

Legal Basis of Water Management in Austria

Abstract by

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The following text is only a gross outline of the theme concerned. For essential further information see the script (in German only). Some information may be gained by English texts referring to European law in "eur-lex.europa.eu".

The Federal Water Act (FWA) of 1959¹ is the central law regulating water management in Austria; it has its origins in 1869 and was last amended in 2006. Its main themes are regulations concerning the

- utilization of waters
- protection of waters
- protection of man against damaging effects of waters
- water management.

Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such. In order to facilitate a water management system which takes into account the different technical and local requirements, the FWA provides authorizations for the issue of guideline ordinances (e.g. protection of water resources, pollution prevention regulations, emission restrictions, general water management provisions, determination of the state of technology, exemption from obtaining permits, data collection, groundwater protection, etc.).

The FWA distinguishes between public and private waters. Simple uses of public waters which do not exclude third parties from the same use are permitted to everyone (public use). This includes swimming, washing, watering of animals, rinsing, withdrawal of small quantities of water, the extraction of negligible amounts of plants, gravel, ice, etc., and the utilization of the ice cover. Private waters, like springs, small rivers and ground

¹ Wasserrechtsgesetz 1959 - WRG

waters, are subject to the disposition of their owner (however, every person is permitted to water animals in or withdraw water with hand vessels from private surface waters).

Fishing and shipping do not belong to the FWA; shipping is regulated in other federal laws, fishing is regulated by the laws of the provinces. Permission by the water rights authority is required for

- any use of public waters exceeding public use and
- any use of private waters touching public interests or the rights of a third party, also for
- any development and use of groundwater exceeding the necessary domestic and economic need of the landowner.

This permission also applies to equipment facilitating the water use. Typical water use rights are, for example, supply of water for communities, industries or private persons, and the utilization of water power. The duty to obtain a license can be suspended by decree for activities which are of minor importance in terms of water management.

Permission is also required for actions affecting water quality, e.g. discharge of waste or waste waters or dumping harmful substances in surface waters or ground water, land uses endangering water quality etc.

The permission of such types of water uses and impacts is subject to strict criteria, such as test of need, state of technology including emission standards, setting of time limits, preservation of the ecological integrity of the waters, comprehensive protection of public interests and rights of third parties. Such rights protected are legal uses of water, real estate and – to certain conditions - fishing. In case of conflict with other legal uses of water or real estate a new project cannot be permitted, unless expropriation is specifically authorized.

Permissions for water utilization belong to the estate or facility site they are designed for.

Licenses for utilization of waters are limited in time. Under certain conditions it is possible to get a new permission. Otherwise the right of utilization expires and the installations have to be removed or left to a third party. The same is the case when necessary parts of the installations are destroyed or not carried out in time.

In the interest of water protection, especially of preventive water pollution control, the FWA obliges all persons to notify the authorities of activities, such as waste-water discharge into the sewers of third parties, storage and movement of substances which may be harmful to water, waste deposits, and sand and gravel extraction and to obtain licenses for such activities.

The same also holds true for facilities located in flood areas (HQ30), for the draining of areas or galleries and for flood control and high-water regulation works in public waters - in private waters when touching public interests or the rights of a third party - in order to ensure the protection of waters and of human beings.

By laying down further authorization and notification obligations and regulations of land uses by ordinance or decree the regional authorities can protect the abstraction of drinking water and important water resources against impacts in quality and quantity.

As far as waste waters are concerned, there is a general obligation to comply with emission standards and therefore to either adapt old plants or facilities to the latest technological developments or close them down; in other cases the authorities may individually order improvements for better protection of public interests.

The FWA obliges all persons to treat waters with due care and provides serious consequences in the case of nonobservance. In urgent cases the authorities are empowered to act immediately instead and at the costs of the person legally obliged.

Nonobservance to the provisions of the FWA and severe water pollution are liable to prosecution by law.

For better implementation of water related tasks and projects the FWA provides the formation of water cooperatives of persons and water associations of communities and industrial plants supervised by water right authorities. This has enabled implementation of good water related infrastructure in Austria.

In 2003 the Directive 2000/60/EC "establishing a framework for Community action in the field of water policy" (Water Framework Directive - WFD) was incorporated in the FWA. So Water Management in Austria now has to pay attention to European regulations regarding water.

According to the provisions of the WFD the water management system of the FWA protecting waters now also includes preservation and improvement of their good ecological and chemical status which can be jeopardized not only by the discharge of waste and other residues into water but also by interventions in the aquatic ecosystem concerned. In order to warrant the qualitative and quantitative preservation of the water resources, it is one of the central tasks to monitor the water cycle, to maintain a network of recording sites and to carry out measurements and surveys as provided by law. Therefore the governmental administration of water resources basically comprises the branches: Water Rights Authority - Water Management Planning - Hydraulic Engineering - Hydrography. Other activities fall within the competence of the Provincial Governments.

The WFD follows the concept of integration as the key to the management of water protection within river basin districts (RBD):

- Integration of environmental objectives, combining qualitative and quantitative ecological objectives for protecting highly valuable aquatic ecosystems and ensuring a general good status of other waters;
- Integration of all water resources, combining fresh surface water and groundwater bodies, wetlands, coastal water resources at the river basin scale;
- Integration of all water uses, functions and values into a common policy framework, i.e. considering water for the environment, water for health and human consumption, water for economic sectors, transport, leisure, as well as water as a social good;
- Integration of disciplines, analyses and expertise, combining hydrology, hydraulics, ecology, chemistry, soil sciences, technology engineering and economics to assess current pressures and impacts on water resources and identify measures for achieving the environmental objectives of the WFD in the most cost-effective manner;
- Integration of water legislation into a common and coherent framework. The requirements of some old European water legislation (e.g. the Fish water Directive) have been reformulated in the WFD to match modern ecological thinking. After a transitional period, these old Directives will be repealed. Other pieces of legislation (e.g. the Nitrates Directive and the Urban Wastewater Treatment Directive) must be coordinated in river basin management plans (RBMP) where they form the basis of the programs of measures;
- Integration of all significant management and ecological aspects relevant to sustainable river basin planning including those which are beyond the scope of the WFD such as flood protection and prevention;

- Integration of a wide range of measures, including pricing and economic and financial instruments, in a common management approach for achieving the environmental objectives of the WFD. Programs of measures are defined in RBMP developed for each RBD;
- Integration of stakeholders and the civil society in decision making, by promoting transparency and information to the public, and by offering a unique opportunity for involving stakeholders in the development of RBMP;
- Integration of different decision-making levels that influence water resources and water status, be they local, regional or national, for an effective management of all waters;
- Integration of water management from different Member States, for river basins shared by several countries, existing and/or future Member States of the European Union.

According to WFD it is necessary

- to characterize water bodies in terms of pressures, impacts and economics of water uses including heavily modified water bodies,
- to put up a register of protected areas with special objectives,
- to identify and implement programs of measures for achieving the environmental objectives of the FWD cost-effectively,
- to produce and publish RBMP.

(See §§ 30 – 30g, and chapters 6 and 7 WRG/FWA).

Water bodies are the units for which status is being assessed, objectives established and achievement of objectives of the WFD checked. The identification and classification of water bodies therefore has to be done for all surface waters (natural, heavily modified and artificial waters) and ground waters. Austria takes part in the RBD of Danube, Rhine and Elbe; actions in Austria therefore have to be coordinated with other states in the same RBD.

The overall aim of WFD/ FWA is "good ecological and chemical status" in all bodies of surface water, and "good chemical and quantitative status" in ground water bodies.

The environmental objectives for natural, artificial and heavily modified water bodies are set in relation to reference conditions in comparable natural waters of the same ecoregion (intercalibration exercise).

Some surface water bodies may not achieve this objective. So under certain conditions it is possible to identify and designate artificial water bodies (AWB) and heavily modified water bodies (HMWB).

- “Body of surface water” means a discrete and significant element of surface water such as a lake, a reservoir, a stream, river or canal, part of a stream, river or canal, transitional water or a stretch of coastal water.
- HMWB are bodies of water which as a result of physical alterations by human activity are substantially changed in character and cannot, therefore, meet the “good ecological status”
- AWB means a body of surface water created by human activity, i.e. surface water bodies which have been created in locations where no water body existed before and which have not been created by the direct physical alteration, movement or realignment of an existing water body.

The designation of HMWB and AWB is optional; instead of “good ecological status”, the environmental objective for HMWB and for AWB is “good ecological potential”. The designation may, in some instances, help to protect wider environmental interests; e.g. when the removal of a modification would lead to the destruction of valuable environmental features.²

Types of activities considered likely to result in a water body being designated as a HMWB are

- navigation, including port facilities, or recreation;
- activities for the purposes of which water is stored, such as drinking-water supply, power generation or irrigation;
- water regulation, flood protection, land drainage;
- other equally important sustainable human development activities.

These specified uses tend to require considerable hydro-morphological changes to water bodies of such a scale that restoration to “good ecological status” may not be achievable even in the long-term without preventing the continuation of the specified use. The concept of HMWB was created to allow for the continuation of these specified uses

² The removal of a weir or dam may, for example, impact significant ecological (e.g. biodiversity) or historical (old mill) features. By designating the water body as heavily modified, the weir or dam probably will not have to be removed.

which provide valuable social and economic benefits but at the same time allow mitigation measures to improve water quality.

Wetland ecosystems are ecologically and functionally parts of the water environment, with potentially an important role to play in helping to achieve sustainable river basin management. The WFD/FWA does not set environmental objectives for wetlands. However, water body related wetlands that are protected Areas (e.g. following FFH-Directive) justify stricter objectives for the water body. The same is true for water bodies with special uses depending on stricter objectives and for (ground) water bodies used for abstraction of drinking water.

The assignment of less stringent objectives to water bodies and an extension of the timing for achieving the objectives are also possible, when the goals cannot be reached in time by appropriate means or without endangering important public interests, or – temporarily - in cases of floods or accidents. This has to be notified to the EC.

The assessment of each water body has to take into account the circumstances of the watercourse and the economical, social and ecological situation of the catchment area. Special problems and trends must be surveyed.

Water management relating to each particular water body has to devise appropriate means to protect or achieve good status in time. This requires regional different actions which have in generally to be arranged by the Province Authorities.

The output of hazardous substances can be regulated by limitations and prohibitions following European Guidelines.

WFD/FWA stipulate a cycle of water management planning (and implementing) lasting six years in each case. So reality will require in many cases the assignment of less stringent objectives.

Participation of stakeholders and the civil society in decision making is an important means implementing regulations. So the concepts of water management plans have to be revealed to the public, and statements received have to be considered.

Relevant data and information are held in evidence for public access in “WISA” (Water Information System Austria) by the Ministry for Agriculture and Forestry.

The provisions of the FWA are supplemented by several other federal and provincial laws.

The Federal Hydraulic Engineering Development Act facilitates the financial promotion of measures for flood control and high-water regulation works, for the protection from avalanches and torrents, for agricultural water uses, for water supply and waste water management etc; it has been largely adapted to ecological requirements in 1994.

Water related regulations can also be found in federal laws concerning shipping, mining, industries, waste management, traffic routes etc.

Laws of the provinces pertain to land use planning, nature conservation, agriculture, fishing, water supply and sewerage connections, etc.
