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Act governing the use of public sector data (Data Use Act – DUA)

Data Use Act of 16 July 2021 (Federal Law Gazette I, p. 2941, 2942,, 4114)

Section 1

Open data principle

- (1) Data falling within the scope of this Act shall, as far as possible, be produced in accordance with the principle of 'open by design and by default'.
- (2) This Act does not create an obligation to provide data or a right to access data.

Section 2

Scope

- (1) This Act shall apply to data from data providers pursuant to sub-section 2 that are
 1. provided on the basis of a statutory right of access,
 2. provided on the basis of a statutory duty to provide data or
 3. otherwise made available to the public or for exclusive use.
- (2) Data providers within the meaning of this Act are
 1. public sector bodies;
 2. undertakings providing services of general interest which are subject to the rules on the award of public contracts and concessions or which operate public passenger transport services;
 3. with respect to publicly funded research data that have already been made publicly available through an institutional or subject-based repository:
 - a) universities, research performing organisations and research funding organisations,
 - b) researchers if the research data have not already been provided by other data providers subject to this Act;

this shall not apply insofar as legitimate commercial interests, knowledge transfer activities or pre-existing intellectual property rights of third parties prevent this.
- (3) This Act does not apply to
 1. data,

- a) access to which is excluded or restricted, whereby access is also restricted if the data are accessible only upon proof of a legal or legitimate interest; access to data is excluded or restricted, in particular,
 - aa) insofar as the protection of personal data prevents this,
 - bb) insofar as the protection of commercial confidentiality prevents this,
 - cc) insofar as the protection of national security, defence or public security prevents this,
 - dd) insofar as the confidentiality of sensitive critical infrastructure protection related information prevents this, and
 - ee) insofar as statistical confidentiality prevents this,
 - b) for which third parties hold intellectual property rights,
 - c) which are accessible pursuant to federal or state regulations on public access to environmental information and are machine-readable, available via an application programming interface and access to which is unrestricted and free of charge, and
 - d) the provision of which is an activity falling outside the scope of the public task of the public sector bodies concerned as defined by binding rules;
- 2. data held by undertakings providing services of general interest produced outside the activity pursuant to Section 3(2);
 - 3. logos, crests and insignia;
 - 4. data held by public service broadcasters or their agents, which serve to fulfil a public service broadcasting remit;
 - 5. data held by cultural establishments other than libraries, museums and archives; sub-section 2 number 3 shall not apply to libraries, museums and archives;
 - 6. data held by educational establishments of secondary level and below; for all other educational establishments, this Act shall not apply to data other than research data.
- (4) The provisions on the protection of personal data and further requirements for the provision and use of data from data providers under other legal provisions shall remain unaffected.
- (5) Public sector bodies shall not invoke the rights for a maker of a database pursuant to Section 87b of the Copyright Act within the scope of this Act.

Section 3

Definitions

For the purpose of this Act, the following definitions apply:

- 1. 'public sector body' means
 - a) territorial authorities, including their special funds,
 - b) other legal persons under public or private law that were established for the specific purpose of meeting non-commercial needs in the general interest, if
 - aa) they are for the most part financed through a participation or in some other way by entities within the meaning of point (a) or (c) acting individually or jointly,
 - bb) their management is subject to supervision by entities under point (a) or (c) or

cc) more than half of the members of their management or supervisory boards have been appointed by entities under point (a) or (c);

the same shall apply if such a legal person, individually or together with others, provides most of the financing to another legal person under public or private law, exercises supervision over its management or has appointed the majority of the members of a management or supervisory board,

c) associations whose members fall under point (a) or (b),

2. an 'undertaking providing services of general interest' means an undertaking as defined in Section 100(1) number 2 of the Act against Restraints of Competition which pursues one of the activities referred to in Section 102 of the Act against Restraints of Competition or which operates public passenger transport services,
3. 'data' means existing records irrespective of the manner in which they are stored,
4. 'use' means any use of data for commercial or non-commercial purposes beyond the performance of a public task or the provision of services of general interest, or for own commercial goals in addition to the performance of public tasks,
5. 'machine-readable format' means that the data can be read out and processed automatically by software applications,
6. 'open format' means a file format that is non-proprietary, platform-independent and made available to the public without any restriction that impedes the use of data,
7. 'formal open standard' means a standard which has been laid down in text form and specifies the requirements on how to ensure software interoperability,
8. 'dynamic data' means records in a digital form that are subject to frequent or real-time updates, in particular because of their volatility or rapid obsolescence,
9. 'high-value datasets' means datasets in accordance with Articles 13 and 14 of Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (OJ L 172 of 26 June 2019, p. 56) and implementing acts to be adopted pursuant to these Articles,
10. 'research data' means records in a digital form, other than scientific publications, which are collected or produced in the course of scientific research activities and are used as evidence in the research process, or are commonly accepted in the research community as being necessary to validate research findings and results,
11. 'reasonable return on investment' means a percentage of the overall charge, in addition to that needed to recover the eligible costs, not exceeding 5 percentage points above the fixed interest rate on main refinancing operations set by the European Central Bank,
12. 'anonymisation' means the process of changing personal data into data which do not relate to an identified or identifiable natural person or the process of changing personal data into data in such a manner that the data subject is not or is no longer identifiable.

Section 4

Principle of unrestricted use of data; admissibility of licences

- (1) Data may be used for any commercial or non-commercial purpose.
- (2) For data to which libraries, including university libraries, museums and archives, hold copyrights or related rights or industrial property rights and for data of undertakings providing

services of general interest, sub-section 1 shall apply only to the extent that the institution or undertaking providing services of general interest has authorised their use.

(3) Conditions of use (licences) are permissible insofar as they are objective, proportionate, non-discriminatory and justified by a public interest objective. The licence must not lead to a distortion of competition and must not unnecessarily restrict possibilities for use. Where possible, public sector bodies shall use open licences.

Section 5

Non-discrimination

(1) Any applicable conditions for the use of data shall be non-discriminatory.

(2) If data are used by a public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the provision of the data for those activities as apply to other users.

Section 6

Exclusive arrangements

(1) Arrangements by public sector bodies or undertakings providing services of general interest, which grant exclusive rights for the use of data (exclusive arrangements) shall not be permitted.

(2) This shall not apply in cases where an exclusive right over the use of data is necessary for the provision of a service in the public interest. The data provider shall review the exclusive arrangement on a regular basis, but at least every three years. The data provider shall make exclusive arrangements established after 15 July 2019 publicly available online at least two months before they come into effect. The final exclusive arrangement shall be clear and unambiguous and shall be made publicly available online. This sub-section shall not apply to the digitisation of cultural resources.

(3) Where an exclusive right relates to the digitisation of cultural resources, the period of exclusivity shall not exceed 10 years. The exclusive arrangements shall be clear and unambiguous and shall be made publicly available online. The public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. The public sector body shall make this copy available for use at the end of the period of exclusivity.

(4) The data provider shall make publicly available online, no later than two months before their coming into effect, legal or practical arrangements that, without expressly granting an exclusive right, aim at or are suited to restricting availability for the use of data by entities other than the third parties participating in the arrangement. The effect of such legal or practical arrangements on the availability and usability of data shall be subject to regular review and shall, in any event, be reviewed every three years. The final arrangement shall be clear and unambiguous and shall be made publicly available online.

(5) Exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions set out in sub-sections 2 and 3 shall be terminated at the end of the exclusive arrangement and in any event no later than on 31 December 2027. Exclusive arrangements existing on 16 July 2019 that were entered into by undertakings providing services of general interest and which do not qualify for the exceptions set out in sub-sections 2 and 3, shall be terminated at the end of the exclusive arrangement and in any event no later than on 31 December 2033.

Section 7

Available formats, metadata

(1) The data provider shall enable the use of the data in all requested and pre-existing formats and languages.

(2) Where possible and appropriate, the data shall be made available through electronic means and in formats that are open, machine-readable, accessible, findable and interoperable, together with their metadata, in accordance with codes of practice. Both the format and the metadata shall, where possible, comply with formal open standards.

(3) Sub-sections 1 and 2 shall not imply an obligation for public sector bodies and public undertakings to create or adapt data and metadata or to make parts of datasets available where this would involve disproportionate effort, going beyond a simple operation. Public sector bodies and undertakings providing services of general interest shall also not be required to continue the production and storage of certain types of data with a view to their use by a private or public sector organisation.

(4) The metadata of machine-readable data shall, where possible and appropriate, be made available via the national metadata portal GovData.

Section 8

Dynamic data

(1) The data provider shall enable the use of dynamic data immediately after collection in real time, via suitable application programming interfaces and, where technically necessary, as a bulk download.

(2) Where the requirements under sub-section 1 would exceed the financial and technical capacity of the public sector body or the undertaking providing services of general interest, thereby imposing a disproportionate effort, the use of dynamic data shall be made possible temporarily using the technical means available. The exploitation of the economic and social potential of dynamic data shall not be unduly impaired by this.

Section 9

High-value datasets

Public sector bodies and undertakings of general interest shall enable the use of high-value datasets in machine-readable format via suitable application programming interfaces and, where technically necessary, as a bulk download.

Section 10

Principle of gratuitousness

(1) The use of data shall be free of charge. However, the recovery of the marginal costs incurred for the following activities and measures may be allowed:

1. the reproduction, provision and dissemination of data,
2. the anonymisation of personal data and
3. measures taken to protect commercially confidential information.

(2) By way of derogation from sub-section 1 sentence 1, fees may be charged for the use of data by:

1. public sector bodies that are required to generate sufficient revenue to cover a substantial part of their costs relating to the performance of their public tasks;
2. libraries, including university libraries, museums and archives;
3. undertakings providing services of general interest.

(3) Sub-section 1 sentence 2 and sub-section 2 numbers 1 and 3 shall not apply to high-value datasets and research data.

(4) Where public sector bodies that are required to generate sufficient revenue to cover a substantial part of their costs relating to the performance of their public tasks wish to be exempted from sub-section 1 sentence 1, they shall notify the Federal Network Agency of the invocation of the exemption. The Federal Network Agency shall maintain a list of the public sector bodies making use of the exemption and make the list available on its website.

(5) Where enabling the use of high-value datasets free of charge by 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 would lead to a substantial impact on the budget of the bodies involved, the use of high-value datasets free of charge shall apply not later than twelve months after 23 July 2021.

Section 11

Assessment of the level of charges

- (1) In the cases referred to in Section 10 sub-section 2 numbers 1 and 3, public sector bodies and undertakings providing services of general interest shall calculate the charges in accordance with objective, transparent and verifiable criteria to be laid down by them.
- (2) The income from providing and allowing the use of data over the appropriate accounting period shall not exceed the cost of their collection, production, reproduction, dissemination and storage, together with a reasonable return on investment, and of the anonymisation of personal data and measures taken to protect commercially confidential information. In the case of Section 10 sub-section 2 number 2, the costs of preservation and rights clearance may also be added to the calculation basis.
- (3) Charges shall be calculated in accordance with the applicable accounting principles.

Section 12

Transparency of charges

- (1) If charges are set for the use of data, which apply to the general public (standard charges), any applicable conditions and the actual amount of the standard charges, including the calculation basis for such charges, shall be made publicly available online.
- (2) Where no standard charges have been set for the use of data, the factors that are taken into account in the calculation of those charges shall be indicated. Upon request, the way in which such charges have been calculated in relation to a specific request for use shall be indicated.

Section 13

Legal recourse

For any disputes under this Act, recourse shall be available to the administrative courts.