



2026

As at: February

Draft for Review
concerning the
Provincial Act amending the Upper Austrian Waste Management Act (AWG) 2009
(Upper Austrian Waste Management Act Amendment 2026 – Upper Austrian AWG
Amendment 2026)

A. General part

I. Objective and content of the draft act

The present draft act further develops and modernises the Upper Austrian Waste Management Act (AWG) 2009. The aim is to adapt the legal framework to the requirements arising from current developments in waste management.

In addition, it will also address new challenges such as the increasing demands placed on separate collection systems, the promotion of waste prevention and re-use systems, and the testing of innovative technologies. The draft act also aims, on the one hand, to prepare Upper Austria's waste management system for extraordinary events of a crisis-level or catastrophic magnitude and, on the other hand, to align it for the future in such a way as to promote the separate collection of waste and to enable municipalities to carry out pilot projects aimed at reducing the volume of residual waste.

In the context of services of general interest, the proper collection, recovery and disposal of used textiles from private households must be ensured. At the same time, coordinated and efficient waste management must also be ensured. Therefore, the establishment of a mandatory transfer obligation for used textiles from private households to the District Waste Management Associations (Bezirksabfallverbände - BAV) or towns with their own charters is intended to ensure that these are collected and recovered in an orderly manner. Firstly, the 'Upper Austrian Used Textile Solution' helps avoid the problems that regularly arise in collections carried out by private collectors as well as to increase the collection rate of separately collected used textiles, and, secondly, helps contribute to the protection of the environment and the local landscape.

In the wake of the COVID-19 crisis, the systemic relevance of waste management has also been further highlighted. Public waste collection facilities (in particular waste collection centres) must therefore be regarded as critical infrastructure and capable of being maintained and kept in operation even in the case of extraordinary events of a crisis-level or catastrophic magnitude, such as pandemics. When operating the waste collection centres, account must be taken of the links between waste management and the collection of waste, the disposal of which must be maintained for hygienic reasons.

The Upper Austrian AWG Amendment 2021, Provincial Law Gazette (LGBl.) No 86/2021, introduces Section 14, Paragraph 1, Point 13, and Section 17, Paragraphs 2 and 3, of the Upper Austrian AWG 2009. These provisions are intended to ensure a uniform approach in the event of a disaster by having the Provincial Waste Management Association (Landesabfallverband - LAV) act in a coordinating capacity and prepare an advance concept for the operation of the waste collection centres in the event of a disaster, which must be approved by the provincial government.

To avoid any ambiguity, the term 'disaster' as defined in the Upper Austrian Disaster Prevention and Management Act is now being replaced by the neutral and broader term 'extraordinary events of a crisis-level or catastrophic magnitude' including an illustrative list of examples. Furthermore, efforts are also continuing to develop a standardised approach to the operation of waste collection centres in Upper Austria in the event of extraordinary events of a crisis-level or catastrophic magnitude, which the District Waste Management Associations and towns with their own charters are obliged to comply with in order to ensure a uniform approach. The Provincial Waste Management Association also has an overarching coordination and monitoring function in this regard. The regulatory power to set out the details of the scheme will not be exercised; instead, the requirements will be incorporated directly into the act.

With the inclusion of Section 17a of the Upper Austrian AWG 2009, the recommendation made by the Provincial Court of Audit in its 2023 initiative audit on 'Waste Management in Upper Austria' regarding the creation of a legal framework for effective waste disposal in the event of a crisis is also being implemented.

Finally, conceptual clarifications and adjustments based on practical enforcement experience are being made in order to increase legal certainty and to ensure efficient and sustainable waste management in Upper Austria.

The main points of this draft act are as follows:

- Establishing the obligation for separate collection of waste in publicly accessible areas. To this end, the definition of 'separate collection' is taken from the (Federal) Waste Management Act 2002, and the further framework conditions are implemented in Section 6, Paragraph 1, Point 11, and Section 11 of the Upper Austrian AWG 2009. This complies with the general obligation on waste producers to separate waste, as set out in Section 15 of the Waste Management Act 2002, and makes a further contribution to the recycling targets of the federal government and the European Union.
- With regard to waste prevention at events, clarifications have been provided regarding the maximum number of attendees for single-day and multi-day events, as well as the use of tableware and cutlery alternatives made from renewable raw materials. In future, the use of reusable cutlery made from renewable raw materials will also be exempt from the requirement to use reusable cutlery (Section 4a, Paragraph 2, of the Upper Austrian AWG 2009).
- The municipality will introduce a scheme for the collection of organic waste from organic waste bins across the entire municipal area. At the same time, the municipality is granted the authority to provide for exceptions to the collection area (special areas) in the waste management regulations.
- The extension of the option to set time limits under Section 6, Paragraph 7, of the Upper Austrian AWG 2009, takes account of the practical experience gained to date in the area of extended special categories within municipal waste management regulations, thereby reducing the administrative burden.
- Within the waste management sector, a legal obligation to deliver used textiles intended for disposal is being enshrined in law, requiring such textiles to be delivered to District Waste Management Associations or to towns with their own charters, in order to ensure their proper disposal on a permanent basis.
- Enabling pilot projects for the collection of municipal waste, including, where necessary, special arrangements for fee structures (keyword: 'digital waste bin') by authorising the carrying out of pilot schemes and the data collection required for this purpose.
- Clarification of the provincial government's remit as the supervisory authority responsible for auditing the budgets and final accounts of the District Waste Management Associations and the Upper Austrian Provincial Waste Management Association.
- Establishing specific guidelines for the design of the concept for the operation of the waste collection centres in the case of extraordinary events of a crisis-level or catastrophic magnitude.
- Repeal of Section 23 of the Upper Austrian AWG 2009 and the associated obligation for waste recovery and disposal companies to notify the authorities of waste generated outside Upper Austria that is to be disposed of in Upper Austria. This is in line with the province's deregulation efforts.

II. Basis of legislative competence

The competence of the provincial legislature is derived from Article 15, Section 1, in conjunction with Article 10, Section 1, Paragraph 12, of the Federal Constitutional Act [B-VG] as well as Section 8 of the Financial Constitutional Act of 1948 [F-VG 1948].

III. Financial implications for local authorities

This draft act will result in minor additional expenditure and associated costs for municipalities compared with the current legal situation. These are justified by the costs of the additional waste bins to be installed in publicly accessible areas, the associated increase in staffing costs and the potential increase in the frequency of collection of the waste bins. However, due to the newly introduced deposit system for all single-use beverage packaging made of plastic and metal, a total cost saving is expected. A final cost estimate will only be possible once the scheme has been implemented in practice.

The workload incurred by the Upper Austrian Provincial Waste Management Association in drawing up the plan for the organised collection of waste in the case of extraordinary events of a crisis-level or catastrophic magnitude was already taken into account within the framework of the Upper Austrian AWG Amendment 2021 (GP XXVIII, AB 1665/2021 Point III. 3.3.).

Furthermore, costs may be incurred in the context of the approval of pilot projects pursuant to Section 11b of the Upper Austrian AWG 2009. In the context of the implementation of pilot projects, it should be borne in mind that the planning, design and implementation of such digitalisation-driven projects may initially entail additional financial expenditure. This arises in particular from the necessary technical infrastructure and integration into existing systems. However, this is balanced by the stated aim of achieving, over the medium to long term, a significant reduction in overall costs for municipalities, District Waste Management Associations, towns with their own charters, citizens and the business community by enabling a more needs-based and efficient waste collection system. As a result, the projects not only help to conserve public resources, but also increase the transparency and traceability of the fee structure and make a significant contribution to the sustainable development of municipal waste management.

The repeal of Section 23 of the Upper Austrian AWG 2009 does not require the processing of approximately 380 notifications per year, which significantly reduces the administrative burden on the provincial government. At the same time, the removal of the notification requirement also eases the burden on businesses.

IV. Financial implications for citizens and businesses, including the implications for the economic standing of Upper Austria

The provisions contained in this draft act will result in a slight additional financial burden on citizens in general and on businesses in particular.

In municipalities where there is currently no comprehensive organic waste collection scheme in place, waste disposal charges may be adjusted accordingly. However, where a comprehensive organic waste collection scheme is already in place, no change to the charges is required.

With the extension of organic waste bin collection to the entire municipal area, an increase in separately collected organic waste and a corresponding decrease in residual waste are to be expected. Based on expert projections, this will result in an additional annual cost of around EUR

10.50 per household for the treatment of the extra organic waste bin, offset by a saving of around EUR 5 per household due to the reduction in residual waste volumes. As a result, an average additional burden of around EUR 5.50 per household per year is to be expected, unless a comprehensive organic waste collection scheme is already in place.

In 2024, the company O.Ö. Landes-Abfallverwertungsunternehmen GmbH was able to generate EUR 220 per tonne from the recycling of textiles and EUR 1 074 per tonne from the recycling of shoes. These amounts were refunded to the Provincial Waste Management Association and to towns with their own charters (factors reducing revenue, such as personnel and infrastructure costs at the waste collection centres, are not yet taken into account).

The revenues shown are the result of a controlled collection process for used textiles, which ensures high-quality pre-sorting. With the introduction of a mandatory delivery scheme, it is expected that an even greater proportion of high-quality, salvageable material will be recorded in the future. This not only boosts revenue from salvaging but also leads to a reliable and generally growing revenue base, even when taking into account market-related fluctuations in the textile sector. In this way, a sustainable and sound refinancing of the waste management infrastructure can be ensured.

V. Relationship with European Union legislation

This draft act does not, as far as can be seen, conflict with any mandatory provisions of EU Law. On the contrary, the rules on the separate collection of waste in public places and on waste prevention at events are specifically designed to ensure that the legal situation complies with EU law.

Mandatory delivery for used textiles is covered by EU law; further details can be found in the explanatory notes (see Art. I, Point 19).

A data protection impact assessment within the meaning of Article 35 of the General Data Protection Regulation is not required.

VI. Implications for different social groups, particularly for women and men

As far as can be seen, the provisions contained in this draft act have neither a direct nor indirect impact on the various groups in society, particularly men and women.

The texts of the present draft act have been formulated in a gender-appropriate manner. Adapting the entire wording of the act would – in comparison with the substantive changes of the current amendment – involve disproportionate effort and has therefore not been undertaken here, but shall be carried out at the next appropriate opportunity.

VII. Implications for environmental policy, particularly climate protection

The provisions contained in this draft act are relevant to environmental policy in that they are consistent with the European Union's Waste Framework Directive.

One of the aims of implementing pilot projects is to design waste collection in such a way as to reduce greenhouse gas emissions through needs-based collection and efficient route planning.

VIII. Specific aspects of the legislative process

The present draft act does not contain any constitutional provisions.

Collaboration between federal bodies within the meaning of Art. 97, Section 2, of the Federal Constitutional Act is not envisaged. As the draft act, in Article I, Points 21, 27, 28 and 29, concerns the amendment of a provision relating to a municipal levy (Section 18: Waste Disposal Charge), it must, in accordance with Section 9, Paragraph 1 of the Federal Constitutional Act of 1948, be notified to the Federal Chancellery immediately after its adoption and prior to its promulgation.

In accordance with Section 3 of the Upper Austrian Notification Act 2017, this draft act 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

Re Article I, Points 1, 2, 3 and 4 (Table of Contents):

The necessary additions to the table of contents are made here.

Re Article I, Point 5 (Section 2, Paragraph 4, Point 14):

Following the amendment of the Waste Framework Directive 2008/98/EC by Directive (EU) 2018/851, the definition of municipal waste was revised under the amendment to the Waste Management Act (AWG) as part of the Circular Economy Package (Federal Law Gazette (BGBl) I No 200/2021)). In doing so, the federal legislature has adopted the EU legal term verbatim. Accordingly, pursuant to Section 2, Paragraph 4, Point 2a, of the AWG 2002, municipal waste is mixed waste and separately collected waste from households, including paper and cardboard, glass, metal, plastics, bio-waste, wood, textiles, packaging, waste electrical and electronic equipment, waste batteries and accumulators, and bulky waste, including mattresses and furniture. Under the constitutional division of powers set out in Article 15 of the Federal Constitutional Law (B-VG) in conjunction with Article 10, Paragraph 1, Point 12, of the Federal Constitutional Law (BVG), the regulation of the organisation and implementation of the collection and treatment of non-hazardous municipal waste, including used textiles from private households, falls within the remit of the provincial legislature. For the sake of clarity, the definition of municipal waste is therefore amended to include 'used textiles'.

Re Article I, Points 6, 15 and 20 (Section 2, Paragraph 4, Point 23, Section 6, Paragraph 1, Point 11, and Section 11):

In accordance with the precautionary principle and the principle of sustainability, as set out in Section 1, Paragraph 1, Point 3a, of the Waste Management Act 2002, waste management must be organised in such a way that 'waste is collected separately and is not mixed with other waste or other materials with different properties, where this is necessary to comply with the objectives and principles of this Federal Act and, in particular, the hierarchy set out in Paragraphs 2 and 2a, and to facilitate or improve preparation for reuse, recycling or other recovery processes'.

Pursuant to Article 11, Section 1, of the Waste Framework Directive 2008/98/EC, as amended by Directive (EU) 2018/851, Member States (subject to Article 10, Sections 2 and 3) must also introduce separate collection of waste – at least for paper, metal, plastics, glass and textiles. The separate collection is intended to promote preparing for re-use and the high-quality recycling of the waste.

The newly introduced definition of 'separate collection', which was adopted verbatim from Section 2, Paragraph 5, Point 10, of the AWG 2002, in conjunction with Section 6, Paragraph 1, Point 11, and the amendment to Section 11 concerning the waste collection in publicly accessible areas within the municipal territory, ensures that the conditions for the separate collection of municipal waste generated in these areas are also met.

Examples of waste generated in publicly accessible areas that must be collected separately include plastic bottles and cups, metal cans and waste paper. These types of waste must be collected separately from residual and organic waste.

Separate collection of household waste at these locations must be carried out by the municipality or by third parties commissioned by it, insofar as this is possible. When assessing the criterion 'insofar as possible', account must be taken, inter alia, of local conditions (infrastructure, roads, transport routes) and the feasibility of collection by the municipality without undue expenditure or under difficult circumstances. The expected frequency must also be taken into account. The aim is to ensure that separate collection is made possible in those areas where significant volumes are expected – where municipalities have relevant empirical data. This must be indicated separately in the waste regulations of the respective municipality.

The organised collection of waste materials generated in publicly accessible areas must be carried out in accordance with Section 14, Paragraphs 1 and 2, in consultation with the District Waste Management Association within its jurisdiction or with the town that has its own charter.

Re Article I, Points 6, 23, 32 and 33 (Section 2, Paragraph 4, Point 24, Section 14, Paragraph 1, Point 13, and Section 24):

To improve clarity and avoid ambiguities in connection with the Upper Austrian Disaster Prevention and Management Act, the narrower term 'disaster' is replaced by a separate, broader definition of extraordinary events of a crisis-level or catastrophic magnitude for the purposes of waste

management planning and preparedness. The aim is to make the waste-related infrastructure more resilient. This does not affect the competence of the provincial and federal authorities in regards to crisis and disaster management.

Examples of extraordinary events of a crisis-level or catastrophic magnitude, the occurrence of which may impair the collection or treatment of non-hazardous waste by the municipality, District Waste Management Associations or towns with their own charters, or by third parties commissioned by them, in accordance with the public interest as set out in Section 1, Paragraph 3, include natural disasters, epidemics and pandemics, fuel and energy shortages, and blackouts.

Natural disasters are events that have direct natural causes or occur in the natural environment. The following are examples of natural disasters that may occur in Upper Austria and for which precautions must be taken:

- Flooding;
- Storms;
- Dam breaches/inland tsunamis;
- Avalanches/mudslides/landslides/rockfall;
- Severe weather (lightning, hail, snowstorms, etc.).

In such cases, buildings and vehicles may become damaged by water, mud, rocks or similar debris. The large quantities of waste generated in such events, such as bulky waste, hazardous materials, waste wood, sludge and debris, must be disposed of as quickly as possible.

An epidemic refers to a highly concentrated outbreak of a disease, particularly an infectious disease, that is limited in both geographical scope and duration. A pandemic is a global epidemic; the most recent example of which is the COVID-19 crisis. In such cases, there may be an increased demand for medical consumables and protective equipment, for example, which must be disposed of in accordance with hygiene regulations.

A fuel and energy shortage occurs, for example, in the event of a shortage of electricity, gas or fuel. In such cases, there may be an increased volume of certain types of waste (e.g. food waste due to a break in the cold chain), as well as restrictions on waste transport and the operation of waste collection centres, as certain parts of the facilities may not be functioning at all or only partially.

Blackout is a prolonged, large-scale power outage that can affect several countries simultaneously and whose effects are far-reaching but difficult to predict in concrete terms. The causes of this may include extreme weather events, technical failures, human error, sabotage, terrorist attacks or cybercrime (see the Blackout Contingency Plan Office of the Upper Austrian Provincial Government, Department of Home Affairs and Local Government, Version 1.0, dated April 2022). Due to the failure of cooling systems (in the absence of emergency power supply) in households and businesses, an increase in waste volumes (household waste, commercial waste similar to household waste, and biogenic waste) is to be expected, which, in the event of a (partial) failure of the otherwise regularly scheduled collection, may become a challenge, depending on weather conditions (heat, etc.).

In any event, Section 2, Paragraph 4, Point 24, does not cover animal diseases and radiological emergencies, such as accidents at nuclear power stations in neighbouring countries, as the substances and materials arising from such events and requiring disposal are not classified as

'waste' (cf. Section 3, Paragraph 1, Points 4 and 5a, of the Waste Management Act 2002) and therefore do not fall within the scope of the Upper Austrian AWG 2009. In the event of such unforeseen circumstances, it should be possible for the waste management sector – either as a secondary measure or in addition to any instructions issued by civil protection or health authorities – to maintain waste collection operations for as long as possible or to adapt them to the situation at hand

The terminology also needed to be updated in the table of contents and in Section 14, Section 17a and Section 24.

Re Article I, Points 7, 8 and 9 (Section 4a, Paragraphs 2, 4a and 5):

Based on experience gained in implementing the provisions relating to waste prevention at events, clarifications have been made regarding the exemption for the use of containers made of renewable raw materials and the limit on attendance for multi-day events.

Under the new wording of Section 4a, Paragraph 2, the use of reusable cutlery made from renewable raw materials is now also covered by the exemption.

The new Section 4a, Paragraph 4a, stipulates that, with regard to the obligation to draw up a waste management plan for multi-day events, the number of potential attendants expected per day must be calculated. From a waste management perspective, it is the potential number of people generating waste that is relevant.

Thus, in the case of multi-day events, the potential number of attendants per day must be calculated. This was already evident from the explanatory notes to the legal provision of Section 4a ([Annex 1665/2021](#), XXVIII. (GP)).

Re Article I, Points 10 to 12 and 14 (Section 5, Paragraphs 2, 3, 4 and 5, and Section 6, Paragraph 1, Point 3):

In order to increase the collection rate for organic waste, the collection area for the organic waste bin is defined in accordance with Section 5, Paragraph 3, to cover the entire municipal area. The aim of making the use of the organic waste bin a compulsory and comprehensive obligation is to ensure a significant increase in the collection of biodegradable waste. Furthermore, the mandatory use of the organic waste bin is intended to significantly reduce the volume of residual waste, thereby enabling an overall reduction in the costs of residual waste treatment. Notwithstanding this obligation, the option of proper on-site composting remains (see Section 9, Paragraph 2). This means that, in addition to using the organic waste bin, waste producers and property owners are permitted to compost organic waste themselves. Proper on-site composting is an alternative option. On-site composting is considered to be proper in accordance with the law if it complies with the objectives and principles of this provincial law; in particular, it must not cause any harmful effects on soil or water, must not cause unreasonable nuisance to neighbours, and must use only the household's own organic waste of plant origin. As with the collection of household waste, an

exception regarding the collection area for organic waste bins may be specified in the waste regulations of the respective municipality.

By stipulating that the collection area for the organic waste bin essentially covers the entire municipal area, further adjustments are required in Section 5, Paragraphs 2, 4 and 5, and Section 6, Paragraph 1, Point 3.

Regarding Article I, Points 13 and 16 (Section 6, Paragraph 1, Point 2, and Paragraph 2):

In accordance with Section 6, Paragraph 1, Point 2, the special areas must be defined with sufficient precision to ensure that the properties located within them can be clearly identified, for example by listing house and plot numbers, streets, etc. Organic waste from properties in special areas may be disposed of at facilities within the meaning of Section 6, Paragraph 1, Point 6, or at collection points. The municipality has the option of setting up collection points, e.g. in the form of collection containers, for the delivery of organic waste bins, for example if a special area comprises several properties. The waste regulations must specify where the collection point is located and when organic waste bins can be delivered.

Re Article I, Point 17 (Section 6, Paragraph 7):

The time limits for authorisations set out in Section 6, Paragraph 7, for the extended special area in the municipal waste regulations pursuant to Paragraphs 4 and 6 are extended from five to seven years for the purposes of deregulation. This will help to reduce administrative costs.

Re Article I, Point 18 (Section 9, Paragraph 2):

Municipalities have the option of designating a specific collection area for organic waste, similar to the arrangements for household waste collection. Special collection areas may be established for areas that are difficult to access, remote or sparsely populated, or where roads are too narrow for refuse collection vehicles. The mandatory collection of organic waste bins in hard-to-reach areas often results in long journeys with high CO₂ emissions. Consequently, in such cases, for environmental and economic reasons, a collection point as defined in Section 6, Paragraph 1, Point 2, may be established, or the organic waste may be deposited at a facility within the meaning of Section 6, Paragraph 1, Point 6. One criterion for establishing a special collection area is the cost of collection. It is reasonable to assume that the designated area for organic waste collection may tend to be larger, as the expected volume of organic waste in sparsely populated and predominantly agricultural areas will be low. In such areas, unlike with general waste, the collection costs would be disproportionately high in relation to the volume of waste collected, which justifies an exemption from collection.

Re Article I, Points 19 and 35 (Section 9, Paragraph 4, Point 1a, and the new Section 25, Paragraph 1, Point 4):

Pursuant to their statutory mandate (Section 14, Paragraph 1, Point 2), District Waste Management Associations and towns with their own statutes are required to establish, operate and maintain the organisational structures necessary for the proper collection of waste materials (e.g. collection facilities), or to have such structures established, operated and maintained by third parties.

In accordance with the provisions of the Waste Framework Directive (cf. Articles 11 and 22d) and federal law (cf. Section 28b of the Federal Waste Management Act 2002), separate collection is mandatory for certain waste streams, in particular used textiles. The separate collection shall be carried out in such a way as to enable preparation for re-use or high quality recycling of the separately collected waste.'

Used textile is defined as second-hand clothing (e.g. jackets, trousers, shirts), household linen (e.g. bed linen, towels) and shoes that are discarded by their original owner but are still usable or suitable for material recycling. These must be collected separately from other waste so that they can be sent for authorised recovery processes. Other textile waste (e.g. soiled or damaged textiles or shoes) that cannot be reused or otherwise recycled in a permissible manner must be disposed of as residual waste.

The aim is to improve the management of textile waste in line with the 'waste hierarchy' enshrined in the Waste Framework Directive, whereby priority is given to waste prevention, preparation for reuse and recycling of textiles over other recovery options and disposal, and 'the polluter pays' principle is implemented. For this reason, an obligation to deliver used textiles to municipal collection points is being introduced into provincial law.

The textile sector is, in fact, resource-intensive. Environmental impacts arise not only in relation to the extraction of raw materials and the production of textiles, but also once clothing, footwear and home textiles have reached the end of their useful life.

The current trend towards fast fashion often promotes lower quality and therefore a shorter lifespan for textiles. This in turn leads to increasing volumes and difficulties in waste management for used clothing and household textiles. Depending on the type of textiles and their composition, high costs can result from recycling or environmentally friendly disposal processes.

In Upper Austria, alongside the organised collection of used textiles from private households by waste management associations, a system of collection via containers operated by various private providers has also developed. In practice, however, this can sometimes give rise to considerable problems.

The container collection services offered by private companies can often hinder salvaging efforts. Used textiles deposited by waste owners are usually not properly packaged, not complete (e.g. individual shoes) or, when the collection points are full, are left next to the collection points without any protection from the elements. Wet and soiled textiles cannot be recycled and must be disposed of as residual waste.

In contrast, the collection of used textiles at recycling centres from District Waste Management Associations and towns with their own charters is a tried-and-tested and well-established system.

Special breathable and see-through bags are provided there for packing the textiles, so that quality control can take place as soon as the items are received or sorted. The collection of used clothing takes place in a designated, usually covered area, under the supervision of the waste collection centres. Shoes are collected separately

The collection of used textiles from private households should primarily take place via the existing waste collection centres. These organisations have the necessary infrastructure and organisational capacity to ensure the orderly, controlled and high-quality collection of used textiles. Other collection methods, in particular collection containers, should be treated as secondary to collection via recycling centres and should only be used as a supplementary measure. The legislation deliberately leaves the District Waste Management Associations and towns with their own charters a degree of discretion in this regard, to allow them to respond flexibly to local circumstances.

Particularly in urban areas, collection bins for used textiles are regularly overfilled or soiled. However, cleaning and removing the waste is usually difficult, as private operators are generally not available. In practice, the responsibility for disposing of improperly stored waste falls once again on the municipalities. This results in additional costs there

In the case of private collection systems, used textile is sometimes exported to third countries under the pretext of reuse. In the process, some of the exported, unsorted textiles may end up in (illegal) landfills in third countries.

Furthermore, experience shows that private companies only operate where economically recyclable material streams promise sufficient revenues. It has also been shown in the past that collection activities increased significantly during periods when the recycling of used textiles was particularly lucrative. In the context of used textiles, this means in practice that private operators focus on economically viable textile fractions (items for the second-hand market, materials for recycling) and only offer collection services where these items are generated. Simply managing economically viable areas and waste at times when it is economically advantageous leads to a fragmented collection system and gaps in waste disposal services.

Against this background, a new regulatory framework for used textiles from private households is now being established in the form of an obligation to deliver.

- This provincial measure interferes with the freedom to provide services guaranteed by EU primary law. However, this interference is permissible under EU law, as it meets the standard of justification established by the European Court of Justice (ECJ, 30 November 1995, Case C-55/94, Gebhard), as will be explained below. The obligation to deliver is:
 - non-discriminatory;
 - justified due to overriding reasons relating to the public interest;
 - suitable for achieving the objectives pursued; and
 - does not go beyond what is necessary to achieve the objectives.

With regard to non-discrimination, it should be noted that the proposed regulations apply equally to both domestic and foreign private collectors. Since the criteria do not rely on other factors that would be easier for domestic companies to meet, there is also no indirect discrimination.

The provision pursues overriding reasons relating to the public interest, in particular those set out by the Court of Justice of the European Union (starting with ECJ 7 February 1985, Case 240/83, *Association de défense des brûleurs d' huiles usagées*, Case 240/83, Recital 15). This also includes the protection of the urban environment (ECJ 30 January 2018, joined cases C-360/15 and C-31/16, *Visser*, Recital 135).

Furthermore, the measure is justified by the need to protect the local landscape, which is also recognised by the Court of Justice (ECJ 29 January 2001, Case C-17/00, *De Coster*, Recital 36) as an overriding reason relating to the public interest.

The exclusive municipal collection scheme for used textiles ensures that textiles are collected in a manner that maximises their potential for further recovery. This is the only way to promote reuse and recycling, meet targets, and continuously reduce environmentally harmful disposal. Where used textiles are collected entirely through the municipal collection system, the procedures described ensure that they meet certain quality standards upon delivery (clean, dry, complete and undamaged), are stored properly, and are recycled or disposed of in an environmentally sound and traceable manner.

Without a statutory obligation to deliver used textiles, it is likely that large quantities of used textiles will not be recyclable and will therefore have to be disposed of. The residues generated during incineration are harmful to the environment, even if they do not constitute hazardous waste. Furthermore, domestic incineration capacity is limited, and proper disposal cannot be guaranteed if the waste is exported to third countries

The introduction of a mandatory delivery scheme for used textiles is also necessary to ensure a reliable, comprehensive and cost-effective waste management system. It is only by including these waste fractions in the public system that the statutory task of the District Waste Management Associations and the towns with their own charters be fulfilled as part of public services.

In particular, private collection companies cannot be obliged to provide and ensure a comprehensive collection service. Furthermore, there have been several instances in the past where private collectors of used textiles have suddenly and unexpectedly withdrawn from a local area. In such cases, it is once again left to the local waste collection authorities to step in, as they are obliged to collect the household waste generated within their local area. These undesirable situations can be prevented by standardising a delivery obligation.

Furthermore, by defining mandatory collection areas, unnecessary waste transport routes and any associated potential environmental impact can be avoided, while also ensuring the efficient use of existing infrastructure. This also satisfies the principle of local waste disposal.

The protection of the landscape is also achieved by introducing a delivery obligation, which prevents waste from being collected in private bins, avoids the aforementioned cases of waste being left on curb sides, and helps halt any associated soiling and overfilling.

With regard to the suitability of this measure, it should be noted that the delivery obligation is in any event also suitable for achieving the above-mentioned objectives, as it ensures the proper collection and recovery of used textiles, irrespective of their current market value. It prevents

adverse effects to the environment caused by private collectors, helps the protection of the urban environment and the landscape, and is also necessary to ensure the continuity, predictability and further development of municipal waste management.

Furthermore, the regulation is not excessive and does not go beyond what is necessary to achieve the objective. Private companies are not completely forced out of the market, as District Waste Management Associations and towns with their own charters can continue to entrust the collection to third parties, thereby ensuring their participation in waste management within the framework of the public service remit. However, the expertise and experience of the District Waste Management Associations and towns with their own charters ensure that only those collection systems are used which guarantee a quality-assured, reliable, continuous and comprehensive collection of used textiles.

It should also be noted that the proposed regulation covers only the collection service. The private waste and circular economy companies remain involved in the recovery chain and value creation, as the waste management associations deliver the collected, quality-assured fractions to these companies for further treatment and recovery.

In line with obligation of the municipalities to collect municipal waste, the obligation to deliver waste to the municipal collection scheme applies only to the collection of used textiles from private households. Private companies may therefore continue to collect used textiles from commercial enterprises and engage in textile recovery activities (sorting, processing, recycling, etc.). Therefore, for the reasons outlined above, they are not excluded from used textile management. Only the collection service is assigned as a responsibility to the District Waste Management Associations and towns with their own charters, thereby ensuring that the overall economic cost of collecting this waste stream is not increased due to the existence of parallel collection structures.

The Extended Producer Responsibility (EPR) system for textiles in Austria is also unaffected by the delivery obligation.

The standardisation of the delivery obligation for used textiles is also consistent, at national level, with the constitutional requirements of the unity of the economic territory, freedom to engage in gainful activity and the principle of equality.

As already explained, the obligation to deliver used textiles from private households is primarily aimed at ensuring that this waste is recovered in an environmentally sound manner, thereby contributing to environmental protection and the preservation of the local landscape. The existing collection system operated at the recycling centres of the waste management associations and towns with their own charters, or by third parties commissioned by them, is ideally suited to this purpose. According to the case law of the Constitutional Court, it is also recognised that preventing damage to a common good, such as the environment, is in the public interest and objectively justifies an interference with the freedom to engage in gainful activity, the principle of equality and the unity of the economic territory (see Constitutional Court Reports 13.102/1992 on the constitutionality of the obligation for waste collectors to accept hazardous waste, and the Constitutional Court Reports 17.777/2006 on the constitutionality of the ban on the storage of waste generated outside a federal province).

Finally, the amendment to the penal provision in Section 25, Paragraph 1, Point 4, takes account of the fact that, in some cases, it may not be possible to reliably identify the authorised operator of individual collection facilities (e.g. collection containers) and that, consequently, the disposal of waste in such facilities should not be subject to administrative penalties.

Re Article I, Points 21 and 27, (Section 11a, Section 11b and Section 18, Paragraph 7):

There is a need for digitalisation within municipalities, District Waste Management Associations and towns with their own charters. In particular, there is a need for digital transformation in data and container management, as this is the only way to achieve long-term efficiency gains in waste collection and treatment.

This provision ensures that personal data required for the performance of the tasks provided for in this provincial act can be processed automatically using central public registers. The structured data processing this enables is the basis for modern, legally compliant and efficient enforcement in municipal and regional waste management.

In some municipalities, District Waste Management Associations and towns with their own charters, work is already underway on potential solutions in collaboration with software service providers. Key areas include container management (e.g. labelling waste bins), site management, order management for waste management companies, transparency regarding collection and billing for residents, and complaints regarding incorrect disposal. In future, it is also conceivable that a move will be made towards emptying waste bins on an as-needed basis and charging fees based on weight. It is therefore also clarified that personal data may be processed in the context of pilot projects if this is necessary to achieve the waste management purpose pursued in the public interest. This processing may include both data from the listed registers and other personal data, provided that these are essential for the implementation of the respective project. The assessment shall take into account the public interest in innovative and data-based waste management, as well as the legitimate interests of the data subjects. In doing so, it must always be considered whether the objective of the project could also be achieved using anonymised data or data collected in a data-minimisation manner.

On the one hand, the new provisions create a legal basis for the processing of personal data by municipalities, District Waste Management Associations, towns with their own charters and the Provincial Waste Management Association, modelled on the Upper Austrian Digitalisation Act 2023 (Section 11a) and, on the other hand, they establish a legal framework for the implementation of digitalisation projects to test practical solutions for the issues outlined above at the level of municipalities, District Waste Management Associations, towns with their own charters and the Provincial Waste Management Association (Section 11b). This makes it possible to identify best-practice examples (such as waste bins fitted with chips, or waste collection only when required) and, once they have been properly tested and proven effective, to incorporate them into standard operations on a large scale in the long term.

The pilot project must be submitted to the provincial government for approval. The pilot project must be prohibited by official notice if its content is unlawful. If no prohibition is issued within six weeks of receipt, implementation of the pilot project may commence. An official decision is therefore only

issued in the event of a prohibition. Upon expiry of the period specified in accordance with Section 11b, Paragraph 1, the pilot project must be evaluated by the municipality, the District Waste Management Association, the town with its own charter or the Provincial Waste Management Association, and, where necessary, adapted to meet waste management requirements.

Section 18, Paragraph 7a, ensures that the flat-rate amount referred to in Paragraph 6, together with its individual components, is also applied when calculating the waste collection levy on the basis of automated data processing. This allows for surcharges or discounts, although in practice discounts are more likely to be applied due to the process simplification brought about by digitalisation. An adjustment of residual waste collection to actual demand is also expected to lead to cost reductions.

Re Article I, Points 22 and 24 (Section 13, Paragraph 3, and Section 16, Paragraph 5):

The supervision of District Waste Management Associations is regulated in Section 13, Paragraph 3, and that of the Provincial Waste Management Association in Section 16, Paragraph 5, with these provisions each referring to Section 22 of the Upper Austrian Municipal Associations Act. Section 22 Upper Austrian Municipal Associations Act, in turn, refers to the provisions of Part VII of the Upper Austrian Municipal Code 1990. An amendment is required to stipulate that the provincial government, as the supervisory authority, is responsible for examining the budgets and final accounts of the District Waste Management Associations and the Provincial Waste Management Association. Otherwise, pursuant to Part VII of the Upper Austrian Municipal Code 1990, Section 99, Paragraph 2, the district authorities would be responsible.

Re Article I, Points 25, 26 and 38, (Section 17, Section 17a and Section 28, Paragraph 9):

The obligation of the Provincial Waste Management Association to draw up a contingency plan for extraordinary events of a crisis-level or catastrophic magnitude that could disrupt the operation of waste collection centres is now set out in greater detail in the entirely new Section 17a. For this reason, Paragraphs 2 and 3 of Section 17, together with the regulatory power, and the paragraph numbering of Paragraph 1, are deleted. This restructuring has the advantage that all relevant requirements are directly enshrined into the act.

The coordination and monitoring function of the Provincial Waste Management Association in the case of an actual occurrence of an extraordinary event of a crisis-level or catastrophic magnitude is added in Section 17, Paragraph 1, Point 12.

The new provisions in Section 17a aim to ensure a uniform approach in cases of extraordinary events of a crisis-level or catastrophic magnitude that could affect the collection of waste in publicly accessible waste collection centres operated by District Waste Management Associations and towns with their own charters or by third parties commissioned by them.

To this end, the Provincial Waste Management Association is to take on a coordinating role and draw up, in advance, a plan for the operation of waste collection centres in the various cases of extraordinary events of a crisis-level or catastrophic magnitude referred to in Section 2, Paragraph

4, Point 24. The plan must at least address natural disasters, epidemics and pandemics, fuel and energy shortages, and power cuts This can be done, for example, in the form of individual chapters

The plan requires the approval of the provincial government. Approval shall be deemed to have been granted if the provincial government, does not, within six weeks of receipt, issue a decision rejecting the plan on the grounds of conflict with statutory provisions.

The aim is to create – on the basis of the legal requirements – a uniform plan for the operation of waste collection centres in Upper Austria in the case of extraordinary events of a crisis-level or catastrophic magnitude, which District Waste Management Associations and towns with their own charters are required to observe.

The concept drawn up by the Provincial Waste Management Association serves as a framework. Additional local (regional) concepts drawn up by District Waste Management Associations and towns with their own charters are permitted, provided they remain within the specified framework. As a preliminary step, regional concepts already exist for specific types of extraordinary events of a crisis-level or catastrophic magnitude, e.g. the flood management concepts or the recycling centres (ASZ) opening concepts COVID-19. These may therefore remain in place or be continued, provided they are compatible with the central concept of the Provincial Waste Management Association.

Only the concept of the Provincial Waste Management Association is to be submitted to the provincial government for approval.

This does not interfere with the implementation of the provisions of the (Federal) Waste Management Act 2002 (AWG 2002) regarding the approval and operation of waste collection centres.

Nor is the competence of the provincial and the federal government in the area of crisis and disaster management affected.

The concept drawn up by the Provincial Waste Management Association is not to be regarded as a plan or programme within the meaning of Directive 2001/42/EC of the European Parliament and of the Council, of 27 June 2001, on the assessment of the effects of certain plans and programmes on the environment, OJ No L 197, of 21 July 2001, as the mere legal obligation to draw up a concept does not in itself constitute a plan or programme within the meaning of Directive 2001/42/EC. In the absence of a normative or factual framework for future authorisation decisions and in the absence of potentially significant environmental impact, it is an organisational disaster prevention instrument without an obligation to carry out a strategic environmental assessment.

Section 17a, Paragraph 2, explicitly states that the operators of waste collection centres (District Waste Management Associations, towns with their own charters, and any third parties commissioned to do so) must be involved in the development of the plan. This is both sensible and necessary because, in the case of an extraordinary events of a crisis-level or catastrophic magnitude, these waste collection centres are required to continue operating in accordance with Section 14, Paragraph 1, Point 13, and the framework guidelines set out in the plan from the Provincial Waste Management Association.

In accordance with Section 17a, Paragraph 3, the aim of the plan to be drawn up by the Provincial Waste Management Association is to ensure a uniform approach in the event of extraordinary events of a crisis-level or catastrophic magnitude, to guarantee the continued operation of waste collection centres, and the orderly collection, temporary storage and disposal of waste.

The detailed substantive requirements for the concept pursuant to Section 17a, Paragraph 4, include the impact analysis described below, the catalogue of measures and a preliminary overview. The events referred to in Section 2, Paragraph 4, Point 24, are all capable, at least in the abstract, of affecting the operation of used textile collection centres. They must therefore be specified and taken into account in the plan.

The impact analysis must describe how the operation of the waste collection centres may be affected by the consequences of the respective extraordinary event of a crisis-level or catastrophic magnitude. In any case, the impact analysis must contain:

1. Assessment of the changes to waste management resulting from the consequences of an extraordinary event of a crisis-level or catastrophic magnitude;
2. Assessment of the expected types and quantities of waste;
3. Consequently, the necessary adjustments to the waste collection system and the operation of waste collection centres.

The catalogue of measures must contain a list of the measures to be taken in the event of various extraordinary events of a crisis-level or catastrophic magnitude pursuant to Section 2, Paragraph 4, Point 24, with reference to the impact analysis.

The set of measures must include the following:

1. Measures to inform the public about the correct procedures for waste disposal and the use of used textile collection centres in the event of an extraordinary events of a crisis-level or catastrophic magnitude;
2. Framework conditions for the operation of used textile collection centres in the event of extraordinary events of a crisis-level or catastrophic magnitude, such as, in particular, opening hours and operating procedures;
3. Any measures necessary to adapt the waste collection system with regard to the operation of used textile collection centres;
4. Any necessary deviating measures due to regional or local particularities relating to the waste collection system and the operation of used textile collection centres.

The following overview should be included at the start of the plan:

1. The names or roles of the individuals or organisations responsible for initiating, implementing and coordinating measures, as well as liaising with the authorities;
2. A list of the relevant services within the context of waste management.

The details set out in the plan on the subject of blackouts, to be drawn up by the Provincial Waste Management Association, should support the provisions in the 'Blackout Contingency Plan' of the Office of the Upper Austrian Provincial Government, Directorate for Internal and Municipal Affairs (Version 1.0, as of 04/2022) and – from the perspective of the District Waste Management

Associations and towns with their own charters as operators of used textile collection centres – provide further detail.

Existing plans for specific types of extraordinary events of a crisis-level or catastrophic magnitude, in particular the flood disposal management plans or the recycling centres (ASZ) COVID-19 opening plan, can be incorporated into the Provincial Waste Management Association's plan as part of an overall strategy.

The requirements for adjustments to the waste collection system referred to in Section 17a, Paragraph 4, may, for example, include a reduction or extension of collection intervals.

Regional variations in accordance with Section 17a, Paragraph 4, may be necessary in districts where waste is not collected, but where household waste and organic waste must instead be taken to the recycling centre (drop-off system).

The purpose of the overview referred to in Section 17a, Paragraph 4, is to enable the authority to identify at a glance the relevant contact persons in the case of an extraordinary event of a crisis-level or catastrophic magnitude. These may also be listed in abstract terms such as a job title (e.g. managing director of the Provincial Waste Management Association, etc.).

When listing the relevant system services, the waste fractions accepted at the Upper Austrian recycling centres should be summarised.

The transitional provision of Section 28, Paragraph 9, stipulates that the concept referred to in Section 17a must be submitted to the provincial government for approval for the first time within one year of this amendment coming into force.

Re Article I, Point 28 (Section 18, Paragraph 8):

The new Section 18, Paragraph 7a, which concerns the calculation of waste disposal charges on the basis of automated data processing, is also to be applied when calculating the waste disposal charge for the collection of household-like commercial waste. With regard to costs, reference can be made to the comments regarding Section 18, Paragraph 7a.

Re Article I, Points 29, 30 and 37 (Section 18, Paragraph 9, Section 22a, Paragraph 2 and Section 27):

This section merely contains amendments to the titles of the laws referred to and their current versions.

Re Article I, Points 31 and 34 (Section 23 and Section 25, Paragraph 1):

Section 23 provides for a notification procedure in the event that a person wishes to dispose of waste generated outside of Upper Austria in Upper Austria. In such cases, it must be assessed

whether the notified disposal does or does not comply with the objectives and principles of the Upper Austrian AWG 2009 or the Provincial Waste Management Plan (Landesabfallwirtschaftsplan - LAWP). Depending on the outcome of the assessment, approval, a prohibition or a partial prohibition may be considered. However, since the entry into force of the provision in 2009, not a single prohibition has been imposed, as the above-mentioned criteria for prohibition have not yet been met in any case. Nor is such a scenario expected in the future

In conclusion, it should be noted that, under the current legal framework, a prohibition on the disposal in Upper Austria of waste generated outside Upper Austria is, in practice, out of the question. There are no restrictions or notification obligations in the provincial laws of the other federal provinces with regard to the disposal of waste generated outside the respective federal province. None of the other federal provinces has laid down any restrictions or notification requirements in their respective laws regarding the disposal of waste generated outside the federal province.

The provision in Section 23, which applies only to waste generated in Austria, can therefore be omitted. In the interests of efficient waste management, there are no plans to introduce a reporting requirement for the disposal of waste generated outside Upper Austria. The traceability of the waste streams is ensured by the nationwide waste balance sheet in Electronic Data Management (EDM). As enforcement practice has shown that no cases of prohibition have arisen, the removal of this provision is also intended to promote deregulation and ease the burden on businesses. It should be noted that, in the case of cross-border shipments of waste not covered by the green list, the notification procedure under Section 69 of AWG 2002 must be used to verify whether proper treatment in an authorised facility is ensured and whether that facility has sufficient capacity. A shipment for disposal is also inadmissible if the principles of self-sufficiency or proximity are not met. Shipments for recovery are, in principle, given priority.

In line with Section 23, the relevant penal provision in Section 25, Paragraph 1, is also deleted; at the same time, the paragraph headings are amended here.

Re Article I, Point 36 (new Section 25, Paragraph 1, Point 11):

This provision will make it a criminal offence for anyone to offer to collect used textiles from private households without having been commissioned to do so by the District Waste Management Association or a town with its own charter.

The provision in the new Section 25, Paragraph 1, Point 11, applies only to the delivery of waste. If (second-hand) items are delivered to charitable organisations and institutions with the intention of reselling them, for example at flea markets or charity shops, no intention of disposal applies. The waste management regulations therefore do not apply to such cases.

Re Article I, Point 39 (Section 28, Paragraph 10):

The transitional provision in Section 28, Paragraph 10, stipulates that, once the six-month transitional period has expired, the collection of used textiles must cease unless a contract has been awarded by a District Waste Management Association or a town with its own charter.

Re Article II (Entry into force):

Section 1 governs the entry into force. Section 2 states that the draft act was subject to an information procedure within the meaning of Directive 98/34/EC.