

DFRIL0001-0003/2005

## Guidelines for project grants from the Austrian Digitization Fund

In accordance with § 9c Par. 1 of the KommAustria Act (Austrian Communications Act, or KOG), BGBl. I No 32/2001 in the version of BGBl. I 3/2003, the Austrian Regulatory Authority for Broadcasting and Telecommunications (*Rundfunk und Telekom Regulierungs-GmbH*, or RTR) has defined and published the following guidelines for grants from the Austrian Digitization Fund under §§ 9a to 9e KOG after completion of the procedure under Article 88 Par. 3 of the EC Treaty (European Commission decision of March 16, 2005, C (2005) 586 fin, State Aid, No. N 622/2003).

### Objectives and bases of the Fund, principles

1. Under § 9a Par. 1 KOG, the Austrian Digitization Fund has been set up for the purpose of promoting digital broadcasting technologies and applications on the basis of European standards. The objectives and bases of the Austrian Digitization Fund are derived from the intentions of the «Europe 2005 Action Plan, which aims to accelerate the transition to digital television. The Fund shall serve to upgrade and reinforce all broadcasting transmission platforms as a special part of communications infrastructure, with due attention to the central role of broadcasting in modern democratic societies. Project grants will be awarded by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR, Broadcasting Division) according to these guidelines.

2.1 RTR will award grants from the Austrian Digitization Fund for projects which are in line with the objectives of the Fund and with the applicable Digitization Concept under § 21 of the Austrian Private Television Act (PrTV-G), BGBl. I No. 84/2001 in the version of BGBl. I No. 169/2003. The projects to be funded must fulfill one of the purposes listed under § 9b Nos. 1 to 4 or Nos. 6 to 8 KOG (Section 4 of these guidelines). In order to be awarded grants, applicants as well as projects also have to fulfill the additional requirements under §§ 9a to 9e KOG and these guidelines (Sections 5 to 9).

2.2 Under § 9c Par. 2 KOG, grants from the Austrian Digitization Fund are to be awarded according to technology-neutral criteria with due attention to all transmission means and platforms for digital broadcasting. Special attention is therefore paid to projects whose objectives or content involve multiple transmission means or platforms.

2.3 No legal claims shall exist for grants from the Austrian Digitization Fund (§ 9c Par. 3 KOG).

**3.** These guidelines shall be applicable to grant awards from the Austrian Digitization Fund; they are not applicable to expenses incurred to the Digitization Fund by KommAustria and RTR under § 9b No. 9 KOG for the creation and implementation of the Digitization Concept, or to cases in which RTR is the party awarding the contract for certain purposes (§ 9b KOG). Grants for the purposes listed under § 9b No. 5 KOG are subject to special regulations.

## **Grants: Purpose and requirements**

**4.** The grants mentioned under Section 2 can be awarded for projects which pursue one of the following objectives under § 9b KOG, and which fulfill the following additional requirements under § 9e KOG:

### **4.1** Pilot projects and research projects in digital broadcasting:

In particular, the recipients of this type of grant will be enterprises which plan to carry out pilot projects under § 22 PrTV-G or are involved in such projects. These pilot and research projects will serve to test digital transmission technologies, programming development and interactive applications. However, it is also possible to receive grants for pilot and research projects on platforms other than that of terrestrial transmission if the projects are intended to test digital transmission technologies, programming development and interactive applications in a comparable manner and within the framework of a limited-time trial.

**4.2** The development of programs and additional services, especially electronic television guides, navigators, interactive and mobile applications which make use of the additional programming and interactive benefits of digital transmission and go beyond the limits of conventional broadcasting programs.

Grants will only be awarded for the development of innovative offers by enterprises such as broadcasters, network operators, technology companies or advertising businesses. Under no circumstances will funds be granted for the development of conventional television content without the specific additional benefits associated with digital broadcasting (i.e., those which do not require transmission by digital means); the same applies to ongoing programming costs.

### **4.3** Facilitation of the transition from analog to digital transmission:

These grants can only be awarded to broadcasters as specified under the Austrian Private Radio Act, Private Television Act or the ORF Act. Grants are not intended to cover the usual operating costs of broadcasting but to provide a buffer for additional financial burdens, in particular for parallel analog/digital transmission. These grants will generally be paid out degressively and for a limited time only. In this context, it is also possible to award grants for the necessary investments made by broadcasters in order to enable digital broadcasting.

**4.4** Measures intended to create financial incentives for consumers to switch to digital reception at an early stage:

The introduction of digital broadcasting will also require the replacement or addition of end-user devices. Whenever a new technology is introduced, the crucial question arises as to how quickly it will be possible to reach "critical mass" with regard to the number of users (referred to as "early adopters"). This critical mass of early adopters, which will enable and accelerate the introduction process, can only be reached at a reasonably early stage in

cases where incentives are offered for migrating to the new technology (such as subsidies for the purchase of digital end-user devices).

Incentive measures will also have to be taken degressively, meaning that incentives will be highest in cases where consumers decide to adopt the new technology at an early stage. Incentives can be granted for a maximum of 24 months in each transition region.

**4.5** Promoting the acquisition of the user devices required in order to receive digitally transmitted broadcasts:

These grants are intended to support the process of equipping consumer groups characterized by especially low purchasing power. Such grants can only be taken into consideration once digital broadcasting coverage has been established and analog transmission is nearing discontinuation. These measures must not be restricted to certain end-user device manufacturers or certain platforms.

**5.1** Under § 9c Par. 3 KOG, grants from the Austrian Digitization Fund can not be combined with funding from other federal grants.

**5.2** Under § 9d Par. 1 No. 2 KOG, grants can only be awarded in cases where financing for the project to be funded (with the exception of the grant applied for) is secured by other grants and sources. Fulfillment of this prerequisite is to be verified upon submission of the application.

**5.3** Grants will only be awarded in cases where the executing the project applied for would be unfeasible (or only feasible to an insufficient extent) without the grant.

**5.4** In general, grants can only be awarded for projects which have not yet begun at the time the grant application is submitted. The provision under Section 7.1 (2<sup>nd</sup> sentence) notwithstanding, it is also possible to award grants for delimitable parts of a project if the costs can be indicated separately and as long as essential components of the project have not yet begun. Grant applications are to be submitted at least four weeks prior to the start of the project (or relevant part thereof) for which the application is submitted.

**5.5** In the case of grants for projects which serve the purposes listed under 4.1 and 4.2, § 9d Par. 1 No. 3 KOG stipulates that the results of all studies, pilot projects, research projects and program developments are to be made available to the public as long as no justified interests on the part of the grant recipient are violated. In particular, such justified interests exist in cases where the results are protected by law (e.g., patent law, trademark law, competition law, data protection law; in cases worthy of special consideration also copyright law, etc.) in favor of the grant recipient. The extent to which grant recipients are not required to publish their results due to this limitation and the manner in which the results are to be published will be defined by RTR in each specific grant agreement.

**5.6** Grant recipients are required to use all funds awarded for their specified purpose and in an economical and effective way.

**5.7** Grant recipients will not be allowed to dispose of granted funds by means of assignment, cession, pledges or any other instrument.

**5.8** In cases where the funds allocated for endowment grants are exhausted, no further grants can be awarded in that calendar year. Applicants have the option of submitting another application for a grant in the ensuing year.

**6.1** Grants will be paid out to recipients in the form of non-repayable allowances. The grant awarded for each project must not exceed 50% of fundable project costs as specified in Section 7. It is possible to combine grants with funding from sources other than the Austrian federal government; however, the costs covered by public funds must not exceed 60% of fundable project costs.

**6.2** Upon application by the grant recipient, grants can also be awarded in other forms such as loans or interest subsidies. The cash equivalent value of grants awarded in the form of loans or interest subsidies must not exceed the funding limit mentioned in Section 6.1.

**6.3** If in the course of projects which are carried out for a limited time (especially studies, analyses, pilot projects and research projects as specified in Sections 4.1. and 4.2) it is necessary to acquire assets which will still have a residual value after the end of the project duration, then it is necessary to ensure that the assets can be used to serve the objectives of the Austrian Digitization Fund in the long term, or that the grant only covers the project period (e.g., a grant for the depreciation of the asset over the project period only). In all cases, more specific provisions to this effect are to be included in the grant agreement.

**7.1** The costs which can be covered by grants only include those which are immediately connected to the project and can be delimited as such. In any case, financing costs can not be covered by grants in cases where a grant is awarded under Section 6.1, nor can costs incurred before submission of the grant application (e.g., research and development costs arising prior to the project).

**7.2.** Costs which can be covered by grants can only be reimbursed in their net amounts, that is, excluding value-added tax. In cases where the grant recipient is not exempt from value-added tax, recipients can apply for a grant which includes value-added tax in the reimbursed costs.

**8.** The applicant's place of incorporation or residence must be in a country which is a party to the Agreement on the European Economic Area.

**9.1** Under § 9d Par. 3 KOG, grant recipients are to submit regular reports on the progress of each funded project. In all cases, these reporting requirements include notification regarding the start of the project as well as a project report upon completion. In the case of projects for the purposes listed under Sections 4.1 and 4.2, the project report must also include the information made available to the public (cf. Section 5.5) or an indication of where this information can be accessed. In addition, grant recipients are to report all major changes in the project (especially with regard to the its duration).

**9.2** Upon request, grant recipients are to provide RTR with information on the progress of their projects at all times. Depending on the duration of the project funded or the amount of the grant, the grant agreement can also include a provision requiring the recipient to present reports at regular intervals.

## **Grant application and award procedures**

**10.1** Applications for grants from the Austrian Digitization Fund can be submitted to RTR in written or in electronic form at any time using the application form provided by RTR.

**10.2** The application is to include the information and documents necessary to verify the fulfillment of all general and specific prerequisites under these guidelines, in particular:

1. Information on the applicant (e.g. full legal name of company, excerpt from the Commercial Register, excerpt from the Associations Register, articles of incorporation, ownership structure);
2. Information and evidence of the applicant's qualifications in the relevant field with regard to the planned project;
3. Evidence to the effect that financing has been secured for the project, with due consideration of the grant applied for as well as other funding;
4. Credible evidence to the effect that executing the project applied for would be unfeasible (or only feasible to an insufficient extent) without the grant;
5. A declaration stating that no other application for Austrian federal grants has been submitted or that any such applications submitted will be withdrawn if a grant from the Austrian Digitization Fund is awarded, as well as information on the level of funding received from other public sources;
6. For projects which pursue the objectives listed in Sections 4.1 and 4.2: The manner in which the applicant plans to make the results of the studies, pilot projects, research projects and program developments available to the public. If the applicant requests exemption from publication requirements due to justified interests, then a full description of the scope of the exemption requested and of the relevant interests is to be submitted;
7. In the case of grants for the acquisition of assets (as mentioned under 6.3): A description of the manner in which the assets will serve the objectives of the Fund in the long term, or information on how the grant would only cover the duration of the project.

**10.3** In the case of incomplete applications, the applicant will be sent a written request to submit the missing documents within a reasonable period of time. If the missing documents are not submitted within the specified period, the incomplete application will not be considered in the awarding of grants.

**11.1** In general, RTR's Broadcasting Division is to decide on complete applications on the basis of these guidelines within two months of receiving the application. Before a decision on the grant award is issued, the Austrian Communications Authority (KommAustria) will be given the opportunity to submit comments pursuant to § 9c Par. 2 KOG.

**11.2** In the case of a grant award, the applicant will be given information as to the amount of the grant as well as all accompanying requirements and conditions connected to it, including the obligations related to the grant award (such as verifications and repayment obligations) in the form of a grant agreement. The grant agreement is to be signed and returned by the applicant within six weeks. The application will be considered withdrawn if the grant agreement is not received by RTR within this period.

**11.3** In the case of rejections, applicants will be informed in writing as to the reasons behind the decision with the appropriate references to the provisions in these guidelines.

**12.1** Grants will generally be paid out in three installments: one third after the grant agreement goes into effect, one third after the start of the project is reported, and one third



after submission of the project report described in Section 9 and the review mentioned in Section 13.1. Funds will be approved for transfer within 10 business days.

**12.2** In cases where the specific characteristics of the project funded (especially its duration or expiration) or the amount of the grant warrants such measures, the grant agreement can also provide for other payout arrangements, such as payments contingent on evidence that a certain stage or certain interim results have been reached, or a single payment once the grant agreement goes into effect. In the case of projects spanning multiple years, the grant is to be paid out at least on an annual basis.

**13.1** After the end of the funded project, § 9d Par. 5 KOG calls for verification of the manner in which the principles of economy and effectiveness were observed in the use of funds and how they were used for their specified purpose, along with the project report mentioned in Section 9. In all cases, this verification report is to include the originals of all records, which will be returned to the grant recipient after inspection.

**13.2** The use of funds granted can be reviewed by RTR or a third party assigned by RTR on an ongoing basis. RTR or the assigned third party is to be presented with all necessary documents and information for this purpose.

**14.1** Grant recipients are obligated to repay grant funds in part or in full within 14 days of receiving a written request from RTR. Grant awards not yet paid out will lose their validity in cases where:

1. The applicant provided inaccurate or incomplete information on important circumstances;
2. A general or special grant requirement included in the applicable laws, in these guidelines or the grant agreement is not fulfilled;
3. Required reports or verifications are not submitted, or necessary information is not provided in cases where a written request is sent with an appropriate deadline and an indication of the legal consequences of non-fulfillment;
4. The grant recipient fails to report to RTR immediately and in writing all events which cause a delay in or obstruct the realization of the project, or which would require a change in the execution of the project;
5. Bankruptcy, composition or preliminary proceedings under § 79 AO are initiated for the assets of the grant recipient before the proper completion of the funded project, or bankruptcy proceedings are not initiated due to a lack of assets to cover costs, and the specific purpose of the grant is or appears unfulfillable for this reason;
6. The grant recipient prevents or obstructs review measures stipulated for the grant;
7. Part or all of the grant funds are not used for their specified purpose;
8. The project is not or can not be realized (or not in due time);
9. The guideline prohibiting the assignment/cession of funds is not obeyed.

**14.2** The grant agreement may also stipulate that interest is to be paid on funds granted in cases where funds are reclaimed; in such cases, the interest rate shall be 3½ percentage points over the interest rate for main refinancing operations published by the European Central Bank in the Official Journal of the European Union (Series C) as of the first calendar day of the month in which the reclaimed funds are due.

**14.3** Should the actual costs of the project exceed the sum stipulated in the grant agreement (e.g. due to *ex post* changes in the project duration or in specific project characteristics), the grant recipient shall not have the right to an increase in the grant awarded. All additional expenses are to be borne by the grant recipient. The grant recipient is to report to RTR any and all cost overruns which can be anticipated or are actually incurred. Should the actual costs of the project be lower than the amount stipulated in the grant agreement, then the grant amount shall be reduced accordingly.

## **Final provisions**

**15.** Under § 9c Par. 4 KOG, RTR is obligated to submit an annual report on the allocation of funds as well as the final accounts to the Austrian Federal Chancellor for each year. These reports are to be submitted by March 30th of the ensuing year.

**16.1** These guidelines shall go into effect on April 9, 2005.

**16.2** RTR will review these guidelines at the latest two years after their entry into effect and if necessary adapt them on the basis of experience and fund administration requirements in line with the objectives of the Austrian Digitization Fund. Such a review will also be carried out in cases where changes are introduced in the Digitization Concept under § 21 PrTV-G in order to ensure that funds grants are awarded in accordance with the Concept.

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**Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)**

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