

AUSTRIA

Environmental Liability

National toolkit on the practical application of
the ELD and its national equivalents

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Austria

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Introduction

Environmental liability does not resemble civil liability, in which individuals claim compensation for damages. Rather, it involves obligations for operators of certain environmentally hazardous activities, if their activity threatens or damages the environment. One could say it is a kind of public liability obliging the operator to restore threats and/or damages to the general environment. The liability comes into effect in a way that the operator has to carry out prevention and remediation measures and has to bear the respective costs. In principle, the operator can be held liable for causing damage to water, land and/or biodiversity without being at fault or negligence. On the other hand, environmental liability does not protect legal interests of individuals (i.e. property damages, financial losses etc.).

Environmental liability is not applicable in certain cases, namely in the following:

- damage which has occurred prior to 2007 (e.g. Inherited contaminated sites = old landfills and industrial sites having caused damage to land and groundwater bodies), unless the damage occurs continuously even after 2007
- Oil pollution at sea, the transport of dangerous goods, nuclear activities (e.g. Operating a nuclear power plant), etc., which are governed by international agreements (see Appendix IV and V of the Environmental Liability Directive)

Since 20th July 2009, Austria has legislation which provides for environmental liability: We have a federal Environmental Liability Act (ELA) and provisions on environmental liability in all nine federal states. The need for this legislation is prescribed by the European Environmental Liability Directive (Directive 2004/35/CE).

The environmental liability legislation enables citizens and NGOs to file a request for action to the authority in case environmental damage has been caused. In the following we will explain in more detail

- What is the request for action?
- When can you file a request for action?
- Who can file a request for action?
- Where do you file a request for action?
- Which minimum content has a request for action to provide?
- Which rights and options does a request for action confer to the applicant?
- How long do the proceedings last?
- Does the request for action come along with any costs for the applicant?
- Which are the experiences with requests for action?
- Links/Information

1. What is the request for action?

The request for action is used, when environmental damage according to the environmental liability laws has been caused. By filing a request for action the competent authority is obliged to act in public interest and take appropriate measures in order to prevent further environmental damage from happening and / or arrange any necessary mitigation measures.

2. When can you file a request for action?

If the operator of a specific activity (**see 1**) causes environmental damage (**see 2**) then certain persons (e.g. environmental organizations) are enabled to request the competent district authority to order or take remedial measures (**see 3**). The applicant then has legal standing in the administrative remediation procedure.

(1) For example: the operation of landfills or waste treatment plants, chemical plants, brickyards, transportation of hazardous materials, water discharge and general manufacturing and handling of hazardous products (e.g. pesticides.), the release of genetically modified organisms.

→ List of activities falling under the environmental liability laws

(2) The activity causes significant damage to water, land or species and habitats protected by EU legislation (Natura 2000). In any case evaluated as “significant” are damages affecting human health. If on the other hand the damage causes less than natural fluctuations (e.g. in population numbers of a particular species), or the natural resource can regenerate in a short time, it is not considered to be significant.

Some examples of significant environmental damage:

Water damage: leakage of chemicals from an industrial plant or a truck, in which chemicals are stored or transported (e.g. caused by an accident)

Biodiversity loss: Microbial contamination of protected habitats and species, e.g. caused by improper agricultural practices.

Land damage: failure of the emission control system of an incinerator, which leads to contamination of the topsoil by heavy metals in a nearby residential area.

(3) There is a distinction between primary and complementary or compensatory remediation.

Some examples:

Primary remediation: cleaning (emergency or immediate remediation), establishment of barriers to stop further spreading of the pollution (emergency or immediate remediation), Restoring the topography;

Complementary or compensatory restoration: development of additional habitats;

3. Who can file a request for action?

Natural or legal persons affected by an environmental damage to waters or land

In case of biodiversity damage any person (regardless of the violation of personal rights)

Recognized environmental organizations (NGOs)

The Environmental Ombudsperson

- ➔ [List of recognized environmental NGOs in Austria](#)
- ➔ [Environmental Ombudspersons in Austria](#)

4. Where do you file a request for action?

The request for action must be filed with the district authority (*Bezirkshauptmannschaft*) in whose jurisdiction the damage has occurred.

The request has to be filed in writing – by e-mail, fax or post

5. Which minimum content has a request for action to have?

The applicant requests the district authority to take action against the environmental damage ("request for action"): therefore the application has to apply for the arrangement or execution of remedial measures as stated in the Austrian environmental liability provisions (e.g. Section 6 and 7 Federal Environmental Liability Act).

The applicant must elaborate, why he/she is entitled to file this request for action (see above: 3. on entitlement). For environmental NGOs it is advisable to attach the formal decision on recognition issued by the Ministry of Environment and/or the list of recognized environmental organizations.

The existence of an environmental damage has to be claimed in the request. It is sufficient to add documents which serve as prima facie evidence (hints or references, samples, reports, test results, etc.). However, it is not upon the applicant to demonstrate beyond doubt, that environmental damage has been caused. This is then the task of the district authority.

6. Which rights and options does a request for action confer to the applicant?

- The applicant has the right to inform the district authority on any environmental damages
- The applicant has the right to request the authority to arrange for appropriate remedial measures
- In case the request for action is justified the applicant has legal standing in subsequent remediation procedures (right to consultation and statement, access to information, right of appeal).

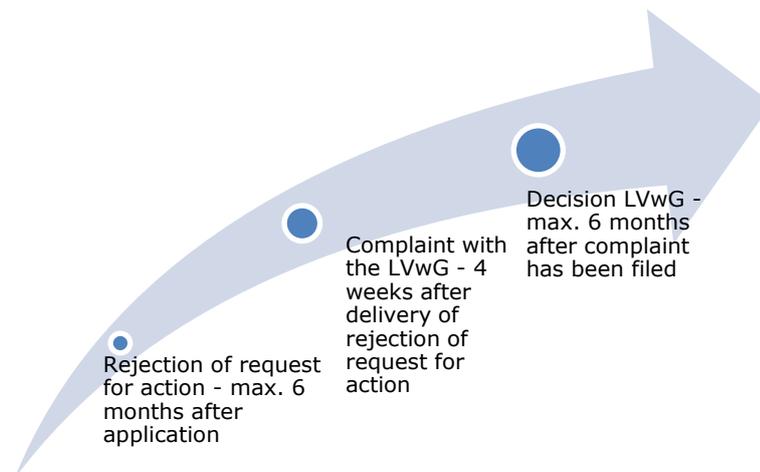
7. How long do the proceedings last?

When the request for action is justified, the applicant has standing in the remediation procedures. The procedures cannot be closed until all necessary remediation measures have been taken. This may even take several years.

A request for action is rejected, when

- the applicant is not entitled to file a request for action
- there is no environmental damage
- the district authority has already arranged for/taken all necessary remediation measures

The legal remedy against the rejection is a complaint with the competent regional administrative court (LVwG):



8. Does the request for action come along with any costs for the applicant?

Costs in administrative proceedings are low in comparison to civil proceedings:

- Each party has to bear his/her own costs (including submission fees to the authorities)
- No loser pays principle;
- The General Administrative Procedure Act (AVG) also establishes the principle that the authority shall bear the costs incurred for its activities performed in the administrative proceeding ex officio;

Nevertheless, experience with requests for action under the environmental liability law showed problems with the imposition of cash expenses. Under certain circumstances the authorities can impose incurred cash expenses to the parties.

Info: Fees to be paid to experts and interpreters are also considered to be cash expense

The AVG states that cash expenses incurred by an authority for an official act shall be borne by the party submitting the request to institute a proceeding, unless the administrative regulations provide that such expenses be borne by the authority (cp. Section 76 AVG). In fact, the environmental liability laws do not explicitly generate exemptions from these rules and there was already a court ruling applying this provision to an applicant filing a request for action in an environmental liability case.

So potentially the following costs may arise for the applicant:

When filing the request for action no fees to be paid or maximal very low submission fees in accordance with the Austrian Fee Act.

Appellate proceedings: Administrative court submission fee currently stands at EUR 30

Cash expenses for the use of unofficial experts can be high: several thousand Euros

9. Which are the experiences with requests for action?

So far only 6 to 7 requests for action have been submitted under the Austrian environmental liability laws. The applications referred to water and biodiversity damages. All of them were rejected by the competent authority. Certainly one reason for this is, that Austria disposes of additional damage remediation regimes in sectorial laws (e.g. in the Water Management Act, also in regional soil protection acts) which are applied more vividly than the environmental liability laws. The reluctance to apply the environmental liability laws may root also in the fact that authorities have little practical experience with the system and the differentiated remediation methods provided for by the environmental liability laws.

Example - Groundwater pollution in Korneuburg near Vienna

The pharmaceutical and pesticide manufacturer Kwizda Agro with a production facility situated near the city of Korneuburg et al caused a pesticide contamination of the ground water, which is still not fully remediated. Investigations of an Austrian environmental organization in 2012 revealed, that the district authority did not take sufficient and adequate remedial measures for the cleansing of the contaminated groundwater. Consequently the environmental NGO filed a request for action under the Federal Environmental Liability Act (ELA). The organization requested the authority to initiate appropriate remediation measures in accordance with ELA and grant the organization standing rights in the remediation proceedings. The district authority wanted to avoid application of the ELA and rejected the request for action after 6 months time. The environmental NGO appealed and the competent regional administrative court granted the appeal and referred the case back to the district authority for doing further assessments on the case. In the following, the district authority and after a re-appeal the regional administrative court denied the application of the ELA based on the argument that the damage did not fall under the temporal scope of the ELA. In total, court proceedings lasted about three years, very controversial case law (still not verified by supreme courts) has been produced and the applicant had to bear the cash expenses of various thousand Euros for the authority's use of an unofficial expert.

10. Links/Information

[BMLFUW Umwelthaftung](#)

[Bundes-Umwelthaftungsgesetz](#)

[EU Factsheet zur Umwelthaftungsrichtlinie](#)

[EU Broschüre zur Umwelthaftungsrichtlinie](#)

[Bezirkshauptmannschaften und Landesverwaltungsgerichte in Österreich](#)

[Beschwerdevorlage an das Landesverwaltungsgericht](#)

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