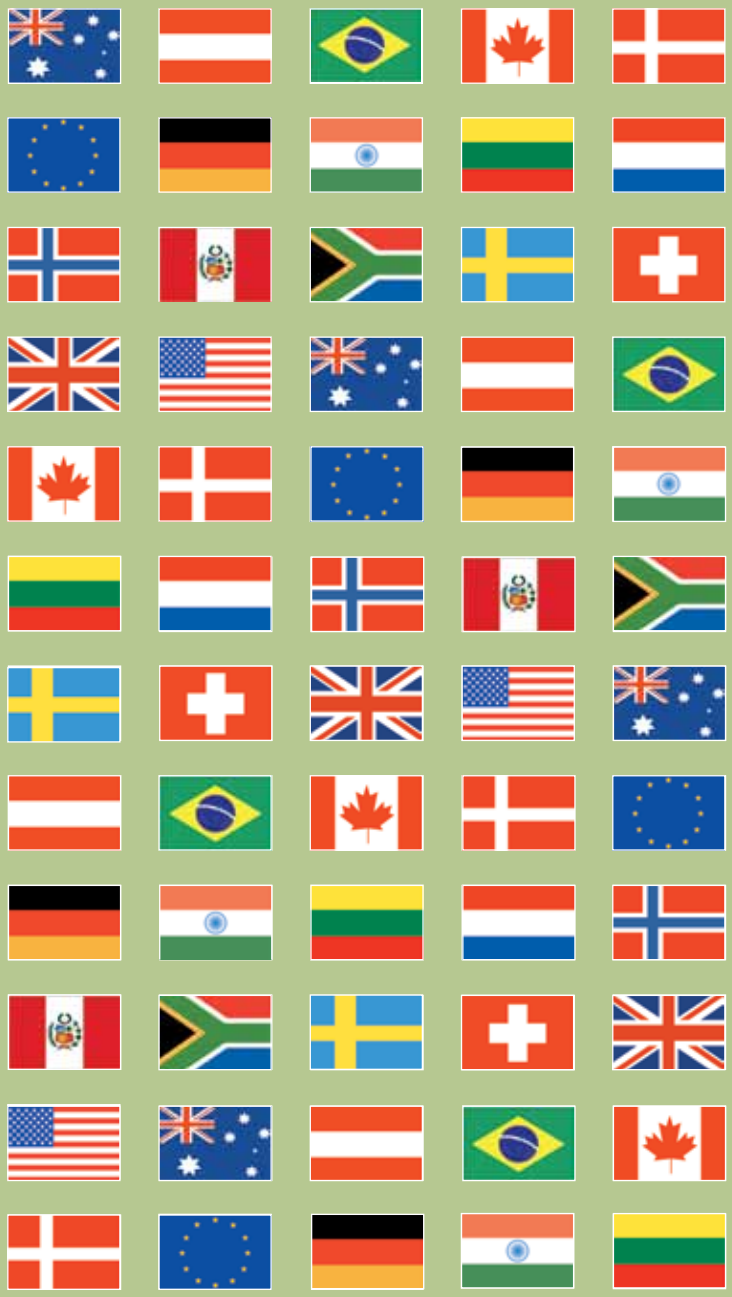
GETTING THE DEAL THROUGH

Climate Regulation

in 17 jurisdictions worldwide

2014

Contributing editor: Per Hemmer



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Main climate regulations, policies and authorities

1 International agreements

Do any international agreements or regulations on climate matters apply in your country?

Austria is party to the United Nations Framework Convention on Climate Change (UNFCCC) as well as its Kyoto Protocol, which entered into force in 2005 and expired at the end of 2012. During the UN Climate Change Conference in December 2012 in Doha the member states of the European Union, including Austria, accepted a second commitment period until 2020. The achievement of the targets for the European Union set therein is already envisioned by the European Climate and Energy Package of 2008.

Being a member state of the European Union, Austria is subject to EC legislation on climate matters and to the European Climate Change Programme including, inter alia, directives on the promotion of renewable sources of energy and on the greenhouse gas emissions allowance trading scheme.

Furthermore, Austria is party to the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol, which aims to reduce and eliminate man-made chemicals destroying the ozone layer.

To accomplish the targets of the mentioned agreements and regulations, Austria has introduced the Austrian Emissions Allowances Act (EZG), the Green Energy Act and the Act for the Promotion of the Environment.

2 International regulations and national regulatory policies

How are the regulatory policies of your country affected by international regulations on climate matters?

Austrian regulatory policies and legislation are directly influenced by international agreements and even more by legislative acts of the European Union. Austria has already transposed the relevant European directives concerning the greenhouse gas emissions trading scheme, the promotion of energy from renewable sources and the specification of petrol, diesel and gas-oil, and remains active in the process of transposing further directives (eg, the Directive concerning geological storage of carbon dioxide, which has been implemented with the Act on the prohibition of the geological storage of carbon dioxide on 28 December 2011).

On 15 June 2012 the European Council of Ministers endorsed the new Energy Efficiency Directive, to help achieve its target to increase energy efficiency by 20 per cent until 2020. Among others, the Directive requires the member states to define national energy efficiency targets and sets obligations of the public sector to purchase services, products or buildings considering their energy efficiency, especially as every year 3 per cent of the total floor area owned by public bodies has to be renovated. Further energy audits have to be promoted and energy efficiency obligation schemes have to be set up by the member states to drive improvements in households, industries and transport sectors regarding their energy efficiency. In 2012 the Austrian government presented a new Energy Efficiency Act, but it did not achieve the majority needed in the Parliament. A new proposal will be tabled after the election in autumn 2013. The Directive will have to be transposed until 5 June 2014. Even though Austria has implemented the relevant regulations into Austrian law, including the emissions trading scheme, targets under the Kyoto Protocol have not been met due to the very ambitious target set from the outset, in addition to the increase of energy consumption that negates emission reductions.

3 Main national regulatory policies

Outline recent government policy on climate matters.

Based on an extensive survey of the options available for achieving the Kyoto target and a draft from the Ministry of Agriculture and Forestry, Environment and Water Management, working groups prepared the Austrian climate policy 2002 (Klimastrategie 2002), which was adopted by the Council of Ministers and the Council of Governors in 2002.

The policy was amended in 2007 when the review process revealed that the measures taken would be insufficient to achieve the targets of the Kyoto Protocol. The amended policy (Klimastrategie 2007) includes, inter alia, measures for the enhancement of the energy efficiency of buildings, increased targets for the share of energy from renewable sources, an increase in the share of alternative fuels (biodiesel and bioethanol) and the purchase of emission reduction units (45 tonnes CO_2 equivalent) in the course of the Austrian Joint Implementation and Clean Development Mechanisms Programme (two project-based Kyoto mechanisms).

Furthermore, the Ministry of Economy, Family and Youth and the Ministry of Agriculture, Forestry, Environment and Water Management published the Austrian energy policy in March 2010; this focuses on measures in the energy realm to reach objectives such as 20 per cent more energy efficiency, a 34 per cent share of renewables and 21 per cent less greenhouse gas emissions within the EU Emissions Trading Scheme (EU ETS).

Due to the impact that climate change will probably have on the ecosystem and on society, the European Union required the member states to elaborate strategies on adapting to the climate change. On 20 July 2012 Austria presented its strategy covering measures concerning the protection from natural hazards, disaster management, etc.

4 Main national legislation

Identify the main national laws and regulations on climate matters.

As mentioned in question 1, Austria has implemented the EU ETS in the EZG (as amended in 2011), which contains rules regarding emission permits, the allocation of and the trade with greenhouse gas emission allowances and the procedures for monitoring emissions.

The Green Energy Act (as amended in 2012) governs the funding of production of energy from renewable sources. The target under the Green Energy Act is to increase the share of renewable sources of energy in electricity production to 15 per cent in 2015. In addition to wind, biomass/biogas and photovoltaics, newly built and expanded small hydropower plants and newly built medium-sized hydropower plants are also included in the aforementioned 15 per cent target. Target values for the further development of the following were also defined: hydropower (700MW), windpower (700MW), photovoltaics (500MW) and biomass and biogas (100MW). For the development between 2010 and 2020, quantitative targets are fixed as following: hydropower (1,000MW), wind (2,000MW), biomass and biogas (200MW), photovoltaics (1,200MW).

The Act for the Promotion of the Environment is the basis for joint implementation and clean development mechanism projects in Austria.

As the measures under the Austrian climate policy are manifold (see question 3), climate-relevant regulations are also included in various other legislation, such as laws concerning house-building subsidies or biofuels.

In November 2011 the Climate Protection Act was enacted, which sets maximum amounts of greenhouse gas emissions for the different sectors. Furthermore, procedures for the development of measures for an increase in energy efficiency and renewables, mobility management and waste prevention have been established.

5 National regulatory authorities

Identify the national regulatory authorities responsible for climate regulation and its implementation and administration. Outline their areas of competence.

The body mainly responsible for implementing the ETS is the Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management. The Ministry is responsible for the allocation of greenhouse gas emission allowances (for details, see question 12), in cooperation with the Austrian Ministry for Economy, Family and Youth and the European Commission.

Permits for installations emitting greenhouse gases are issued by the authorities that are competent to issue the plant licence under the respective law; generally, these are the administrative district authority under industrial law or the provincial governor for power plants.

The Minister of Life may impose fines for offences under the EZG, such as the operation of installations emitting greenhouse gases without a permit.

General national climate matters

6 National emissions and limits

What are the main sources of emissions of greenhouse gases (or other regulated emissions) in your country and the quantities of emissions from those sources? Describe any limitation or reduction obligations. Do they apply to private parties in your country?

According to the data published by the Ministry of Agriculture, Forestry, Environment and Water Management in the Austrian Energy Status 2013, the main sources of emission of greenhouse gases in Austria in 2011 were:

- traffic (21.8 million tonnes of CO_2): notably, this sector is – with the exception of air traffic – not covered by the scheme of the EZG; one reason for the high amount of emissions accounted for in Austria is the relatively low price of fuel as compared to neighbouring states, which leads to fuel tourism;
- industry and commerce (26.2 million tonnes of CO_2); and
- production of energy (14.5 million tonnes CO_2): this includes power plants as well as the supply of heat (district-heating, etc).

Under the Kyoto Protocol, Austria was required to reduce its greenhouse gas emissions by 13 per cent in the period from 2008 to 2012, as compared to its emissions in 1990 (please see question 9). In 2011 Austria was 14 percentage points above its target. Emission certificates in the amount of €600 million had to be bought. The allocation of emission allowances to the sectors covered by the EU ETS, as well as to the operators of installations within the scheme is determined by the EZG (please see question 12). Even though the allocation does not have a limitation of emissions, the obligation of the industry to purchase allowances for additional emissions is regarded as an incentive to reduce emissions.

7 National emission projects

Describe any major emission reduction projects implemented or to be implemented in your country. Describe any similar projects in other countries involving the participation of government authorities or private parties from your country.

Since its establishment in 2007, the climate and energy fund subsidised 57,370 projects in different areas including research, e-mobility, traffic, renewable energy, energy efficiency, model regions and building and renovating. By 2012 €724.5 million had been spent and another €140.58 million is available for 2013. For example, at this time, different kind of solar plants are being supported (solar heat, for private households, etc).

In recent years model regions have been established for trying out new systems and technologies, as in Wagram in Lower Austria, where plants for producing renewable energy were subsidised. Again in 2013, subsidies for new model regions as well as existing ones have been put out to tender until 11 October 2013.

Further, the fourth tender regarding 'Smart Cities' is in planning. Cities cause 80 per cent of the overall greenhouse gas emissions, although they only represent 2 per cent of the earth's surface. The climate and energy fund will support Austrian companies in developing new technologies to save energy and avoid emissions and in implementing them in pilot projects. Innovative concepts concerning architecture, appropriate energy technologies and also e-mobility shall be integrated into a complete system, which will be tested in certain Austrian cities. Currently eight model regions for e-mobility, 106 climate and energy model regions, 18 smart cities and one smart grid model region are supported by the climate and energy fund.

Individuals as well as companies, research institutions and local authorities can apply.

Another very successful initiative established in 2004 by the Ministry of Agriculture, Forestry, Environment and Water Management is 'klima:aktiv'. The aim is to promote the launch of climate-friendly technologies and services. Klima:aktiv offers changing programmes in four sectors: mobility, energy saving, building and renovation and renewable energies. For example, with its '€5 programme', klima:aktiv supports communities on their way to energy self-sufficiency by providing qualified consultants helping to find the best solutions for each community.

Domestic climate sector

8 Domestic climate sector

Describe the main commercial aspects of the climate sector in your country, including any related government policies.

Austria is already one of the leading countries in the use of hydropower. Currently, the remaining potentials of this renewable energy source are being assessed and projects are being promoted. In addition, Austria sponsors other renewables through the Green Energy Act, including wind parks, hydropower, biomass/biogas and solar plants.

Measures in the building sector are especially being promoted under the heading of 'energy efficiency and saving'. The agricultural sector is also trying to foster biomass and biofuel projects.

Different industries in Austria profit from the implementation of the national climate policy. The wind and solar energy sectors are, compared to leading states in this field such as Germany and Spain, relatively small. However, Austria is focusing on hydropower and biomass (especially pellets) for use in combined heat and power plants as well as in private households. The government sponsors projects like these by granting investment subsidies.

General emissions regulation

9 Regulation of emissions

Do any obligations for emission limitation, reduction or removal apply to your country and private parties in your country? If so, describe the main obligations.

Under the Kyoto Protocol and the burden-sharing agreement of the EU, Austria was committed to reducing its greenhouse gases to 13 per cent below 1990 levels by 2012. Austria should have also reached a reduction of emissions to 68.8 tonnes CO_2 equivalent.

Despite the commitment to reduce, emissions increased by 14.2 million tonnes between 1990 and 2005, resulting in an obligation to reduce emissions by 24.4 million tonnes. In 2009 emissions were 2.4 per cent higher than in 1990, but 7.9 per cent lower than in 2008. In 2010 the emissions increased again, but were still 2.7 per cent lower than in 2008. In 2011 emissions decreased again by 2.9 per cent, but were still 13.5 per cent higher than in 1990.

However, under the European Climate and Energy Package of 2009, Austria is also required to reduce emissions from sectors not covered by the EU ETS by 16 per cent from their 2005 level.

Emission targets are not directly passed on to the industry as the number of allocated emission allowances is higher than Kyoto goals would allow and not all branches (notably traffic) fall into the scope of the EU ETS. However, obliging the undertakings that are part of the EU ETS to acquire (and submit) a certain amount of emission allowances for their actual emissions is seen as providing an incentive to reduce emissions. However, as described in the previous paragraph, such incentive was not strong enough to help reach Kyoto requirements.

10 Emission permits or approvals

Are there any requirements for obtaining emission permits or approvals? If so, describe the main requirements.

The operator of an installation emitting greenhouse gases must hold a greenhouse gas emission permit. The purpose of such permit is to make sure that the operator will monitor and report the emissions in the way prescribed by Austrian and European law.

Accordingly, the operator must demonstrate in its application that it is capable of monitoring and reporting the emissions in the way prescribed by such law. In order to do this, it has to submit a monitoring plan by filling in an electronic form. Since regulation 601/2012/EU about the ETS-monitoring came into force on 1 August 2012, an EU-wide standardised form, which is available on the website of the Ministry of Agriculture, Forestry, Environment and Water Management (www.lebensministerium.at), needs to be used.

The operator must also submit a reporting plan.

11 Oversight of emissions

How are emissions monitored, reported and verified?

As described in question 10, the operator has to submit a monitoring plan when applying for an emission permit, in which it describes which methodology it uses for determining the emission of its installation. The operator can choose between a calculation-based or measurement-based method. The competent Austrian authority (see question 5) has to approve such a plan and any amendment thereof.

Every year, the operator has to submit an emissions report to a private independent verification agency (approved by the Ministry of Agriculture, Forestry, Environment and Water Management) using an internet portal (edm.umweltbundesamt.at). After approval of the emissions report by the agency, the operator has to submit the emissions report to the Ministry of Agriculture, Forestry, Environment and Water Management again via the above-mentioned internet portal.

As mentioned in question 10, on 1 August 2012 the Monitoring Regulation came into force. According to the provisions of the EZG any emission permit holder was obliged to amend the existing monitoring plan within four months using the new template available on the website of the Ministry of Life.

Emission allowances (or similar emission instruments)

12 Regime

Is there an emission allowance regime (or similar regime) in your country? How does it operate?

There has been an emission allowances regime in Austria since 2005 as part of the EU ETS. Until 2012 the allocation of emission allowances has been carried out via a three-stage system: national allocation plan; Austrian allocation regulation; and individual administrative allocation decision. The regime operates with subsequent trading periods: the first period lasted from 2005 until 2007 as a kind of test period (phase I), whereas all the following trading periods were meant to be five-year periods, but since the amendment of the EZG in 2011 the trading periods after 2013 will be eight-year periods.

For each trading period, the minister of life in consultation with the finance minister and the minister for economic affairs enacted a national allocation plan (NAP), followed by a regulation by the minister of life and a similar individual administrative allocation decision for each installation. On 23 April 2009 the European Community enacted a new Directive concerning the EU ETS as part of the Climate Package. According to this Directive, there will be no NAPs for the third trading period beginning 2013. Instead, the European Commission will enact a 'Community-wide quantity of allowances'. On 12 December 2011 the new EZG 2011 was published in the Federal Law Gazette, transposing the Directive into Austrian Law. As a result, there will no longer be national allocation plans. Instead the member states have to calculate – according to the standardised provisions applicable in every member state – the quantities of allocation and have them approved by the Commission.

By 30 April every year, the operator has to return emission allowances corresponding to the tonnes of greenhouse gases it has emitted in the previous year to the Ministry of Agriculture, Forestry, Environment and Water Management. The emission allowances are subsequently deleted from the operator's account in the union-wide registry, which has been available since mid-2012. In case the operator does not return the respective number of emission allowances, €100 (adapted to the monetary union index of consumer prices) is charged for each emitted tonne.

Emission allowances are valid for one trading period and will be deleted from the registry four months after the beginning of the next trading period. However, as from 2013 the deleted emission allowances from the last period (starting with phase II, 2008 to 2012) are substituted in the next period (known as 'banking'). Austria did not allow banking for the first period (2005 to 2007), as the substitution would have had to be carried out by using Austria's assigned amount units, which would have been difficult in connection with Austria's share of the EU Kyoto goal of reducing CO_2 by 13 per cent below 1990 levels by 2012. The emission allowances of phase I constituted a different 'good' than the emission allowances of the

following periods, as they did not yet have a share in the amount allocated to the member states.

13 Registration

Are there any emission allowance registries in your country? How are they administered?

Since mid-2012 a union-wide registry has become available, which has to be used by the Ministry of Agriculture, Forestry, Environment and Water Management to ensure the exact registration of the allocation, holding, transfer and cancellation of emission allowances. The registry is administered by a body set up by the Ministry.

14 Obtaining, possessing and using emission allowances

What are the requirements for obtaining emission allowances? How are allowances held, cancelled, surrendered and transferred?

The emission allowances for phase I were allocated free of charge. For phase II, around 97.7 per cent of the emission allowances were allocated free of charge and the rest were auctioned (the allocation regulation for phase II, BGBl II, No. 279/2007 amended by BGBl II, No. 326/2010 regulating, inter alia, an increased number of emission allowances). Since the beginning of the third period as of 1 January 2013 (phase III), a large amount of the emission allowances has been auctioned (EZG 2011, see question 12).

Each operator falling under the scope of the Austrian ETS holds its emission allowances in an account in a union-wide registry. The emission allowances are deleted by the registry upon request of the operator. The EZG stipulates that the operator of an installation has to surrender the used allowances to the Ministry for Life by 30 April of the following year.

In Austria, allowances have the legal character of goods and can be transferred between persons or legal entities in the EU as well as in third countries, provided such countries recognise the emission allowances in reciprocal agreements. The transfer of the allowances becomes valid with entry into the registry.

Trading of emission allowances (or similar emission instruments)

15 Emission allowances trading

What emission trading systems or schemes are applied in your country?

As previously mentioned, the EU ETS applies in Austria. However, only a share of the total sum of emissions is covered by the system: the energy sector and industries such as the production and processing of ferrous metals and the production of metal ore, pig iron and steel, cement, clinker glass, ceramic products, paper, board and pulp from timber. In 2009 the aviation industry and the production of aluminium and certain chemicals were added to the scope of the EZG. Further, in 2011 emissions from the production of petrochemicals and ammonia and certain nitrous oxide emissions were then added. Greenhouse gases like methane, farming, industries other than those mentioned above, private households and the transport sector do not fall under the scope of the EU ETS.

In phase II of the EU ETS (2008–2012), member states are free to auction up to 10 per cent of emission allowances. In Austria, only 2.3 per cent are auctioned; the rest are allocated for free. Auctioning allowances can be carried out over the counter, meaning directly between the acting persons, via a broker or via stock exchanges (eg, the European Climate Exchange in London, the European Energy Exchange in Leipzig and the Energy Exchange Austria (EXAA) in Vienna). Compared to phase I, phase II allows entities to compensate a lack of allowances by reducing emissions in non-member states (see question 13). Furthermore, member states have agreed to add aviation to the scheme by 2012.

In phase III (2013 to 2020), the total amount of emission allowances has been reduced again, and more and more allowances will be auctioned (from 20 per cent in 2013 to finally 100 per cent in 2025).

Moreover, the allocation criteria has been changed from the grandfathering principle (meaning that installations get as much emission allowance for free as they emitted CO_2 in the past) to the BAT (best available technology) principle; allowances are not allocated according to the emitted gas, but according to the amount of emissions of a modern and efficient installation in the same sector and of the same size.

16 Trading agreements

Are any standard agreements on emissions trading used in your country? If so, describe their main features and provisions.

Trading is possible, for example via the EXAA or via the Austrian Development Bank as a broker. Apart from future contracts and the standard agreement provided by the European Federation of Energy Traders (EFET), there are no standard agreements in Austria, and the EFET agreement is only made for transactions between energy or gas providers. In other words, there is currently no general standard agreement on emissions trading.

Sectoral regulation

17 Energy production, use and efficiency

Give details of (non-renewable) energy production and consumption in your country. Describe any regulations on emissions. Describe any obligations on the state and private persons for minimising energy use and improving efficiency. Describe the main features of any scheme for registration of energy savings and for trade of related accounting units or credits.

According to the Austrian Energy Status 2013 of the Ministry of Economy, Family and Youth (using mostly data from 2011), the total energy production in Austria was 489 petajoules (12.6 per cent natural gas, 7.5 per cent oil, 7.2 percent combustible waste 25.2 per cent hydropower and 47.5 per cent other renewables), while the gross domestic consumption was up to 1,427.3 petajoules. The imported amount of energy was 1,288.3 petajoules.

This domestic production is sufficient for only 34.3 per cent of Austria's total energy consumption. Therefore, Austria has a net import rate of 69.5 per cent and is more dependent on energy imports than the average EU member state (54 per cent average import rate).

The gross final energy consumption (ie, energy amount provided for the consumer to convert to net energy such as heating and electric lighting) of 1,089.2 petajoules can be divided into 38.2 per cent oil products, 20 per cent electricity, 17 per cent gas, 14.6 per cent renewables, 1.8 per cent combustible waste, 6.7 per cent heating and 1.7 per cent coal.

In comparison with the 1990s, when the biggest amount of energy was consumed by domestic use, today the largest share (32.9 per cent) can be assigned to traffic, followed by 28.7 per cent to production, 23.9 per cent to domestic use, 12.4 per cent to supply of services and 2.1 per cent to agriculture.

In relation to all emissions in 2011 (carbon dioxide 70.5 million tonnes, methane 5.4 million tonnes, nitrous oxide 5.3 million tonnes and industrial gas 1.7 million tonnes), 31.7 per cent of the total observed CO_2 emissions were caused by industry, followed by traffic (26.3 per cent), small consumers (13.0 per cent), energy production (17.5 per cent), agriculture (9.1 per cent) and others (2.4 per cent).

18 Other sectors

Describe, in general terms, any regulation on emissions in connection with other sectors.

Transport

Although this sector emits 21.8 million tonnes of CO_2 (26.3 per cent of the total CO_2 emissions in Austria) and has increased 54.9 per cent since 1990 (partly due to the 'fuel tourism' arising from lower fuel prices in Austria than in Germany), it is not included in the emission allowances and trading regime.

Agriculture

There is no specific regulation in place; agriculture is another sector that is not subject to the emission allowances and trading regime.

Exploration and production of oil, gas and minerals

Exploration and production, as well as refining processes, are covered by the EZG.

Industrial processes

The EZG scheme is applicable if the industry in question is one of the enumerated industries (see question 15).

Waste-to-energy activities

The EZG does apply, but the Austrian allocation regulation provides for special provisions (ie, a cogeneration bonus named the KWK bonus).

Renewable energy and carbon capture

19 Renewable energy consumption, policy and general regulation

Give details of the production and consumption of renewable energy in your country. What is the policy on renewable energy? Describe any obligations on the state and private parties for renewable energy production or use. Describe the main provisions of any scheme for registration of renewable energy production and use and for trade of related accounting units or credits.

Due to its topographical situation, Austria produces hydropower and biomass in respectable amounts. Hydropower can contribute up to 150 petajoules per year to the total energy amount, although this amount depends on heavy snow and rainfall during the year. Thus, in 2011, around 123.1 petajoules came from hydropower and contributed 25.2 per cent to the total domestic energy production.

The production of biogenic fuel (pellets, biogas, sewage gas, etc) has quintupled over the past 20 years and contributed 160.7 petajoules in 2011, along with:

- 35 petajoules from non-renewable combustible waste;
- 13.3 petajoules from solar and geothermal energy; and
- 7 petajoules from wind energy.

These sources covered about 16.4 per cent of Austria's gross final energy consumption in 2011. In 2009 Austria had the fourth-highest percentage of gross final energy consumption in the European Union. The aim set out in Austria's action plan for energy efficiency is to reach 34 per cent by the year 2020.

One important legal basis is Directive 2001/77/EC, amended by Directive 2009/28/EC, which has been implemented in the Green Energy Act to drive the deployment of renewable energy. This Act generally regulates the increased use of electricity from renewable sources and the documentation of the evidence of origin.

In Austria, green energy is promoted mainly by guaranteed feed-in tariffs for power from renewable sources but also by investment subsidies (for small hydropower plants in particular).

20 Wind energy

Describe, in general terms, any regulation of wind energy.

There are no general restrictions for the construction and operation of wind energy plants. Any owner and operator of a wind energy plant has to comply with the general duties for electricity generators under the applicable provincial electricity act. In addition, the following permits and approvals will be necessary subject to the specific circumstances:

Spatial planning

Regulations differ from province to province; in some cases a special dedication is required. In other cases, wind energy plants can only be built upon land that is dedicated for building.

Building law

In almost all provinces a permit is required. However, in Lower Austria, for example, a wind energy plant only requires an authorisation according to the Building Regulations if no approval under the Electricity Act is required. An approval under the Lower Austrian Electricity Act is necessary if the bottleneck capacity exceeds 50kW.

Electricity law

Depending of the size of the wind energy plant a separate permit is necessary; with smaller wind energy plants a notification is sufficient. Limits are defined in each province's law.

Nature protection law

There are defined areas where wind energy plants are completely forbidden and areas where there are certain restrictions (eg, concerning height).

In other areas, whether a project violates conservation law or not is decided on the merits of the individual case.

Environmental impact assessment

If a wind power plant reaches a certain size (20 plants or a total capacity of 20MW or more, 10 plants and 10MW in regions that are protected), an environmental impact assessment (EIA) is obligatory.

Aviation law

No buildings at all are allowed within a safety zone around an airport. If someone wants to build a wind energy plant in this area, an exceptional permit from the Federal Ministry of Transportation (civil airports) or Defence (military airports) is necessary. Outside such area the height of the wind energy plant is relevant. Any installation that is 30 metres or higher has to be checked to assess whether it is an obstacle to aviation (higher than 30 metres and standing upon a hill that protrudes more than 100 metres from the surrounding landscape). In such case an exceptional permit is necessary. Usually, such a permit is combined with certain measures (flash lights on top; notification to the register of aviation obstacles).

Subsidies

According to the Green Energy Act 2012 wind energy plants are promoted by way of purchasing the generated electricity to special feed-in tariffs as long as there are sufficient funds.

21 Solar energy

Describe, in general terms, any regulation of solar energy.

There are no special provisions in place under Austrian law with respect to the construction and operation of solar energy generation facilities.

Whether special permits are required (electricity law, building authorisation, approval under nature protection laws) or restrictions

Update and trends

The use of renewable energy has become a hot topic of discussion in 2013. Measures taken to protect the climate, such as subsidising green energy by granting high feed-in tariffs and the drop in prices for emission certificates, plunged the energy community into chaos. Efficient, climate-friendly, gas-fired generation plants have to be shut down. Instead coal-fired generation plants are running, because of the cheap price of coal and emission certificates. During the peak hours of solar or wind energy production, prices for electricity at trading points are extremely low (in Germany they even became negative), while for customers electricity gets more and more expensive because of high green-electricity charges. Renewable energy will have to get competitive and infrastructure will need to be developed to avoid congestion at peak hours of solar and wind energy production.

under regional planning apply depends on the size and the location of any specific facility.

Solar energy plants are also promoted by the Green Energy Act 2012. Additionally, in 2013 subsidies for different kind of solar plants were made available by the climate and energy fund. Furthermore, some federal states are promoting solar energy plants, for example in connection with the building or renovation of private residential buildings in Lower Austria.

22 Hydropower, geothermal, wave and tidal energy

Describe, in general terms, any regulation of hydropower, geothermal, wave or tidal energy.

Hydropower is one of Austria's main primary energy sources. Geothermic power is also used. In addition to the necessary permits under the applicable provincial Electricity Act, permits under the Austrian Federal Water Act are required. Depending on the size of the project and whether its location in one of those areas under protection, special permits under the relevant nature conservation laws will most likely be required, as well as an EIA.

In respect of geothermic projects, a special permit under the Federal Mineral Resources Act is required for wells that are deeper than 300 metres. If the geothermic project is only used by a heat exchanger without change in the underground water cycle, only a notification under the Austrian Water Act is necessary.

Small and middle-sized hydropower plants are promoted by investment subsidies in accordance with the Green Energy Act 2012.

23 Waste-to-energy

Describe, in general terms, any regulation of production of energy based on waste.

Waste-to-energy is primarily used by local communities in waste-fired cogeneration plants and at industrial sites, in particular paper mills, using waste from the industrial production as a primary energy source for cogeneration plants.

In addition to any permit required under the provincial Electricity Act, a special permit under the Austrian Waste Disposal Act may be necessary, depending on the size of the plant and whether it uses dangerous waste or not. If the plant is subject to a permitting process under the Austrian Industry Act, such special permit may not be necessary if the waste is not dangerous and the output is less than 2.8MW.

In individual cases, an EIA is obligatory. A building permit under the building law will also usually be necessary.

The Ministry of Life promotes waste-fired plants, only if it is biogenic waste. In this case investment subsidies are possible.

24 Biofuels

Describe, in general terms, any regulation of biofuels.

Directive 2003/30/EC is transposed into national law by an amendment to the regulation concerning fuels, ruling that a certain percentage of diesel fuel has to be biodiesel.

The Ministry of Life promotes plants for the production of biofuels with investment subsidies. Furthermore, biofuels are exempted from the petroleum tax.

Regarding the building of biofuel plants, please see question 20.

25 Carbon capture and storage

Describe, in general terms, any policy on and regulation of carbon capture and storage.

The EC Directive 2009/31/EC on carbon capture geological storage has been transposed into national law by the publication of the act on the prohibition of the geological storage of carbon dioxide in the Austrian Federal Law Gazette on 28 December 2011. As a result, the geological storage of carbon dioxide is now forbidden, except for certain research activities.

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Climate matters in transactions

26 Climate matters in M&A transactions

What are the main climate matters and regulations to consider in M&A transactions and other transactions?

In a transaction concerning installations potentially falling under the scope of the EU ETS, from the purchaser's perspective the compliance of the operator with obligations under the EU ETS in the past should be checked during the due diligence process. The buyer should include a warranty clause to ensure that the seller is liable for the violation of past obligations in connection to emission permits or emission allowances. Furthermore, the respective sale and purchase agreement should contain a clause governing the responsibility for the implementation of obligations concerning emission permits and emission allowances, particularly concerning their costs. Such costs will rise in the future as a consequence of the change of the allocation procedures, as more and more allowances will be auctioned. From the perspective of a buyer, a respective warranty of the seller should be included in the sale and purchase agreement.

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