licence basis.

The licence clause about the fee must state the amount and describe the criteria for calculation, so that the licensee has a clear overview of the price charged.

2.9. Payment

The method of payment can also greatly differ between different bodies and different licences. An invoice or debit form can be sent to the licensee. However, the licensee may also receive the bank information electronically and pay by credit card or electronic bank transfer or via a system of prepaid credits etc.

Each body must specify how the fee for re-use of its administrative documents must be paid. As the fee must still often be paid based on an invoice with a payment time limit, this clause is temporarily included in the licence template.

2.10. Termination of the licence

In principle, the licence shall automatically terminate upon expiry of the period of time for which it was granted, unless it was extended by mutual consent of both parties. However, the body must also be able to terminate the licence prior to the end of the period, for example if the licensee does not comply with the licence obligations, if it uses the document for purposes or in ways other than that agreed upon, or if the licensee has not paid the agreed fee. This also applies if the administrative documents are no longer produced or if it is no longer possible to provide the administrative documents for reasons of public security, etc.

Below are a number of sample clauses:

- The licensor may unilaterally terminate this licence if the licensee does not re-use the product for the purposes and under the conditions defined in this licence.
- The licensor may unilaterally terminate this licence if the licensee does not pay the fee specified in article [number], after reminder.
- The licensor may unilaterally terminate this licence if the licensee does not provide access to the results of product re-use in accordance with the provisions of article [number], thus preventing the licensor from monitoring whether the product was re-used under the conditions of the licence.
- The licensor may unilaterally terminate this licence if the licence holder ceases trading, is in voluntary or involuntary liquidation or is declared bankrupt.
- The licensor may unilaterally terminate this licence if, on the grounds of Article 2 of the decree on the re-use of public sector information, the product is no longer considered to be an administrative document. For example, this may concern databases which, through the addition or adjustment of information, may no longer be accessible under the decree on administrative transparency, for reasons of public security, commercial secrets, privacy protection, etc.
- The licensor may unilaterally terminate this licence if, after reminder by registered mail, the licensee does not pay the fee due within a period of [X] after the due date.

An additional clause can include that late interest can be calculated.

- The licensee may unilaterally terminate this licence if, after reminder by registered mail, the licensor does not deliver the product according to the terms of this licence.

2.11. Transfer of the licence

The body can freely decide whether it wishes to include the possibility of transfer in the licence. If not, a clause stating that the licensee receives a non-exclusive and non-transferable right to re-use must be added to the subject of the licence.

If, however, the licence is transferable, this clause must be included in the licence. This may include situations where companies or businesses or parts thereof are transferred, so that it is not necessary to create a completely new licence. Such transfers should only be authorised with the prior written consent of the body, so that said body is aware of the identity of the new licensee.

2.12. Subcontractors

If the licensee outsources work to subcontractors and the relevant administrative documents must be handed over or used by the subcontractor, the licensee must ensure that the subcontractor also complies with the licence obligations. Preferably, the subcontractor should give a written commitment to comply with the provisions of the licence.

2.13. Liability

The licence template must state that the administrative documents were created for specific purposes within the body and were, therefore, not produced with a view to the re-use thereof by a private party. The administrative documents are delivered “as is”, without processing to make them ready for use. Article 5 of the decree states that bodies are under no obligation to create or adapt administrative documents to satisfy an application for re-use.

The bodies may complete this clause with their own liability limitations.

2.14. Applicable law and appeals procedure

As the possibilities for defence must always be notified to citizens, the licence must contain a clause indicating the body competent to decide on disputes concerning the licence. The decree on the re-use of public sector information provided for an appeals procedure with the appeals body for administrative transparency (Article 15 et seq.).

To be attached to the ministerial order of 8 October 2007 defining the licence template for the re-use of public sector information

The Minister-President of the Flemish Government,

K. PEETERS