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WP2 – Research and Implementation assessments

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Glossary

Abbreviation	German	English
AVG	Allgemeines Verwaltungsverfahrensgesetz	General Administrative Procedure Act
BAK	Bundesamt Korruptionsprävention und Korruptionsbekämpfung	Federal Office for Corruption Prevention and Anti-Corruption
B-GIBG	Bundes-Gleichbehandlungsgesetz	Federal Equal Treatment Act
BMI	Bundesministerium für Inneres	Austrian Ministry of the Interior
BKA	Bundeskriminalamt	Federal Criminal Police Office
BMVRDJ	Bundesministerium für Verfassung, Reformen, Deregulierung und Justiz	Federal Ministry of Constitution, Reforms, Deregulation and Justice
BVergG	Bundesvergabegesetz	Federal procurement law
B-VG	Bundes-Verfassungsgesetz	Constitution
BVT	Bundesamt für Verfassungsschutz und Terrorismusbekämpfung	Federal Office for the Protection of the Constitution and Counterterrorism
BWB	Bundeswettbewerbsbehörde	Federal Competition Authority
BWG	Bankwesengesetz	Banking Law
DSG	Datenschutzgesetz	Data Protection Act
FMA	Finanzmarktaufsicht	Financial Market Authority
Kerndaten-VO	Kerndaten-Verordnung	Key Data Regulation
MedienG	Mediengesetz	Media Law
OGH	Oberster Gerichtshof	Supreme Court
StAG	Staatsanwaltschaftsgesetz	State Attorney Act
stop	Strafprozessordnung	Criminal Procedure
StRÄG 2015	Strafrechtsänderungsgesetz 2015	Criminal Law Amendment
TKG	Telekommunikationsgesetz	Telecommunications Act
UIG	Umweltinformationsgesetz	Environmental Information Act
WKStA	Wirtschafts- und Korruptionsstaatsanwaltschaft	Economic and Corruption Prosecutor



Open Data Austria

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Open Data Austria

Definition

“Open government data (OGD) are those non-personal and non-critical infrastructure-related data of public interest, provided without any restriction on their free use, distribution and reuse.”¹

Regulatory sources and aims pursued.

“Open Government Data is credited with the potential to sustainably promote social, cultural, scientific and economic progress in many areas. The use of non-personal information in the public sector promotes the development of new products and services and supports economic growth in Austria. Moreover, Open Government Data is seen as an adequate tool to increase the transparency of administrative action, to facilitate better cooperation between politics, administration, business, research, citizens and to strengthen democracy.”²

Austria has no Freedom of Information Act³, making it the only country in Europe, where citizens have no legally entrenched right to be informed. To protect administrative and government information from disclosure, Austria has the “Amtsgeheimnis” (official secret) written down in the constitution (B-VG Art. 20 Abs. 3).

According to the Global Right to Information Rating⁴ Austria is ranked on position 123 of all 124 democratic countries in the world.

Legally the right to information is restricted in all areas where the statutory confidentiality obligation holds (information Diligence Act/Auskunftspflichtgesetz §1). Further legal regulations are to be found in special laws as listed in the Information Diligence Act §65.

[Examples:

*According to **BVergG 2018 (Federal Procurement Law 2018)** all contracting authorities and other entities required to apply provisions of the Federal Procurement Act (§ 4 BVergG 2018) must make the so-called metadata of the key data available to www.usp.gv.at for their procurement procedures on data.gv.at starting from 1st March 2019.*

Translations of relevant areas in BVergG 2018 (original german text can be found in our link-section):

Pre-tender information §25 BVergG 2018:

§ 25. (1) If an applicant or a tenderer or an associated company has advised the contracting authority or was otherwise involved in the preparation of the contract award procedure, the contracting authority must take all necessary measures to ensure that: that the competition is not distorted by the participation of that candidate or tenderer. Measures include, in particular, the transmission or provision of all information exchanged in connection with the preparatory work or resulting from the preparatory work, to all participants in the award procedure or the determination of reasonable deadlines for submissions. The measures taken by the contracting authority are to be recorded in the contract award notice.

¹ Translated into English from: <https://www.digitales.oesterreich.gv.at/open-government-data2>

² Translated into English from: <https://www.digitales.oesterreich.gv.at/open-government-data2>

³ <https://www.help.gv.at/Portal.Node/hlpd/public/content/171/Seite.1710882.html>

⁴ <https://www.rti-rating.org/>

⁵ <https://www.rti-rating.org/wp-content/uploads/Austria.pdf>



(2) Applicants, tenderers and related undertakings which participated in the preparation of the award procedure within the meaning of paragraph 1 shall, to the extent that their participation would distort fair and fair competition in accordance with the principle of equal treatment, exclude participation in the award procedure. Prior to expulsion, the entrepreneur concerned must be given the opportunity to prove that his participation in the preparation of the procurement procedure could not distort competition.

Announcement of a prior information notice in Austria §60 BVergG 2018:

§ 60. (1) If the contracting authority wishes to make use of the possibility of shortening the offer period in accordance with § 73, he must publish a prior information notice in Austria in accordance with § 59.

(2) A contracting authority other than those listed in Annex III may, in restricted procedures and in negotiated procedures with prior publication, use the notice of prior information referred to in Article 59 as a notice of the intended award of an assignment, provided that the prior information

- 1. expressly refers to those services that will be the subject of the order,*
- 2. indicating that this contract will be awarded in a restricted procedure or in a negotiated procedure with prior notice without publication of a contract notice,*
- 3. inviting entrepreneurs to communicate their interest, and*
- 4. 35 days at the latest and 12 months at the earliest before sending the invitation to tender.*

Additional publication in the buyer profile is permitted.

(3) When awarding a special service contract, the contracting authority may use the notice of prior information pursuant to § 59 as a notice of intended assignment of an order, provided that the prior information

- 1. Explicitly cites the types of services to be provided,*
- 2. indicates that this contract will be awarded without publication of a contract notice, and*
- 3. inviting entrepreneurs to communicate their interest.*

Additional publication in the buyer profile is permitted.

4. The period covered by a prior information notice in accordance with paragraphs 2 and 3 shall be in accordance with the period determined in accordance with section 57 (4).

Thresholds §12 BVergG 2018:

§ 12. (1) Procedures of contracting authorities for the award of contracts take place in the upper threshold, if the estimated order value

- 1. in the case of supply and service contracts awarded by contracting authorities listed in Annex III, the minimum amount is EUR 144 000; in the case of supply contracts awarded in the area of the Federal Ministry of Defense, this applies only to contracts in the field of defense concerning goods listed in Annex IV, or*
- 2. for service contracts listed in Annex XVI, is at least EUR 750 000, or*
- 3. for all other supply and service contracts, the minimum is EUR 221 000, or*
- 4. at least 5 548 000 euro for works contracts.*



(2) Competitions by public procurers take place in the upper threshold area, if in the case of realization competitions, the estimated order value of the service order considers any prize money and payments to participants or in idea competitions the sum of the prize money and payments to participants

1. in the case of competitions carried out by contracting authorities listed in Annex III, this shall be at least EUR 144 000, or

2. for competitions other than those referred to in Annex III, the minimum amount is € 221 000.

(3) Procedures of contracting authorities for the award of contracts shall be made in the sub-threshold, if the estimated value of the contract does not reach the amounts referred to in paragraph 1. Competitions shall be carried out in the sub-threshold, if the estimated value of the contract, including the prize money and payments or the sum of the prize money and payments to the participants, does not reach the amounts referred to in paragraph 2.

Announcements in Austria §BVerG 2018 (in threshold⁶)

§ 59. (1) The contracting authority shall publish notices in the threshold area by providing the metadata of the core data of procurement procedures <https://www.data.gv.at/> and therein referring to the information referred to in Section 1 of Annex VIII (Core data for notices). The contracting authority must make this core data fully available in an open and machine-readable standardized format under a free license.

(2) The availability of the metadata of the core data of procurement procedures and the core data for notices shall be ensured at least until the expiry of the time limit for the submission of tenders.

(3) Further notices in other suitable publication media shall be available to the contracting authority.

(4) Where the contracting authority considers that the implementation of a contract award procedure without prior notice is permitted in the area of the threshold, the contracting authority may publicize the decision on which contract to award the contract. The availability of the metadata of the core data of procurement procedures and the core data for notices must be ensured for at least ten days.

(5) A notice pursuant to paragraphs 1, 3 or 4 may not be published before the date of publication by the Publications Office. However, publication may in any case take place if the contracting authority has not been informed by the Publications Office within 48 hours of the receipt of the notice of publication. The notice may only contain the information contained in the notice sent to the Publications Office or published in a pre-information notice in a buyer profile. The notice shall indicate the date of dispatch of the notice to the Publications Office or the date of publication in the buyer profile.

Announcements in Austria §BVerG 2018 (sub-threshold)

§ 64. (1) The contracting authority shall publish notices in the sub-threshold area by providing the metadata of the core data of procurement procedures <https://www.data.gv.at/> and referring therein to the core data for notices. The contracting authority must make this core data fully available in an open and machine-readable standardized format under a free license. A procurement in the buyer profile must not be made prior to the availability of the metadata of the core data of procurement procedures and the core information for the notice. The buyer profile must indicate the date of the provision of the core data.

⁶ Threshold in Austria §12 BVerG 2018



(2) The availability of the metadata of the core data of procurement procedures and the core data for notices shall be ensured at least until the expiry of the time limit for the submission of tenders.

(3) Further notices in other suitable publication media shall be available to the contracting authority.

(4) Where required by Union law principles, the contracting authority must notify the award of a specific service contract. A notice of procedure may in particular be disregarded if one of the conditions specified in §§ 37 (1) and 44 (2) (2) exists.

(5) Where the contracting authority considers that the implementation of a contract award procedure without prior notification is permitted in the sub-threshold, the contracting authority may publicize the decision on which bidder should be awarded the contract. The availability of the metadata of the core data of procurement procedures and the core data for notices must be ensured for at least ten days.

(6) In addition, the contracting authority is required to make known a different setting of a dynamic purchasing system than the deadline laid down in the notice of competition.

Special notice provisions for the sub-threshold sector §66 BVergG 2018:

§ 66. (1) A public contracting authority within the scope of the Federal Government shall announce each contract awarded, each concluded framework agreement and the result of each ideas competition after a contract award procedure, the value or amount of the prize money is at least 50,000 euros, by: he provides the metadata of the core data of procurement procedures <https://www.data.gv.at/> and refers therein to the core data for announcements; except for contracts awarded under framework agreements whose value does not reach EUR 50 000. The contracting authority shall provide the metadata of the core data for procurement procedures for at least 5 years and make the core data available for publication in an open and machine-readable standardized format under a free license for at least 5 years. The announcement must be made no later than 30 days after the award of the contract, after conclusion of the framework agreement or after the conclusion of the ideas competition.

(2) By way of derogation from the last sentence of paragraph 1, the contracting authority may

1. special service contracts and

2. Contracts awarded on the basis of a framework agreement or a dynamic purchasing system, at the latest 30 days after the end of the respective quarter according to para.

3. By way of derogation from paragraph 1, certain information concerning the award of contracts, the conclusion of framework agreements or the result of an ideas competition shall not be published if their disclosure impedes the implementation of laws, is contrary to the public interest and harms the legitimate business interests of an entrepreneur or affect free and fair competition between entrepreneurs.

Documentation requirements §49 BVergG 2018

§ 49. (1) The contracting authority shall document all essential decisions and procedures in connection with a procurement procedure sufficiently that they can be reconstructed. Furthermore, any participation by third parties in the preparation of an invitation to tender must be documented. The documentation must be kept for at least three years after the award of the contract.]

Each year the Data Protection Authority must submit and publish a progress report pursuant to Art. 59 DSGVO to the Federal Minister for Constitution, Reforms, Deregulation and Justice, the European Commission, the European Data Protection Board (Article 68 GDPR) and the Data Protection Council in accordance with the official secret (§23 DSG).



The development of OGD in Austria has been strongly supported by civil society activities of IT professionals involved in OGD interest groups. Thereby a system has been developed which has received very little attention from public authorities so far. As of 29th May 2019, 1.143 entities (including 1078 local communities that reported via www.offenerhaushalt.at) have contributed data so far. The list can be viewed under: <https://www.data.gv.at/veroeffentlichende-stellen/>, but many of them just started to do so in 2019, although it has been strived for contributions since Open Data Government launched in with the establishment of a Data Portal of the City of Vienna in 2011.

Areas of disclosure of public data.

The incompatibility and transparency law (Unvereinbarkeits- und Transparenzgesetz) only deals with (private) employments of public officials and no information – about committees' activities or decisions - is provided to the public.

A "Transparenzdatenbank" (TDBG - transparency database) has been legally implemented in 2012, but not everyone seems to be reporting and the access to files is still not provided by all regional councils and authorities. So far (as of 29th May 2019) the states Lower and Upper Austria claim to have reports fully provided⁷ after (the now) former Minister of Finance requested all states to do so in 2015 already⁸.

There is no right to have an "Akteneinsicht" (access to files) but there might be a chance to gain access by exception. The Right to view your files according to §53 StPO only applies in case of preliminary proceedings and has nothing to do with the right to view public data.

Although there is no right to information, some data – contributed by geographical information, statistics, data from publicly sponsored research projects, libraries, environmental data, data on traffic and the micro census - is still provided to the public. Not included are data of individual citizens as well as infrastructure-critical databases.⁹

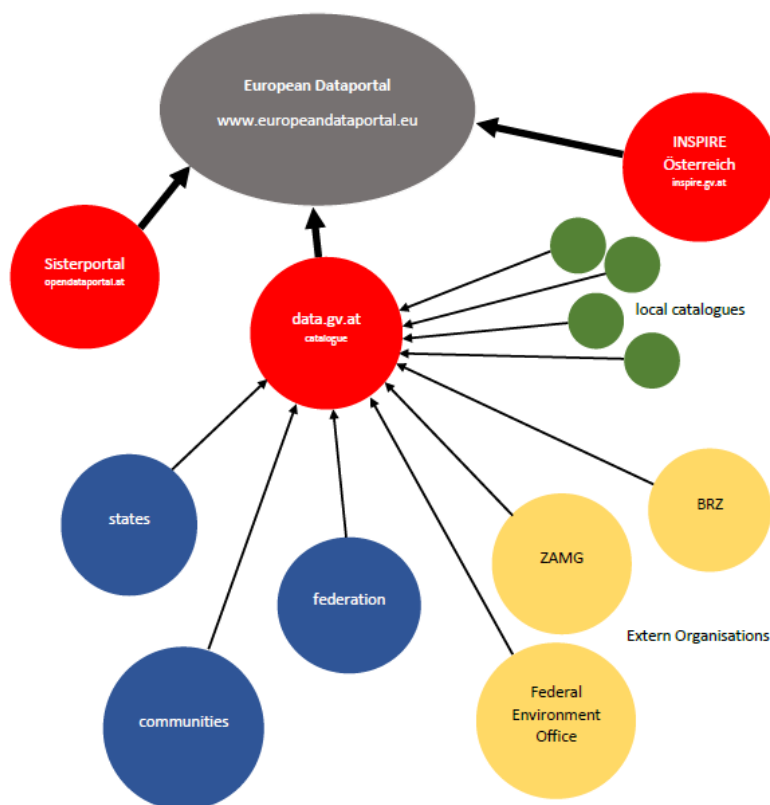
Cooperation OGD Österreich has implemented a platform, where data – provided by cities (Vienna, Linz, Graz, Salzburg and the Bundeskanzleramt (office of the chancellor) – is coordinated and forwarded to the European data portal.¹⁰

⁷ <https://noe.orf.at/news/stories/2948879>

⁸ https://www.parlament.gv.at/PAKT/PR/JAHR_2015/PK1358/index.shtml

⁹ Aschauer, 2012, p. 94

¹⁰ <https://www.data.gv.at/infos/cooperation-ogd-oesterreich/>



Publication requirements and data standardization. Data Protection.

In the **Kerndaten-VO** (Key Data Regulation) requirements for and provision of core data are regulated.

According to the Handbook of Open Government Data¹¹ the key principles to aim for are completeness, primary sources, timely availability, easy access, machine readability, free of discrimination, use of open standards, licensing, documentation and availability worldwide. The implementation of usages charges is not foreseen.

The terms of use prescribe the use of Creative Commons named 4.0 international. The data is meant to contribute to transparency and accountability of public services.

The data-traffic between authorities and stakeholders is regulated by §13 AVG (General Administrative Procedure Act). Complaints and other communications may be submitted to the Authority in writing, verbally or by telephone. It needs to be mentioned that an anonymous written report is to be seen as defect and will be rejected (§ 13 Abs 3 and 4 AVG).

According to §23 DSG the Data Protection Authority must submit a progress report to the Federal Ministry for Constitution, Reforms, Deregulation and Justice and publish it to the public, the European Commission, the European Data Protection Board (Article 68 GDPR) and the Data Protection Council in accordance with the **official secret** (§23 DSG) every year.

Data Accessibility

Data must be provided in a suitable and modifiable way for free (where possible to be downloaded by users). Reimbursement of reasonable data processing costs is possible. Furthermore, data must allow

¹¹ <https://www.data.gv.at/wp-content/uploads/Benutzerhandbuch-datagvat-Cockpit.pdf>



combinations with other data (interoperability) and has to be reusable. Everyone has to have access and no group of users shall be discriminated or excluded from the usage of the data.¹²

Drafting techniques

No special provisions have been taken by public authorities in Austria to provide data in a user-friendly and barrier-free format

Benchmarking

No formal benchmarking agreements with other administrations are in place.

Control Authorities

No complaint or control mechanisms have been established regarding Open Data policies.

Sanctions

Open Data requirements are to be met on a voluntary basis; no formal sanction regime is available.

Conclusion

This situation, of not having a right to information and holding onto the official secret, might be caused by the fact that Austrian Constitution as established in 1922 has been amended several times over the years and some of the regulations seem to be contradictory (compare B-VG Art. 20 Abs 3 and 4). Also, political strategies and power plays might interfere with activity to make more data public as a majority of two thirds in parliament is needed to amend the Constitution.

A civil rights-NGO¹³ is currently fighting for the right to information, access to files, access to public administration's documents and for their automatic public publishing.

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Civil Rights-NGO

<https://www.informationsfreiheit.at/>

Open Data Österreich

www.data.gv.at

Law Databases

The legal Information System of the Republic of Austria:

<https://www.ris.bka.gv.at>

Jusline Law Platform:

<https://www.jusline.at>

Manz Publishing Company with a Law Database:

¹² Aschauer, 2012, p. 92

¹³ <https://www.informationsfreiheit.at/>



<https://rdb.manz.at/home>

Laws Online

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Beamten-Dienstrechtsgesetz 1979, Fassung vom 03.06.2019

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BörseG 2018 - Bundesgesetz über die Wertpapier- und allgemeinen Warenbörsen 2018 (Börsegesetz 2018)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009944>

BVergG – Bundesgesetz über die Vergabe von Aufträgen (Bundesvergabegesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010295>

B-VG – Bundes-Verfassungsgesetz

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>

BWG – Bundesgesetz über das Bankwesen (Bankwesengesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10004827>

DSG 2018 – Datenschutzgesetz 2018

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597>

Kerndaten-VO - Verordnung des Bundesministers für Verfassung, Reformen, Deregulierung und Justiz, mit der die Standardisierung des Kerndatenformates und die Befüllung der Metadatenfelder festgelegt werden (Kerndaten-Verordnung)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010591>

MedienG - Bundesgesetz vom 12. Juni 1981 über die Presse und andere publizistische Medien (Mediengesetz)

https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1981_314/ERV_1981_314.pdf

StAG - Bundesgesetz vom 5. März 1986 über die staatsanwaltschaftlichen Behörden (Staatsanwaltschaftsgesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000842>

StPO - Strafprozeßordnung 1975



<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326>

TKG - Bundesgesetz, mit dem ein Telekommunikationsgesetz erlassen wird (Telekommunikationsgesetz 2003)

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