

Selected examples of existing regulations on access to genetic resources in Austrian law

According to Article 4 (1) of *Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union*, users of genetic resources should exercise due diligence to ensure that genetic resources are accessed in accordance with the applicable national laws or other regulatory requirements.

The *Federal Law on the Implementation of Obligations from the Nagoya Protocol and Regulation (EU) No 511/2014* (Federal Law Gazette I No 36/2019) does not impose direct restrictions on access to genetic resources. However, there are a number of other regulatory restrictions on access that are applicable in Austria and thus have to be considered before accessing genetic resources.

The regulations described below are derived from the sectors agriculture, forestry, hunting, fishing, soil and nature conservation and have been selected as illustrative examples. The Patents Law and the General Austrian Civil Code of Law have been considered as well. The regulations are listed where appropriate under the relevant headings and a brief summary of each regulation is given. The list is by no means exhaustive and the summary provided is not the exact wording of the respective regulation. The intention is merely to draw attention to the regulations that have been selected as relevant, and to describe the potential scope of access restrictions in Austria.

The access restrictions laid down by Austrian law can be divided into the following categories:

- Regulations for entry upon land and property
- Regulations for the removal of genetic resources in general
- Regulations on the way in which genetic resources can be removed
- Regulations for the time period during which genetic resources can be removed
- Regulations for certificates of competency as a requirement for the removal of genetic resources
- Regulations for hygiene measures in connection with the removal of genetic resources
- Regulations for the transport and labelling of genetic resources

Typical regulations for entry upon land and property:

Forest Act 1975:

Forests may only be entered for recreational purposes; therefore, consent must be obtained from the forest owner before entering a forest and remaining within it for the purpose of removing genetic resources. In addition, there may be restrictions on uses according to Section 34 (in particular the restrictions on utilisation due to closures) which have to be respected.

Hunting laws of the federal states:

Trespassing bans are in place to prevent unauthorised persons from entering certain designated areas. Access to hunting grounds is not permitted.

Tyrolean law for the protection of fields:

The unauthorised driving of vehicles on agricultural land is not permitted.

The General Austrian Civil Code of Law:

Entry upon designated land is restricted by virtue of the law of property and by virtue of property protection.

Typical regulations for the removal of genetic resources in general:

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA):

For a number of agricultural crop plants (listed in the Annex to the International Treaty) a “multilateral system” has been established that lays down regulations for the sustainable use and fair and equitable sharing of the benefits arising from the utilisation of these genetic resources. The rules implementing the Nagoya Protocol do not affect the ITPGRFA regulations. Affected are plants from in-situ and ex-situ populations.

Fishing laws of the relevant federal states:

The removal of freshwater animals requires prior permission or authorisation. Bans on fishing e.g. of certain species must be observed.

Certain species are under general protection; they are subject to a general ban on fishing.

Hunting laws of the relevant federal states:

Some areas are closed to hunting, or special permission is needed.

A hunting permit is required for hunting. There are bans on certain types of capture or killing, as well as on disturbances during the breeding and rearing season, and there are prohibitions in place for persons who do not have a legal right to hunt.

Animal Protection Act:

Apart from a number of very specific exceptions, animals may not be used in animal testing.

Nature conservation laws of the federal states:

In the different types of protected areas, bans on specified actions are in place. The protection may also extend to natural habitats and their surroundings, to protected biotopes and to natural monuments.

Listed plant, animal and fungal species are protected by ordinances to varying degrees; they

(or parts of them) may therefore, depending on their protection status, not be removed from their habitat.

Depending on the federal state in question, general protection is given to wild mammals, wild birds, reptiles and amphibians.

In areas outside designated protected sites it is not allowed to collect unprotected species in large quantities without permission from the land owner or occupier. Picking berries or mushrooms for organised or commercial purposes is also prohibited in a number of federal states.

The use of non-selective means for the capture or killing of protected animals is prohibited in any case.

Tyrolean law for the protection of fields:

The unauthorised removal of humus or soil from agricultural land is prohibited.

Patents Law:

There are restrictions on access to genetic resources for patented biological material.

The General Austrian Civil Code of Law:

The removal of genetic resources from a plot of land is restricted by virtue of the law of property and by virtue of ownership protection.

Criminal law:

Potential public endangerment is an offence and is thus prohibited.

Typical regulations for the way in which genetic resources can be removed:

Fishing laws of the relevant federal states:

As a rule, fishing must be performed in an appropriate manner and in accordance with rules and guidelines that ensure fish stocks are managed and cared for in a sustainable way.

Certain methods of fishing, trap devices and fishing equipment are prohibited.

Fish traps that are allowed must be checked daily.

Fish below the specified minimum size limit must be returned to the water carefully. Electric fishing requires a licence.

Fishing may be prohibited altogether in certain waters.

Animal Protection Act:

Nobody may inflict unjustified pain, suffering or injury on an animal.

Killing an animal without reasonable cause is prohibited.

Typical regulations for the time period during which genetic resources can be removed:

Fishing laws of the relevant federal states:

There are regulations for closed seasons that have to be complied with and for the size of fish when catching aquatic animals.

Hunting laws of the relevant federal states:

There are closed seasons and hunting seasons for certain species.

There may be closures of parts of the hunting grounds. Exemptions from prohibitions can be obtained for research purposes.

Typical regulations for the transport and labelling of genetic resources

Forest Reproductive Material Act 2002:

For exports of reproductive material which does not comply with the provisions of this Act and which, according to Section 1 (3), is demonstrably intended for export or re-export to third countries, proof must be provided to the Federal Forest Office by exporters within three days, together with a customs declaration and an exit visa appended to it.

Plant Protection Act 2011:

The Annex to the Plant Protection Act contains a list of relevant organisms that are subject to several different bans. These also concern the transfer of harmful organisms through potentially infested parts of plants.

In some cases precautionary measures such as official inspection, issuance of a plant passport or certain packaging quality standards are required, and in some cases movement in general, or movement into protected areas, is also prohibited.

Plant Material Act 1997:

There are specific requirements regarding the packaging and labelling of plant material.

Vine Plants Act 1996:

In the commercial sector reproductive material may be placed on the market only if it has been approved and undergone official inspection. Scientific purposes, breeding projects or conservation breeding are excluded, as is private use.

Hunting laws of the relevant federal states:

There is a ban on the transportation of certain animals that cannot be hunted.

Nature conservation laws of the relevant federal states:

For certain vehicles there are driving bans in areas above a certain altitude and in listed habitat types. There are certain expanses of lakes where boating or navigation is prohibited.

Ad Regulations for certificates of competency as a requirement for the removal of genetic resources:**Plant Material Act 1997:**

Suppliers within the meaning of the Act are subject to mandatory registration (official register).

An application must be made for the approval of laboratories.

Hunting laws of the relevant federal states:

A hunting permit is required for hunting.

Animal Protection Act:

The deliberate killing of vertebrates may only be carried out by veterinary surgeons.

Exceptions are the killing of farm animals, killing for training purposes and for professional pest control. The capture of wild animals must be carried out by competent persons only.

The following pieces of legislation have been considered:

Federal laws

- Federal law of 3rd July 1975, under which forestry is regulated in Austria (**Forest Act 1975**), Federal Law Gazette No 440/1975 as amended by Federal Law Gazette I No 102/2015
- **Forest Reproductive Material Act 2002**, Federal Law Gazette I No 110/2002 as amended by Federal Law Gazette I No 189/2013
- Federal law on measures to protect against the movement of organisms that are harmful to plants and plant products and on the principles established to protect plants from pests and diseases (**Plant Protection Act 2011**), Federal Law Gazette I No 10/2011 as amended by Federal Law Gazette I No 189/2013
- Federal law on the marketing of ornamental, vegetable and fruit plant material (**Plant Material Act 1997**), Federal Law Gazette I No 73/1997 as amended by Federal Law Gazette I No 189/2013
- Federal law on the recognition of seeds, certification of seeds and the placing on the market of seeds and on plant variety certification (**Seeds Act 1997**), Federal Law Gazette I No 72/1997 as amended by Federal Law Gazette I No 83/2004
- **International Treaty on Plant Genetic Resources for Food and Agriculture including the Annexes and Declaration**, Federal Law Gazette III No 98/2006
- Federal law on trading in vine plants (**Vine Plants Act 1996**), Federal Law Gazette No 418/1996 as amended by Federal Law Gazette I No 189/2013
- Federal law under which working with genetically modified organisms, the release and the placing on the market of genetically modified organisms, and the use of genetic analysis and gene therapy for humans are regulated (**Genetic Engineering Act**), Federal Law Gazette No 510/1994 as amended by Federal Law Gazette I No 92/2015
- **Patents Law 1970**, Federal Law Gazette 259/1970 as amended by Federal Law Gazette I No 126/2013
- **General Austrian Civil Code of Law** for the entire German-speaking Hereditary Lands of the Austro-Hungarian Empire, Austrian collection of judicial legislation (JGS) No 946/1811 as amended by Federal Law Gazette I No 87/2015

State laws - fishing

- **Fisheries Law of Burgenland 1949 (restored)**, State Law Gazette No 1/1949 as amended by State Law Gazette No 79/2013
- Law concerning fisheries within the area of the City of Vienna (**Vienna Fisheries Law**), State Law Gazette No 01/1948 as amended by State Law Gazette No 16/2014
- Act of 19th May 1983 relating to fisheries in Upper Austria (**Upper Austrian Fisheries Law**), State Law Gazette No 60/1983 as amended by State Law Gazette No 90/2013
- **Lower Austrian Fisheries Law 2001**, State Law Gazette 6550-0 as amended by State Law Gazette No 83/2015
- Act of 18th May 1999 relating to the regulation of fisheries in Styria (**Styrian Fisheries Law 2000**), State Law Gazette 85/1999 as amended by State Law Gazette No 52/2014

- Act of 12th July 2000 relating to fisheries in the State of Carinthia (**Carinthian Fisheries Law**), State Law Gazette 62/2000 as amended by State Law Gazette No 85/2013
- Act of 3rd July 2002 relating to the regulation of fisheries in the State of Salzburg (**Fisheries Law 2002**), State Law Gazette 81/2002 as amended by State Law Gazette No 106/2013
- Act of 20th March 2002 under which fisheries are regulated in Tyrol (**Tyrolean Fisheries Law 2002**), State Law Gazette No 54/2002 as amended by State Law Gazette No 130/2013
- **Act on fishing in inland waters** (Vorarlberg), State Law Gazette No 47/2000 as amended by State Law Gazette No 44/2013

State laws - hunting

- Act of 10th November 2004 relating to the regulation of hunting in Burgenland (**Burgenland Hunting Law 2004**), State Law Gazette No 11/2005 as amended by State Law Gazette No 79/2013
- Act relating to the regulation of hunting (**Vienna Hunting Law**), State Law Gazette No 06/1948 as amended by State Law Gazette No 46/2013
- Act of 3rd April 1964 relating to the regulation of hunting (**Upper Austrian Hunting Law**), State Law Gazette No 32/1964 as amended by State Law Gazette No 83/2016
- **Lower Austrian Hunting Law 1974**, State Law Gazette 6500-0 as amended by State Law Gazette No 84/2015
- **Styrian Hunting Act 1986**, State Law Gazette No 23/1986 as amended by State Law Gazette No 9/2015
- **Carinthian Hunting Law 2000**, State Law Gazette No 21/2000 as amended by State Law Gazette No 85/2013
- Law on hunting in the State of Salzburg (**Hunting Act 1993**), State Law Gazette No 100/1993 as amended by State Law Gazette No 21/2015
- **Tyrolean Hunting Law 2004**, State Law Gazette No 41/2004 as amended by State Law Gazette No 64/2015
- **Law on Hunting** (Vorarlberg), State Law Gazette No 32/1988 as amended by State Law Gazette No 44/2013

State laws – nature conservation

- Law dating from November 1990 relating to nature protection and landscape care in Burgenland (**Burgenland Nature Protection and Landscape Care Law 1990**), State Law Gazette No 27/1991 as amended by State Law Gazette No 38/2015
- Law providing for the passing of the Vienna Nature Conservation Act (**Vienna Nature Conservation Act**), State Law Gazette No 53/2001 as amended by State Law Gazette No 31/2013
- State law on nature conservation and management (**Upper Austrian Nature and Landscape Protection Law 2001**), State Law Gazette No 129/2001 as amended by State Law Gazette No 92/2014
- **Lower Austrian Nature Conservation Act 2000**, State Law Gazette 5500-0 as amended by State Law Gazette 5500-11
- Act of 30th June 1976 on nature protection and landscape management (**Styrian Nature Conservation Act 1976**), State Law Gazette No 65/1976 as amended by State Law Gazette No 55/2014
- **Carinthian Nature Conservation Act 2002**, State Law Gazette No 79/2002 as amended by State Law Gazette No 85/2013

- **Salzburg Nature Conservation Act 1999**, State Law Gazette No 73/1999 as amended by State Law Gazette No 106/2013
- **Tyrolean Nature Conservation Act 2005**, State Law Gazette No 26/2005 as amended by State Law Gazette No 87/2015
- **Nature Conservation and Landscape Development Act (Vorarlberg)**, State Law Gazette No 22/1997 as amended by State Law Gazette No 9/2014

Other state laws

- Act of 5th July 2000 on the protection of fields and the application of sewage sludge (**Tyrolean law for the protection of fields 2000**), State Law Gazette No 58/2000 as amended by State Law Gazette No 130/2013