# Explanatory remarks

**on the draft law amending the Tyrolean Beekeeping Act 2019**

## "I.
## General

### A.

The Tyrolean Beekeeping Act 2019 was amended by the newly-issued LGBl Act No 1/2020. The current rules have proven effective in principle and, therefore, comprehensive system changes are not foreseen. Based on practical experience in enforcement, various adjustments are to be made. The main regulatory priorities of the draft are:

the addition of the minimum distances as set out in Section 4;

the creation of a regulatory authorisation for conservation breeding areas for autochthonous bee breeds that merit protection or are threatened with extinction.

### B.

The competence of the provincial legislator to issue an act in accordance with this draft is based on Article 15(1) of the Federal Constitution.

### C.

The entry into force of an act corresponding to the draft does not create any additional financial burden for the Province of Tyrol. The present amendments have no financial implications for the Federal Government or the municipalities.

### D.

According to point 4 of Decree No 93 of the Provincial Director of 25 August 2022, based on government decisions of 22 September 2021 and 5 July 2022, Zl. LaZu-KS-S-8/17-2022, on the application of a Climate Check for climate-relevant legislative projects, the Tyrolean Beekeeping Act 2019 was classified as being a climate-relevant provincial law. In the case of legislative amendments, the Climate Check in accordance with point 3 of the aforementioned Decree refers to the new legislative text to be adopted. The Climate Check, which is therefore mandatory, showed that the amendments to the law provided for in the present amendment do not have any negative climate-related effects. With regard to the nature and landscape subject area, there are even some very positive effects: The creation of a regulatory authorisation for conservation breeding areas for certain bee breeds that merit protection or are threatened with extinction contributes to the protection and conservation of natural areas which promote biodiversity.

## II.
## Comments regarding the individual provisions

**Re Article I:**

**Re Point 1:**

The law is to be given a letter abbreviation.

**Re Point 2 (Section 2(h)):**

In view of the introduction of a statutory authorisation for conservation breeding areas in the new Section 9a (see point 5), it seems necessary to supplement the definitions in Section 2 with those of "conservation breeders". In particular, it should also be made clear that the term "conservation breeder" may include not only an individual beekeeper who holds autochthonous bee breeds that merit protection or are threatened with extinction, but also a collective of beekeepers (e.g. a beekeeping club).

**Re Point 3 (Section 4):**

Based on practical experience, the minimum distances in Section 4 are to be supplemented by a minimum distance for apiaries with more than 60 beehives. The minimum distance should be at least 500 metres as the crow flies, whereby the beekeepers can agree privately and autonomously on smaller distances than those provided for by law in accordance with the applicable regulations (cf. Section 4). The proposed distance regulation is based on the requirements of beekeeping, taking into account the size distribution of Tyrolean beekeepers in 2024 according to the information provided by the Tyrolean Beekeeping Association.

**Re Point 4 (Section 8):**

A legally precise and enforceable legal basis is to be created with regard to breeding centres for purebred bee breeds and their protected areas. The purpose of these regulations is to preserve the different bee breeds in their purest form. This provision is equivalent to a quantitative restriction under EU law, but it is justified by the objective of preserving biodiversity and ensuring the continued existence of bee breeds, which is necessary and proportionate in its design within the meaning of Article 36 TFEU (see Judgment of 3 December 1998, Bluhme, C-67/97, EU:C:1998:584, 1-8033.

**Re Point 5 (Section 9a):**

In the proposed Section 9a, the government of the State is to be authorised to issue an ordinance to establish conservation breeding areas for autochthonous bee breeds that merit protection or are threatened with extinction. There is currently at least one area in Tyrol that, due to its topographical and climatic conditions, would be well suited to being considered a conservation breeding area.

The conservation of an autochthonous bee breed that merits protection or is threatened with extinction is in the public interest if it serves the prevention of the extinction of the bee breed concerned or sustainable conservation breeding of same.

The provincial government should only be able to issue such a regulation if scientific evidence of the protection of the autochthonous bee breed and a conservation breeding programme is submitted by the respective conservation breeder. The conservation breeding programme must include, for example, the breed being bred, the breeding objective, the selection criteria (e.g. economic criteria, breed characteristics, etc.), performance testing and documentation (breeding book) and the planning, implementation and control of the intended beekeeping. This must be based on current research in the domains of science and technology.

In conservation breeding areas, beekeepers should be prohibited from establishing and maintaining apiaries of species other than those specifically designated for conservation. In addition, in conservation breeding areas, the migration of bees according to the definition provided in Section 5, i.e. the movement of populated beehives, in particular for the purpose of honey production, extraction of other bee products, pollination, breeding or development of bee colonies, should be prohibited.

In so far as the conservational purpose of the conservation breeding area is not adversely affected, it should be possible to lay down exceptions to the prohibitions set out in Paragraph 2 in regulations pursuant to Paragraph 1. Thus, in conservation breeding areas, for example, the keeping and setting up or moving apiaries of other bee breeds (such as *apis mellifera carnica*) may also be authorised if this is compatible with the objective of the conservation breeding area.

Regulations adopted on the basis of Paragraph 1 shall be reviewed periodically at intervals not exceeding 10 years. For this purpose, the conservation breeder shall be required to submit to the provincial government, upon written request, proof of the current protection status of the bee breed and, if required, an updated conservation breeding programme. In particular, compliance with the conditions for declaring a conservation breeding area should be checked as part of this periodic evaluation. In addition, whether any other public interests outweigh the public interest in the continued existence of the conservation breeding area should be evaluated; for example, an overriding public interest in the preservation of the environment, animal health, safety or food supply could be considered if it becomes apparent that these are negatively impacted by the conservation breeding area.

Subject to the penalties outlined (see point 7), the conservation breeder should be required to carry out the breeding work in accordance with the conservation breeding programme that was submitted. At the same time, provision should be made for an obligation on the part of the conservation breeder to make known without delay any relevant changes to the fulfilment of the conditions referred to in Paragraph 1, in

particular with regard to the presence of autochthonous bee breeds that merit protection or are threatened with extinction in the relevant conservation breeding area as soon as they come to light.

**Re Point 6 (Section 12(1)(b)):**

In this case, a necessary adjustment of the penal provisions as a result of the inclusion of Section 9a should be made so that infringements of a prohibition pursuant to a regulation pursuant to Section 9a(1) may be penalised accordingly.

**Re Point 7 (Section 12(2)(d)):**

The proposed addition appears to be necessary in order to enable the imposition of administrative criminal penalties for breaches of the obligations provided for in Section 9a(4).

**Re Point 8 (Section 13):**

The title of the paragraph should be brought into line with the current legislative practice.

**Re Point 9 (Section 13(4)):**

Here, an adaptation of the data protection provisions necessary due to the inclusion of Section 9a is to be made.

**Re Point 10 (Section 14):**

Due to the current content of the provision (see only point 11), the paragraph heading should be adjusted appropriately.

**Re Point 11 (Section 14(6) and (7)):**

Re Paragraph 6: With a view to increasing the minimum distances laid down in Section 4 for apiaries with 60 or more beehives (point 3), provision should be made, on the basis of objective considerations, for a transitional provision for existing legally-established apiaries of this size, which would no longer meet the current statutory distance under Section 4 (500 metres as the crow flies). The new proposed minimum distance from other apiaries (Section 4) should not apply to existing apiaries with 60 or more beehives that are set up in accordance with the law under the current Section 4, i.e. those that have complied with the distances previously provided for by law or agreed under private law, if they have been entered in the Electronic Veterinary Register (VIS) at the time of the entry into force of this Act. If such an apiary registered in the VIS has 60 or more beehives at the time of the entry into force of this Act, it may therefore continue to exist permissibly even if, despite its size, the apiary, pursuant to Section 4, does not meet the minimum distance of 500 metres as the crow flies from other apiaries. However, this "locational advantage" should only apply until such a beehive has been relocated and/or extended. An extension in this sense exists, for example, if an apiary with 65 beehives (i.e. already an apiary of the largest category at the time of the entry into force of this law, for which the current Section 4 provides for a minimum distance of 500 metres) is to comprise 66 beehives. In this case, the new minimum distance from other apiaries must be respected. This differentiation seems appropriate in view of the fact that, on the one hand, a certain protection of legitimate expectations can be assumed with regard to the previously permissible locations and, on the other hand, any relocation or extension after the entry into force of this Act lies in the freedom of disposition of the individual beekeeper.

Re Paragraph 7: Since the statutory powers to issue statutory instruments under Section 8 (point 4) and Section 9a (point 5) are technical provisions within the meaning of Directive (EU) 2015/1535, notification is required under Section 3(1) of the Tyrolean Notification Act, LGBl. No 43/1999, as last amended by the LGBl Act No 21/2019. In any event, upon receipt of the notification by the European Commission, a standstill period of three months must be observed, which in certain cases may be extended by up to 18 months (cf. Section 4(1)-(4) of the Tyrolean Notification Act). In addition, pursuant to Section 4(6) of the Tyrolean Notification Act, the final technical regulation adopted must be transmitted to the European Commission without delay in accordance with Section 3(1) of the Tyrolean Notification Act. Given this context, it should be indicated that the obligations under Directive (EU) 2015/1535 have been fulfilled, and the notification number should be mentioned.

**Re Article II:**

This provision regulates entry into force.