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Constitutional Service Management
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Annex to Const.-2013-158664/44

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As at: 20 August 2025

Consultation Draft

concerning the Provincial Act with which the 1991 Upper Austrian Soil Protection Act is amended (2025 Upper Austrian Soil Protection Act Amendment)

A. General part

I. Objective and content of the draft Act

The envisaged amendments to the 1991 Upper Austrian Soil Protection Act, Provincial Law Gazette (LGBl.) No 63/1997, as amended by the Provincial Act, LGBl. No 64/2025, aim at appropriate, impact-oriented and necessary adjustments and provide for legal consolidation and deregulatory measures as elements of better regulation. In addition to changes required under EU law to harmonise and simplify the administrative burden and thus administrative processes, together with the introduction of provisions suitable for digital use and practical application

(electronic form of credential, provisional certificate of competence, duplicate) and the discontinuation of balance-sheet, reporting and programme submissions, further necessary adjustments to cross-references are also to be made. This draft Act makes use of the option under EU law to extend certain registration or conversion time-limits in the 1991 Upper Austrian Soil Protection Act (an optional accompanying measure to Implementing Regulation (EU) 2023/564 that reduces the administrative burden).

II. Basis of legislative competence

The competence of the provincial legislature is derived from Article 15 of the Federal Constitution.

III. Financial impact on regional authorities

Neither the province nor the municipalities (or federal government) will (presumably) incur (significant) additional costs as a result of this draft Act compared to the current legal situation. On the contrary, the aim is to reduce costs, for example, by allowing certificates of competence to be issued electronically.

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

The amendments envisaged in this draft Act do not, as far as can be seen, entail any (significant) financial burden on citizens in general and for businesses in particular.

V. Relationship with European Union legislation

This draft Act does not, as far as can be seen, conflict with any mandatory provisions of European Union Law. Rather, it serves precisely to establish a legal situation that is in conformity with Union law in accordance with Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market, OJ L 309, 24.11.2009, p. 1 et seq., Implementing Regulation (EU) 2023/564, OJ L 74, 13.3.2023, p. 4 et seq. and Directive (EU) 2019/1024, OJ L 172, 26.6.2019, p. 56 et seq.

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

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

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.

VII. Impact on environmental policy, particularly climate protection

The regulations contained in this draft Act regarding the use of plant protection products are environmentally relevant. However, negative effects compared to the current legal situation are not to be expected due to the corresponding record-keeping obligations.

VIII. Specific aspects of the legislative process

The present draft Act does not contain any constitutional provisions. No provision is made for the participation of federal bodies within the meaning of Article 97(2) of the Federal Constitution Act. The draft Act does not involve any state or municipal fee as defined in § 9(1) of the 1948 Public Finance Act (F-VG 1948). There is no obligation for any other reason to notify this legislative resolution to the Federal Chancellery.

Pursuant to § 3 of the Upper Austrian Notification Act 2017, the present 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. Specific part

Re Article I subparagraph 1:

The table of contents must be adapted to the changes associated with the present draft Act.

Re Article I subparagraphs 2, 3, 4, 5, 8, 9, 12 and 15 (§ 1(5), § 2(1) subparagraph 2, § 14 subparagraph 3, § 16(2), § 17(10), § 18(1), § 21(2), (3) and (4) and § 33(2)):

Only citation amendments are made.

Re Article I subparagraph 6 (§ 17(4)):

The possibility of issuing the certificate of competence in electronic form takes account of the digitalisation plan of the Province of Upper Austria.

Re Article I subparagraph 7 (§ 17(5a)):

The possibility of issuing temporary certificates of competence (valid for a limited period of eight weeks) reduces the waiting time between the completion of initial training or further training and the issue of the certificate; moreover, the certificate may be issued immediately upon completion of the relevant training course (e.g., a course at the Rural Training Institute (Ländliches Fortbildungsinstitut)). In addition, it should also be possible to issue duplicates if the original (physical format) of the certificate of competence is damaged, destroyed, stolen or lost. Its period of validity must always match that of the original.

Re Article I subparagraph 10 (§ 18(5)):

The purpose of this provision is to protect the health and safety of the persons involved. However, it may be omitted, as corresponding hazard, safety, application and protection notices as well as more detailed usage information can be found in the relevant safety data sheets (already assessed in the authorisation procedure).

Re Article I subparagraph 11 (§ 18a):

In view of the Union requirements of Implementing Regulation (EU) 2023/564, which apply from 1 January 2026 and which regulate the content of records (regarding content, format, time, electronic conversion and provision) on the use of plant protection products in implementation of Article 67 of Regulation (EU) 1107/2009, it is appropriate to reissue or completely recast this provision.

Paragraph 1 contains, as before, (general) stipulations on the record-keeping obligations in this regard.

Paragraph 2 stipulates that records on the use of plant protection products must comply with both the requirements of Article 67 of Regulation (EC) No 1107/2009 and Implementing Regulation (EU) 2023/564. Professional users must immediately record any use of a plant protection product. The following must be recorded: the commercial name and the plant protection product register number of the plant protection product, the date of use, the quantity used per hectare in kilograms or litres, the location of the treated area or the name of the field, the size or extent of the treated area or unit in hectares, the name of the crop and the place of use, the name and address of the professional user and, where applicable, the person or persons authorised to dispose of the plant protection product. With effect from 1 January 2026, there will also be an obligation to convert the written records (spray logbook), which are to be made without delay, into an electronic, machine-readable format. In principle, a period of 30 days (after the date of use of the plant protection product, monthly conversion) is foreseen for conversion into a electronic, machine-readable format. In addition, professional users must make the information contained in the records available to the competent authorities and (if contractual arrangements are in place) to other natural or legal persons without undue delay.

To simplify the administrative burden associated with the comprehensive fulfilment of all technical requirements, **paragraph 3** is intended to provide professional users (and thereby, indirectly, providers of common farm management software systems) with a limited, yet sufficiently long, transitional period (use permitted until the end of 31 December 2029) for the mandatory conversion of records of uses of plant protection products up to 31 January of the following year (annual conversion at the reference dates 31 January 2027 for the year 2026, 31 January 2028 for the year 2027, 31 January 2029 for the year 2028, 31 January 2030 for the year 2029). This option under Article 3 of Implementing Regulation (EU) 2023/564 is to be made use of, to the greatest possible extent, by means of this provincial legislative measure.

These requirements are intended to achieve objectives such as the Union-wide establishment of a uniform level of quality (as far as possible) and the application of consistent record-keeping parameters (as far as possible) (harmonisation). Another medium-term goal is, taking into account technical developments, to avoid duplicate (analogue and electronic) records and entries by professional users (themselves) and the authorities (avoidance of costs, one-click report system) using farm management software systems. There are already common systems and record-keeping programs that (can or will) meet the requirements of Implementing Regulation (EU) 2023/564 with regard to electronic conversion (if adapted accordingly). Examples include the LK (Landwirtschaftskammer – Chamber of Agriculture) Fertiliser Calculator, ÖDüPlan and AgrarCommander. It can be assumed that in the coming years, numerous providers of farm management software systems will develop their programs and applications in accordance with EU law.

Re Article I subparagraphs 13 and 14 (section heading; §§ 31 and 32):

Debureaucratisation (reduction of bureaucracy) and deregulation, in particular the avoidance of duplication (e.g., reduction of reporting obligations), are a constant concern and an ongoing task at the same time. Accordingly, the obligations of the Provincial Government to draw up a soil balance report every three years (§ 31) and, every five years, a soil information report and a soil development programme (§ 32), to lay them before the Provincial Parliament and to publish them, should no longer be required. These deregulation measures for (static) balance-sheet, reporting and programme formats will result in cost savings and reduce the resources required to draw up these balance-sheet, reporting and programme submissions. This will likewise eliminate the costs associated with producing multiple physical copies (print run of the soil information report: 1 000 or 1 500 copies). It should be noted that the figures, data and facts that can be derived from the soil balance sheet, the soil information report and the soil development programme (as environmental information) are to be collected regularly and consistently (in some instances proactively) on the basis of other (EU, federal and provincial) statutory provisions or requirements and are also regularly published (by other bodies) and thus publicly accessible (cf. e.g., the Green Report, plant protection product use statistics, the national action plan on the sustainable use of plant protection products, the soil cadastre, the sewage sludge register, Boden.Wasser.Schutz.Blätter (Soil-Water-Protection bulletins), analyses of the digital cadastral map and the digital land use plan, monitoring of land take and soil sealing, the farm structure survey, the forest inventory and other public registers, etc.). In this context, the provisions of the Freedom of Information Act, Federal Law Gazette (BGBl.) I No 5/2024, should also be mentioned, which (from 1 September 2025) already provide for numerous (proactive) publication requirements for information of general interest (cf.

e.g., regulations on the information register) and thus standardise access rights to relevant information.

The deletion of §§ 31 and 32 also entails an adjustment of the preceding heading for Section V.

Re Article I subparagraph 16 (§ 36(1)):

As § 32 is deleted, the standardised reference to the soil development programme pursuant to § 32(2) is obsolete.

Re Article I subparagraph 17 (§ 48):

Prior to the adoption of regulations on the basis of the 1991 Upper Austrian Soil Protection Act, a public and transparent assessment procedure is regularly carried out (on the homepage of the Province of Upper Austria). The aforementioned bodies are therefore involved in this (public) participation procedure. Specific interests and substantive comments can therefore still be asserted or submitted. By dispensing with the requirement of an express hearing, potential procedural errors can be avoided.

Re Article I subparagraph 18 (§ 49(4) and (5a)):

The limitation period for prosecution is now regulated in § 31(1) of the Administrative Penal Act (Verwaltungsstrafgesetz – VStG), which is why only the citation is corrected here; however, the previously prescribed extension of the limitation period for prosecution to two years remains unchanged.

Re Article II (entry into force, reference):

The statutory amendments are to enter into force at the end of the day on which they are promulgated in the Provincial Law Gazette for Upper Austria (**paragraph 1**). As regards to the point in time specified in **paragraph 2**, a provision of EU law is taken into account. **Paragraph 3** contains the procedural reference to the notification under the 'Information Directive' (EU) 2015/1535, which must be completed before the resolution is passed in the Provincial Parliament.