

proposed for:  
Committee for Construction and Nature Conservation

## **Proposal**

**of the State Government of Upper Austria  
concerning the  
Provincial Act amending the Upper Austrian Structural Engineering Act 2013  
(Upper Austrian Structural Engineering Act Amendment 2026)**

[Verf-Verf-2013-8208-226]

### **A. General part**

#### **I. Reason for and content of the draft law**

This amendment primarily serves to implement European Union law. This concerns in particular

- adaptations to Regulation (EU) 2019/1020 of the European Parliament and of the Council, of 20 June 2019, on market surveillance and conformity of products and amending Directive 2004/42/EC and Regulation (EC) No 765/2008 and (EU) No 305/2011, OJ No 169 of 25/06/2019, p. 1, in the version of 1 October 2024, OJ L 90589, p. 1, and
- adaptations to Regulation (EU) 2017/1369 of the European Parliament and of the Council, of 4 July 2017, establishing a framework for energy labelling and repealing Directive 2010/30/EU, OJ No 198 of 28/07/2017, p. 1, as amended on 05/06/2020, OJ L 177, p. 1.

The changes in this amendment primarily concern the references to European legal acts, the activities, powers and measures of the market surveillance authority, definitions and penal provisions.

## **II. Basis of legislative competence**

The competence of the state legislature to enact the present amendment to the Upper Austrian Structural Engineering Act 2013 derives from Article 15(1) of the Federal Constitutional Act (B-VG).

## **III. Financial impact on local authorities**

This amendment to the act is not expected to result in any significant additional costs for the province, the municipalities, or the federal government compared to the current legal situation.

## **IV. Financial impact on citizens and businesses, including the impact on the economic standing of Upper Austria**

The provisions contained in this provincial act do not impose any financial burdens on citizens in general or on businesses in particular.

## **V. Relationship to European Union legislation**

This provincial act does not conflict with any mandatory provisions of EU law, as far as can be ascertained. Rather, the amendment at hand makes adjustments to the EU legal provisions cited in greater detail under Point I.

## **VI. Impact on different social groups, particularly on men and women**

The proposed provisions do not have, as far as can be ascertained, any direct or indirect different effects on various groups in society, in particular on women and men. The texts of this amendment have been formulated in a gender-inclusive manner.

## **VII. Impact on environmental policy, particularly climate protection**

The provisions contained in this provincial act do not have any significant relevance to environmental policy.

## **VIII. Specific aspects of the legislative process**

The draft law at hand does not contain any constitutional provisions. No provision is made for the participation of federal bodies as defined by Article 97(2) of the Federal Constitutional Act. The draft law does not involve any state or municipal fee as defined in § 9(1) F-VG 1948 (Financial Constitution Act of 1948). There is also no other obligation to notify the Federal Chancellery of this legislative decision before its promulgation.

In accordance with § 3 of the Upper Austrian Notification Act 2017, this draft law is to be transmitted to the Federal Government for forwarding to the competent European bodies in order to comply with the 'Information Directive' (EU) 2015/1535.

### **B. Special Part**

#### **Regarding Article I(1) (Table of Contents):**

The table of contents must be adapted in accordance with the amendments.

#### **Regarding Article I(2) (§ 51):**

The amendments to § 51 are necessary due to the adaptation to Regulation (EU) No 305/2011.

#### **Regarding Article I(3) (§ 54):**

The definitions in § 54 are supplemented in accordance with Regulation (EU) 2019/1020 and Regulation (EU) 2017/1369.

#### **Regarding Article I(4) and (7) (§ 55(1) and § 65):**

The previous § 55(1) and the previous § 65 correspond to Articles 18 and 24 of the agreement pursuant to Article 15a B-VG on cooperation in the construction sector and the provision of construction products on the market and their use. The term 'harmonised technical specification' in the aforementioned agreement is still based on Directive 89/106/EEC (Construction Products Directive). The definition of this term has changed with Regulation (EU) No 305/2011. According to Article 2(10) of Regulation (EU) No 305/2011, harmonised technical specifications include harmonised standards and European Assessment Documents (EADs). Since an EAD is not mandatory to apply (Article 4 of Regulation [EU] No 305/2011), the obligation to affix CE marking only arises when a European Technical Assessment (ETA) is available for a specific product and not when the harmonised technical specification EAD is available. Against this background, the provision

must be adapted accordingly, thus also complying with the suggestion of the Austrian Institute of Construction Engineering.

**Regarding Article I(5) and (8) (§ 60(5) and § 66(2)):**

The previously planned newsletters of the Austrian Institute of Construction Engineering have been discontinued and are therefore no longer available as a means of promulgation. The amendment therefore stipulates that announcements must in future be made via the website of the Austrian Institute of Construction Engineering. This announcement must in turn be referenced on the state's website.

**Regarding Article I(9) to (16) (§ 75, § 77, and § 78(3)):**

§ 8 (Market surveillance of construction products) contains adjustments to Regulation (EU) 2019/1020. All references to Regulation (EC) 765/2008 shall be replaced by references to Regulation (EU) 2019/1020. The provisions of Regulation (EU) 2019/1020 are binding and directly applicable in every Member State. The Austrian Institute of Construction Engineering is the market surveillance authority for construction products and is therefore entrusted with the activities pursuant to Article 11 of Regulation (EU) 2019/1020, vested the powers of a market surveillance authority pursuant to Regulation (EU) 2019/1020 (Article 14, except Paragraph 3(c)) and is required to take market surveillance measures pursuant to Article 16 of Regulation (EU) 2019/1020 where needed.

The market surveillance authority shall take appropriate measures pursuant to Article 16(1) of Regulation (EU) 2019/1020 if a harmonised construction product, when used as intended or in a foreseeable misuse and when properly installed and maintained, 'is likely to endanger the health and safety of users' (Letter a) or 'does not comply with the applicable Union harmonisation rules' (Letter b). In such a case, the market surveillance authority shall, in accordance with Article 16(2) of Regulation (EU) 2019/1020, take immediate, appropriate and proportionate corrective measures to eliminate the risk or non-compliance within a specified period. According to Article 19(1) of Regulation (EU) 2019/1020, the market surveillance authority must ensure that products that pose a serious risk are recalled or withdrawn from the market. Market surveillance measures pursuant to Article 16 of Regulation (EU) 2019/1020 may be taken as measures of direct command and enforcement without prior administrative procedure in the case of construction products that pose a serious risk and require rapid intervention.

At the suggestion of the Austrian Institute of Construction Engineering, the provisions concerning the activities, powers and measures of the market surveillance authority are being adapted. This also serves to harmonise provisions under national law with regard to market surveillance.

**Article I(17), (19) and (20) (§ 79(2) and § 85(1)(14) to (17)):**

With regard to the reporting obligations of the building authority and the criminal offences, several adjustments (in particular to citations) are made and new administrative offences are added to § 85(1) with regard to Regulation (EU) Clause 305/2011, Regulation (EU) 2017/1369 and Regulation (EU) 2019/1020, according to which penalties are to be established for violations of the Regulation (see Article 41 of Regulation [EU] 2019/1020, for example).

**Regarding Article I(21) (§ 85(3)):**

The minimum penalty of EUR 2 500 is included in § 85(3) – at the suggestion of the Austrian Institute of Construction Engineering and following the example of other countries (cf. § 40(2) of the Tyrolean Construction Products Act 2016 or § 18(2) of the Salzburg Construction Products Act) – and also complies with the requirement of Article 41 of Regulation (EU) 2019/1020, according to which sanctions must be effective, proportionate and dissuasive.

**Regarding Article I(22) (§ 85(4)):**

The amendment to § 85(4) clarifies that administrative offences under Paragraph 1 are to be classified as continuing offences if the unlawful situation created by the administrative offence persists.

**Regarding Article I(23) and (24) (§ 85, Paragraphs 5 and 6):**

The amendment in Paragraph 5 results in principle from the agreement pursuant to Article 15a B-VG on cooperation in the construction sector and the provision of construction products on the market and their use. Therefore, the restriction to certain numbers in Paragraph 5 was removed, so that now all fines imposed on the basis of Paragraph 1 will be paid to the Austrian Institute of Construction Engineering.

The penalty of forfeiture of construction products can now be imposed if these items are related to an administrative offence under Paragraph 1, Clauses 1, 2 and 5 to 14 (Paragraph 6). This change also results in principle from the agreement pursuant to Article 15a B-VG on cooperation in the construction sector and the provision of construction products on the market and their use. The extension of the forfeiture provisions to further administrative offences mentioned in Paragraph 1 serves the purpose of more efficient market surveillance.

**Regarding Article II (Entry into force and transitional provision):**

Article II(1) contains the entry into force provision for the amendment at hand.

Article II (2) stipulates the continued validity of the existing provisions for pending administrative penalty proceedings.