

Full Text of the Legal Provisions of the 2012 Accreditation Act in the version of 06 June 2012

Attention:

The 2012 Accreditation Act was published in Article 1 of Federal Law Gazette I No. 28/2012.

Full Title:

Federal law on the accreditation of conformity assessment bodies (2012 Accreditation Act – AkkG 2012)

Reference: Federal Law Gazette I No. 28/2012 (National Council: GP XXIV RV AB 1712 page 148. Federal Council: AB 8699 page 807).

Preamble / Promulgation Clause

The National Council has adopted

Text

Part 1 General Provisions

§ 1. (Constitutional Provision) The adoption, amendment, repeal and implementation of regulations, as they are contained in the present federal law, are a matter of federal competence, also in those cases where the Federal Constitution Act stipulates otherwise. The matters covered in the present regulations can be handled directly by federal authorities.

§ 2. The present federal law supplements Regulation (EC) No. 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 of the Council, Official Journal No. L 218, dated 13 August 2008, page 30, and regulates the accreditation of conformity assessment bodies (especially testing, inspection, calibration and certification bodies) and establishes the necessary procedural provisions.

§ 3. (1) The Federal Minister of Economy, Family and Youth shall be the accreditation body. He/She shall entrust an organisational unit within his/her scope of competencies with the operational handling of accreditation procedures and provide this unit with the necessary resources. The entrusted organisational unit shall be called “Akkreditierung Austria”.

(2) Accreditation shall be granted to conformity assessment bodies which perform assessments of conformity on a compulsory and voluntary basis.

§ 4. (1) Accredited conformity assessment bodies have the right to carry the accreditation mark and the national emblem for the scope of competencies recognised by the accreditation body.

(2) Accredited conformity assessment bodies shall carry the assigned accreditation marks on their reports (especially test and inspection reports and calibration certificates) as well as on certificates which are issued within the scope of the granted accreditation.

(3) The Federal Minister of Economy, Family and Youth shall determine, by way of ordinance, the appearance of the accreditation mark as well as detailed provisions on its use.

§ 5. The activities performed for the operation of accredited conformity assessment bodies and undertaken within their scope shall not be subject to the provisions of the 1994 Trade Regulations. If conformity assessment bodies use industrial installations for their activities, the provisions of the 1994 Trade Regulations in their respectively valid version shall apply to them.

Part 2 Accreditation Procedure

§ 6. (1) The Federal Minister of Economy, Family and Youth shall set up an advisory board for accreditation.

(2) The advisory board for accreditation shall have the following tasks:

1. To advise on procedural and/or technical requirements concerning accreditations for conformity assessments on a compulsory basis, as well as to make recommendations concerning the respectively applicable normative documents,
2. To monitor the process of accreditation procedures, irrespective of whether they are conducted for assessments on a compulsory or voluntary basis,
3. To advise on how to increase acceptance as well as on the general direction of accreditation.

(3) The existence of respective standards and/or specific requirements and rules is a prerequisite for any accreditation procedure. The territorial corporations which require compulsory accreditations shall make sure that they submit the specific prerequisites for accreditation to the accreditation body or present proposals for the specific documents to be supplied for the respective accreditation, which – if necessary – are submitted to the advisory board for accreditation for deliberation after a technical committee has been consulted.

(4) In connection with item 2 of para (2) the advisory board for accreditation shall determine the following matters in any event:

1. selecting assessors for the initial and reassessments,
2. granting or refusing accreditation as a result of an initial or a reassessment,
3. setting up technical committees,
4. dealing with all other matters relating to accreditation which the accreditation body submits to the to the advisory board for accreditation,
5. obtaining an additional assessor opinion in the event that a reasoned objection is lodged concerning the granting or refusal of an accreditation by a member of the advisory board for accreditation listed in para (5).

(5) The advisory board for accreditation, which shall take actions in accordance with items 1 and 2 of para (2) as well as para (4), shall comprise the following members who shall be entitled to vote:

1. one representative of the Federal Ministry of Economy, Family and Youth,
2. one representative of the Federal Ministry of Labour, Social Affairs and Consumer Protection,
3. one representative of the Federal Ministry for Health,
4. one representative of the Federal Ministry of the Interior,
5. one representative of the Federal Ministry of Agriculture and Forestry, Environment and Water Management,
6. one representative of the Federal Ministry of Education, Arts and Culture,
7. one representative of the Federal Ministry for Transport, Innovation and Technology, and
8. one representative of the Liaison Office of the Federal Provinces.

(6) Whenever the advisory board for accreditation takes action in matters listed in item 3 of para (2), the range of its members shall be extended by the following representatives:

1. one representative each of the federal provinces,
2. one representative of the Austrian Economic Chambers,
3. one representative of the Federation of Austrian Industries,
4. one representative of the Austrian Chamber of Agriculture,
5. one representative of the Federal Chamber of Architects and Engineering Consultants,
6. one representative of the Austrian Chamber of Physicians,
7. one representative of the Austrian Chamber of Dentists,
8. one representative of the Austrian Chamber of Apothecaries,
9. one representative of the Austrian Chamber of Veterinary Surgeons,
10. one representative of the Professional Association of Engineering Firms,
11. one representative of the Federal Chamber of Wage and Salary-Earners,
12. one representative of the Austrian Trade Union Congress,
13. one representative of the Association for Consumer Information,
14. one representative of *Austrolab* (Association of Accredited Bodies),
15. one representative of the Austrian Standards Institute, and
16. one representative of the Austrian Association for Electrical Engineering.

(7) A representative of "Akkreditierung Austria" designated by the Federal Minister of Economy, Family and Youth shall be the chairperson of the advisory board for accreditation.

(8) The advisory board for accreditation shall establish its rules of procedure, which shall require the approval of the representatives listed in para (5). The rules of procedure shall contain detailed provisions on the course of the deliberations, representation by proxy and decision-taking, including the right of objection.

§ 7. (1) The conformity assessment bodies shall comply with

1. the requirements of the standards applicable to the respective accreditation, which the European Commission has published in the Official Journal of the European Union,
2. the technical specifications which have been stipulated pursuant to Article 13 para 3 of Regulation (EC) No 765/2008, whenever this applies to the accreditation in question, and
3. the requirements of the guidance documents that are applicable to the respective accreditation, which the recognised body pursuant to Article 14 of Regulation (EC) 765/2008 has published.

(2) The Federal Minister of Economy, Family and Youth can publish by way of ordinance the references to the guidance documents of Akkreditierung Austria, taking account of comparable regulations under EU law and guidelines of international organisations and can state that these guidance documents are binding, whenever this is required in order to ensure recognition of the conformity assessment bodies in comparison to international peers, or whenever this facilitates a time and cost-saving evaluation of the applications.

§ 8. An accreditation shall be granted, refused, withdrawn, suspended, restricted and extended in scope by way of notification.

§ 9. (1) The accreditation body shall be authorised to retain assessors to conduct the appraisal and to produce the appraisal report in the course of an accreditation procedure, whenever this is necessary to check on the compliance with accreditation requirements. In this context such assessors shall be retained who have as comprehensive specific technical knowledge and experience as possible with regard to the bodies to be accredited.

(2) Whenever assessors identify non-conformities in the course of their appraisals, they shall inform the conformity assessment body thereof in writing. The conformity assessment body shall take the necessary corrective measures within 8 weeks, commencing on the last day of the assessment, and immediately present suitable evidence thereof to the assessor.

(3) Whenever no such evidence is provided with the period of 8 weeks, the responsible assessor shall conclude his assessment report and communicate it to the accreditation body.

(4) Whenever insufficient evidence is presented to the assessor within the period of time as specified in para (2), the assessor shall inform the conformity assessment body thereof in writing and point out that either appropriate evidence needs be presented to him/her within a further period of 4 weeks or that he/she will conclude the assessment report and communicate it to the accreditation body.

(5) The responsible assessor shall communicate immediately a report on the non-conformities pursuant to para (2) to the accreditation body.

(6) Assessors shall be obliged to maintain confidentiality beyond their work as assessors concerning all processes and facts that have come to their knowledge in the course of their assessment. Documents that were made available for the

assessment must specifically not be made accessible to any third party in any way whatsoever.

(7) Assessors shall be obliged to refuse an appraisal whenever grounds prevail that create doubts concerning their complete impartiality such as when they provide consultancy services for the conformity assessment body.

(8) Assessors shall be obliged to conduct their assessments in accordance with the parameters stipulated by the accreditation body and, whenever applicable, use the available working documents.

(9) Assessors shall be obliged to obtain further professional development at their own expense and inform the accreditation body of any major changes.

(10) Upon a request by the accreditation body assessors shall be obliged to make the necessary amendments, especially with regard to assessment reports or findings concerning facts established in the course of an assessment, without claiming a refund of their costs.

§ 10. (1) Specific administrative fees shall be due for the official acts to be performed under the provisions of the present federal law. The Federal Minister of Economy, Family and Youth, by mutual agreement with the Federal Minister of Finance, shall determine these fees as lump sums which shall reflect the input required for these official acts.

(2) The lump sums shall be determined on the basis of the preparatory work and the time required for its performance, the number of official organs required, the number of test procedures described in the applications and the average cash expenses incurred (in particular for transport and travel costs, printing costs, material and postage).

(3) The administrative fees pursuant to para (1) shall be structured according to

1. fees for accreditation, broken down into a basic fee and a fee depending on the type and scope of the accreditation,
2. fees for an extension of the scope of accreditation,
3. fees for the surveillance of an accreditation,
4. fees for issuing notifications and confirmations.

(4) The communications pursuant to para (1) of § 12 and all other correspondence with the accreditation body deriving from the present federal law, with the exception of applications pursuant to § 8, shall be exempt from the fees as stipulated in the 1957 Fees Act in its respectively applicable version.

(5) Whenever it is foreseeable that an accreditation procedure will require considerable cash expenses, the applicant body may be required to transfer an adequate down payment (§ 76 (4) of the General Administrative Procedures Act).

§ 11. (1) Whenever important reasons prevail (such as, in particular, reports to the police, written complaints, justified suspicion that there are reasons for withdrawal)

the accreditation body can subject the accredited conformity assessment body to a surveillance action at any time.

(2) The costs of a surveillance action pursuant to para (1) shall be borne by the conformity assessment body, unless the surveillance action establishes no deficiencies; in the latter case, the costs of the surveillance action shall be borne by the accreditation body.

Part 3

Obligations of the Conformity Assessment Bodies

§ 12. (1) The accredited conformity assessment body shall inform the accreditation body in writing and without any delay of any significant changes that relate to the accreditation status or the mode of operation and which are especially linked to

1. its legal, economic and/or organisational status,
2. its top management or other key staff members,
3. its general arrangements,
4. its resources or locations,
5. the scope of its accreditation, or
6. other matters that might have an impact on the capacity of the conformity assessment body.

(2) Accredited conformity assessment bodies shall be obliged to participate, at their own expense, in proficiency tests ordered or instructed by the accreditation body. In this connection previously conducted or future comparative tests or round robin tests to be conducted for other reasons shall be taken into adequate account.

(3) Upon request, accredited conformity assessment bodies shall make available to the accreditation body and the commissioned assessors all documents which provide insight into the mode of operation of the conformity assessment body.

(4) Accredited conformity assessment bodies shall be obliged to facilitate access to their sites as well as to provide appropriate information and to permit inspections to representatives of the accreditation body, or an assessor commissioned by it, without any undue delay and without any title to being refunded the expenses incurred thereby.

(5) Accredited conformity assessment bodies must make it possible for the accreditation body to conduct a monitoring of the operations of the conformity assessment body.

(6) The accredited conformity assessment bodies shall draw up an annual report which they shall present to the accreditation body by 1 March of the following year at the latest.

(7) Accredited conformity assessment bodies shall be obliged – in a manner and to an extent as is customary in prudent business dealings – to ensure, by taking out adequate insurance, that they can satisfy any claims for damages arising from their conformity assessment activities. The Federal Minister of Economy, Family and

Youth shall establish, by way of notification, the minimum amounts of the coverage for personal damage, material damage and property damage.

(8) The accredited conformity assessment bodies shall keep for a period of ten years the records that serve to understand and logically explain the reports and certificates issued (para (2) of § 4).

Part 4

Termination of Accreditation

§ 13. (1) The authority to exercise an accreditation shall end

1. upon withdrawal of the accreditation,
2. upon dissolution of the legal entity, or
3. with the return of the authority by the accredited conformity assessment body.

(2) Irrespective of para (1) the accreditation may be exercised by another legal entity for a period of six months. In this connection the applicable requirements for accredited bodies shall be preserved. The provisions on withdrawal pursuant to § 14 shall not be affected by the foregoing.

Withdrawal of Accreditation

§ 14. (1) An accreditation shall be withdrawn by means of notification if

1. the essential accreditation requirements are not satisfied,
2. there is no compliance with the obligations arising from accreditation or instructions by authorities pursuant to § 12,
3. the accreditation is exercised during the period in which it has been suspended, or
4. the accreditation mark has been used repeatedly in an abusive manner, and the requirements for a suspension pursuant to § 16 do not apply.

Suspension of Accreditation

§ 15. Upon application by the accredited conformity assessment bodies, an accreditation can be suspended for six months whenever a scheduled assessment cannot be made, or the accredited activity cannot be performed, due to a change of location, construction work at the seat or on the premises of the accredited conformity assessment body, or the longer absence of key staff members.

§ 16. (1) An accreditation may be suspended *ex officio* for a period of six months if

1. non-conformities established by the accreditation body are not remedied within the periods set in § 9, or
2. scheduled assessments are not performed in time for reasons attributable to the accredited conformity assessment body, or
3. there is no compliance with periods set by way of notification.

(2) An accreditation can be partially suspended for six months if major requirements for the exercise of a specific part of the accreditation are no longer met and are not remedied within the periods set in § 9.

(3) The suspension of an accreditation shall be lifted as soon as the reasons leading to the suspension no longer apply.

Restriction of Accreditation

§ 17. The scope of an accreditation shall be reduced if

1. essential requirements for exercising the respective part of the accreditation no longer apply,
2. deficiencies in the exercise of the respective part of the accreditation have been established repeatedly.

Part 5

Penal Provisions

§ 18. Persons

1. who do not comply with instructions by authorities as stipulated in § 12 or who comply only with an unjustified delay, or
2. who do not perform the accredited activity in a manner conforming to the provisions of Regulation (EC) No. 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, the present federal law or ordinances issued on its basis, or
3. who use the accreditation mark in an abusive manner,

shall commit an administrative offence and shall be punished by the local administrative unit to a fine of up to a maximum of € 10,000.

Implementation

§ 19. The present federal law shall be implemented by

1. the Federal Minister of Economy, Family and Youth in agreement with the Federal Minister of Finance with regard to para (1) of § 10,
2. the Federal Minister of Finance with regard to para (4) of § 10,
3. the Federal Minister of Economy, Family and Youth with regard to all other matters.

Part 6

Transitional and Final Provisions

§ 20. (1) The Federal Minister of Economy, Family and Youth shall lift without any replacement the ordinances concerning the accreditation of certification bodies after issuing new administrative notifications on accreditation.

(2) The procedure for issuing notifications for certification bodies that have previously obtained accreditation shall be initiated *ex officio*.

(3) Accreditations that are valid at the time the present federal law enters into force and that were issued by the Austrian Institute for Construction Engineering (*Österreichisches Institut für Bautechnik*) on the basis of regional legal provisions shall remain valid until the expiry of their period of validity; yet, as a maximum, they shall remain valid until the end of the transitional period laid down in Article 39 of Regulation (EC) No. 765/2008 (i.e. 31 December 2014).

§ 21. (1) The Accreditation Act, Federal Law Gazette No. 468/1992, as last amended by Federal Law Gazette I No. 85/2002, shall cease to be in force at the expiry date of xx.xx.2012.

(2) The ordinance on the recognition of calibration certificates and calibration results, Federal Law Gazette II No. 427/1999, shall cease to be in force at the expiry date of xx.xx.2012.

(3) The application of the Ordinance on Accreditation Fees, Federal Law Gazette No. 70/1994, as last amended by Federal Law Gazette II No. 490/2001, the Ordinance on Insurance Coverage for Accreditation, Federal Law Gazette II No. 13/1997, as last amended by Federal Law Gazette II No. 490/2001, and the Ordinance on Accreditation Marks (Logos), Federal Law Gazette II No. 380/2008, shall not be affected by the lifting of the ordinances.

(4) § 1 to § 4, § 7, § 8 and § 10 to § 12 of the Ordinance on Calibration Services, Federal Law Gazette I No. 42/1994, as last amended by Federal Law Gazette II No. 490/2001, are lifted.

§ 22. The gender-specific expressions and concepts used in § 1 to § 4, § 7, § 8 and § 10 to § 12 always equally cover the male and the female form.
