

This is the English translation of an extract from the Act to promote electronic government and to amend other legislation (Federal Law Gazette I 2013 no. 43, published in Bonn on 31 July 2013, pp. 2749 - 2760). It comprises the main act (Article 1, E-Government Act – EGovG), but not the amendments to other acts resulting from the EGovG (Articles 2 - 31).

## **Act to promote electronic government**

**of 25 July 2013**

The Bundestag has adopted the following Act with the approval of the Bundesrat:

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Act to promote electronic government (E-Government Act – EGovG)

### **Article 1**

#### **Act to promote electronic government (E-Government Act – EGovG)**

### **Summary of contents**

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### **Section 1**

#### **Scope of application**

(1) This Act shall apply to the administrative activities under public law of the federal authorities, including bodies, institutions and foundations under public law which are directly accountable to the Federal Government.

(2) This Act shall further apply to the administrative activities of authorities of the *Länder*, local authorities, local authority associations and other legal entities under public law which are subject to *Land* supervision in executing federal law.

(3) This Act shall apply to the activities of court administrations and administrative bodies of the judiciary, including public law entities under their supervision only where such activities are subject to review by the courts of administrative jurisdiction or review by the courts competent in cases concerning the activities of lawyers, patent lawyers and notaries under administrative law.

(4) This Act shall apply insofar as no federal law or regulation contains identical or conflicting provisions.

(5) This Act shall not apply to

1. criminal prosecution or the prosecution of and imposition of punishments for administrative offences, judicial proceedings carried out on behalf of foreign legal authorities in criminal and civil matters, tax and customs investigations (Section 208 of the Federal Fiscal Code) or measures relating to the legal status of the judiciary,
2. proceedings at the German Patent and Trade Mark Office or before its appointed arbitrators,
3. administrative activities pursuant to Book Two of the Social Code.

## Section 2

### **Electronic access to government**

(1) Every authority shall be obliged to open up a point of access for the transfer of electronic documents, including such documents provided with a qualified electronic signature.

(2) Every federal authority shall further be obliged to open up electronic access via a De-Mail address in accordance with the De-Mail Act, save where the federal authority concerned has no access to the central IT process provided for the federal administration via which the De-Mail services are provided for Federal authorities.

(3) In administrative procedures in which they are required to establish a person's identity by virtue of a legal provision or in which they consider identification to be necessary on other grounds, every federal authority shall be obliged to offer an electronic proof of identity pursuant to Section 18 of the Passport Act or pursuant to Section 78 (5) of the Residence Act.

## Section 3

## **Information on authorities and their procedures in publicly accessible networks**

- (1) Every authority shall make information on its work, its address, its business hours and its contact details for postal, telephone and electronic communications generally available in generally comprehensible terms via publicly accessible networks.
- (2) Every authority shall provide information in generally comprehensible terms about its activities under public law relating to external parties, attendant charges, documentation to be furnished, the competent point of contact and the latter's contact details, and shall make necessary forms available.
- (3) Sub-sections 1 and 2 shall apply to local authorities and local authority associations only where stipulated under *Land* law.

## **Section 4**

### **Electronic means of payment**

Where charges or other amounts receivable arise in connection with an administrative procedure carried out by electronic means, the authority must enable payment of such charges or other amounts receivable by participating in at least one adequately secure payment procedure which is customary in the area of electronic business transactions.

## **Section 5**

### **Required documentation**

- (1) Where an administrative procedure is carried out by electronic means, the documents to be presented may be submitted by electronic means, save where this is at variance with a legal provision or where the authority requires the submission of an original document for certain procedures or in individual instances. The authority shall decide after due consideration at its own discretion which form of electronic submission is permissible in order to determine the facts of the matter in hand.
- (2) With the consent of the party involved in the procedure, the competent authority may retrieve required documentation originating from a German public body directly from the issuing public body. The requesting authority and the furnishing public body may collect, process and use the necessary personal data to this end.
- (3) In the absence of any legal provisions to the contrary, the consent pursuant to sub-section 2 may be provided by electronic means. In this connection, the authority shall ensure that the data subject
  1. has granted their consent consciously and unambiguously,
  2. can retrieve the content of the consent at any time and
  3. can revoke the consent at any time with effect for the future.The consent shall be documented.

## Section 6

### **Electronic record-keeping**

The federal authorities should keep their records in electronic form. The first sentence shall not apply to authorities for whom keeping electronic records is not economical in the long term. Where records are kept in electronic form, appropriate technical and organizational measures are to be undertaken in accordance with the state of the art to ensure that the principles of orderly record-keeping are observed.

## Section 7

### **Conversion and destruction of the original paper document**

(1) Where federal authorities keep electronic records, they should keep electronic copies of such records on file in electronic form, instead of keeping paper documents. When transferring records to electronic documents, it shall be ensured in accordance with the state of the art that the pictorial and text content of the electronic documents correspond to the paper documents when they are rendered readable. The conversion of paper documents into electronic documents may be waived where such conversion would entail disproportionate technical efforts.

(2) Following conversion into electronic documents, paper documents pursuant to sub-section 1 should be destroyed or returned as soon as further retention is no longer necessary on legal grounds or to ensure due quality of the conversion process.

## Section 8

### **Access to files**

Where a right to inspect files exists, federal authorities which keep files in electronic form may grant access to files by

1. providing a print-out of the files concerned,
2. displaying the electronic documents on a screen,
3. transmitting electronic documents or
4. permitting electronic access to the content of the files.

## Section 9

### **Optimization of administrative procedures and information on the status of progress**

(1) Prior to introducing IT systems, federal authorities should apply established methods to document, analyse and optimize administrative procedures which are to become largely electronically based for the first time. In the interests of the parties

involved in the procedures, the necessary workflows should be designed so that information on the status of progress and on the further course of the process can be retrieved by electronic means, together with contact information regarding the competent point of contact at the time of the inquiry concerned.

(2) The measures pursuant to sub-section 1 may be waived where these would require unreasonable costs or where such measures are inappropriate on other compelling grounds. The measures pursuant to sub-section 1, second sentence may also be waived where these would be counter to the purpose of the procedure concerned or would breach a protective rule of law. The grounds pursuant to the first and second sentences shall be documented.

(3) Sub-sections 1 and 2 shall apply *mutatis mutandis* to any substantial changes to the administrative procedures or the IT systems used.

## Section 10

### **Implementation of standardization resolutions of the IT Planning Council**

If the planning council for cooperation on IT matters in the field of public administration between the Federation and the *Länder* (IT Planning Council) adopts a resolution on supradisciplinary and interdisciplinary IT interoperability or IT security standards in accordance with Section 1 (1), first sentence, no. 2 and Section 3 of the agreement on the establishment of the IT Planning Council and on the principles of cooperation relating to the application of information technology in federal and *Land* government administrations – agreement on the implementation of Article 91 c of the Basic Law (Federal Law Gazette 2010 1, pp. 662, 663), the council of Federal Government Commissioners for Information Technology (IT Council) shall enact implementation of this resolution within the federal administration. Section 12 of the Act on the Federal Office for Information Security shall apply *mutatis mutandis*.

## Section 11

### **Joint procedures**

(1) Joint procedures are automated procedures which enable several controllers within the meaning of the Federal Data Protection Act to process personal data in or from a database. Where joint procedures are also intended to enable data retrieval by other bodies, the retrieval procedures pursuant to Section 10 of the Federal Data Protection Act shall apply.

(2) The participation of public bodies of the Federation pursuant to Section 2 (1) of the Federal Data Protection Act in joint procedures shall be permissible only where this is appropriate with due regard to the data subject's legitimate interests and the tasks to be performed by the participating bodies. The provisions regarding the permissibility of data processing in individual cases shall remain unaffected.

(3) Before establishing or effecting substantial changes to a joint procedure, a prior check shall be carried out pursuant to Section 4d (5) and (6) of the Federal Data Protection Act and the Federal Commissioner for Data Protection and Freedom of Information shall be heard. The stipulations pursuant to sub-section 4 and the result of the prior check shall be submitted to the Federal Commissioner.

(4) Before establishing or effecting substantial changes to a joint procedure, beyond the information pursuant to Section 4e, first sentence of the Federal Data Protection Act, the following in particular is to be stipulated in writing:

1. the procedure to be applied and the bodies responsible for defining, amending, developing and complying with organizational and technical specifications for the joint procedure and

2. the participating bodies responsible for ensuring the legality of collecting, processing and using data, respectively.

The controllers pursuant to the first sentence, no. 1 shall appoint one of the participating bodies whose data protection official shall keep an overview to be drawn up by the participating bodies in accordance with Section 4g (2), first sentence of the Federal Data Protection Act and shall make this overview available to anyone for inspection pursuant to Section 4g (2), second sentence of the Federal Data Protection Act together with the information pursuant to the first sentence, nos. 1 and 2. In accordance with the first sentence, no. 1, controllers may also be appointed which are permitted to commission other bodies to collect, process and use personal data for the joint procedure. Section 11 of the Federal Data Protection Act shall remain otherwise unaffected.

(5) Where divergent data protection regulations apply for the participating bodies, it is to be determined before establishing a joint procedure which data protection law shall apply. It is further to be determined which supervisory authority shall verify compliance with the data protection regulations.

(6) The data subjects may assert their rights pursuant to Sections 19 to 20 of the Federal Data Protection Act against any of the participating bodies, irrespective of which body is responsible for processing the data in the individual case concerned pursuant to sub-section 4, first sentence, no. 2. The body contacted by the data subject shall forward the matter to the responsible body in the case concerned.

## Section 12

### **Requirements pertaining to the provision of data, authorization to issue statutory instruments**

(1) Where authorities employ publicly accessible networks to make data available, an interest in the use of which is to be expected, in particular further use within the meaning of the Act on the Further Use of Information Held by Public Bodies (Informationsweiterverwendungsgesetz), machine-readable formats shall be used as a general principle. A format is machine-readable when the contained data can be read and processed in automated mode by means of corresponding software. The data should be provided with metadata.

(2) The Federal Government shall be authorized to stipulate regulations for use of the data pursuant to sub-section 1 via statutory instruments with the approval of the Bundesrat. The provisions on use should cover commercial and non-commercial use. In particular, they should regulate the scope of use, conditions of use, exclusions of liability and exclusions of warranty. It shall not be possible to enact any regulations on payments.

(3) Regulations in other legislation regarding technical formats in which data are to be made available shall take precedence where they ensure machine-readability.

(4) Sub-section 1 shall apply to data created prior to 31 July 2013 only where such data are in machine-readable formats.

(5) Sub-section 1 shall not apply insofar as it conflicts with the rights of third parties, in particular the *Länder*.

## Section 13

### **Electronic forms**

Where a legal provision stipulates the use of a certain form providing a signature field, this alone shall not be tantamount to requiring written form. The signature field shall be omitted from a version of the form intended for electronic submission to the authority.

## Section 14

### **Georeferencing**

(1) If an electronic register which contains information relating to real estate within Germany is created or revised, the authority is to include standard nationwide georeferencing (coordinates) in the register relating to the respective parcel or the building or an area defined in a legal provision to which the information refers.

(2) For the purposes of this Act, registers are such for which data are collected or stored on the basis of federal legislation; these may be public or non-public registers.

## Section 15

### **Official gazettes and journals**

(1) Notwithstanding Article 82 (1) of the Basic Law, an obligation to effect publication in an official gazette or official journal of the Federation, a *Land* or a local government authority may be met additionally or exclusively via an electronic issue, where this is available via publicly accessible networks.

(2) Every individual must have adequate access to the publication, in particular via the possibility of ordering printed copies or accessing the publication at public institutions. It must be possible to subscribe to the publication or to receive electronic notification of new publications. Where only an electronic issue exists, this is to be publicized in an appropriate manner in publicly accessible networks. It is to be ensured that the published content is generally and permanently accessible and that the content cannot be altered. Where publication is effected simultaneously in electronic and paper form, the issuing body is to stipulate which form is to be regarded as authentic.

## Section 16

### **Barrier-free accessibility**

The federal authorities should ensure the barrier-free design of electronic communications and the use of electronic documents in an appropriate manner pursuant to Section 4 of the Act on Equal Opportunities for Persons with Disabilities.