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Environment & Climate Change Law

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21st Edition

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Steptoe International (UK) LLP

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Expert Analysis Chapter

Q&A Chapters

Austria

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

The Austrian environmental protection regime is one of the strictest in the world. As a Member State of the European Union, Austria is obliged to implement and put into effect the (already strict) European environmental law. However, the national policies and laws often provide for even more rigorous rules on topics such as permitting requirements, thresholds, rights of third parties and liabilities ("gold plating").

Some of the principles of Austrian environmental law are laid down in the Federal Constitutional Law on Sustainability, Animal Welfare, Environmental Protection, Securing Water and Food Security and Research (*Bundesverfassungsgesetz über die Nachhaltigkeit, den Tierschutz, den umfassenden Umweltschutz, die Sicherstellung der Wasser- und Lebensmittelversorgung und die Forschung*), such as the preservation of the natural environment (i.e., water, air and soil) as the basis of life for future generations. Other fundamental principles of Austrian environmental law include, *inter alia*, the precautionary principle, the "polluter pays" principle, and the principles of no deterioration and amelioration of elements of the environment.

From a systemic perspective, Austrian environmental policy and law are characterised by the distribution of legislative and administrative competences between the federation and the nine provinces. Thus, some policies are decided upon at the federal level and others at the provincial level. The distribution of competences is one of the main reasons why all efforts to codify environmental law have so far been in vain. Therefore, Austrian environmental law remains scattered across numerous federal and provincial legal acts, meaning enforcement is also highly fragmented, as set out below.

Federal level

The legislative competence on the federal level for matters such as water, waste, forestry, mineral raw materials, aviation, chemistry and trade law, lies with the Austrian Parliament, while the administrative competence is divided between the various ministries. The most important environment-related ministries are:

- the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology (*Bundesministerium für Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie*, BMK);
- the Federal Ministry of Agriculture, Forestry, Regions and Water Management (*Bundesministerium für Land- und Forstwirtschaft, Regionen und Wasserwirtschaft*, BML); and
- the Federal Ministry of Labor and Economy (*Bundesministerium für Arbeit und Wirtschaft*, BMAW).

Provincial level

At the provincial level, the legislative competence lies with the provincial parliaments. The provincial governments (*Landesregierungen*) are the highest administrative authorities. The provinces have the legislative competence for environmental topics such as nature protection, buildings or spatial planning; they enforce, for example, spatial planning, environmental impact assessments and nature conservation. For certain matters, e.g., in the field of nature conservation, the district administrative authority is competent. In addition, local municipalities enforce certain aspects of planning law, such as land use and zoning plans, as well as building law.

Given the complex distribution of competences, the competent authority must be identified for each relevant matter.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

As the competences for enforcement are divided between many different authorities on the federal and provincial level, there are also many different approaches to enforcement (see question 1.1 above). This also depends on the political party to which the highest body (e.g., the minister) of the authority belongs. The approach may also differ from province to province. However, based on the fundamental principle of legality, all acts can be exercised only on the basis and to the extent of applicable laws.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

In principle, public authorities and public institutions must grant access to information on the environment to everyone. Additionally, Austrian environmental information law goes beyond the principle of free access to environmental information and obliges public authorities in many cases to obtain information on their own initiative and to make it available to the public.

Environmental information is understood to be data on the state of the environment (e.g., water, air, soil and the landscape), environmental factors (e.g., substances, energy, noise and

radiation), measures (e.g., plans, programmes and administrative acts), cost-benefit and other economic analyses, etc. However, the right of access is granted only in relation to environmental information itself and does not cover the right to inspect specific documents or entire procedural acts.

Information must be provided by administrative authorities, bodies of regional and local authorities, legal persons under public law, and natural and legal persons under private law who perform public tasks or provide public service listings under one of the above-mentioned bodies (e.g., energy supply companies). The environmental information right has the character of an *actio popularis* because everyone is granted a right of free access to environmental data.

Limitations on disclosure

Disclosure may be refused if:

- the request for information relates to an internal communication;
- the request was apparently committed in an abusive manner;
- the request is too general; and/or
- the request concerns material in the process of being completed, unfinished documents or similar.

Before refusal, the interests speaking for and against the disclosure must be weighed by the competent authorities.

Compulsory disclosure

Environmental information that must, in all cases, be actively disseminated includes:

- the wording of international treaties;
- policies, plans and programmes relating to the environment;
- environmental status reports;
- authorisations with an environmental impact; and
- environmental impact assessments.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

As a general principle, environmental permits are required under Austrian law if the "public interest" or third-party rights (e.g., landowners' or fishing rights) can be affected by the envisaged activity. The permitting procedures vary immensely and can range from simple notification obligations to thorough environmental impact assessments lasting up to several years.

Due to the constitutional division of competences, all efforts for a comprehensive environmental permit have so far been in vain. A single permit from only one competent authority ("one-stop shop") is only foreseen for very large projects under the Federal Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz*, UVP-G). Thus, activities potentially affecting the public interest or third-party rights in Austria usually require more than one environmental permit (and usually from more than one competent authority). The construction and operation of a single industrial plant can require multiple environmental permits (e.g., under the Trade, Water, Forestry, Nature Protection and Construction Acts). The question of which permits a certain activity requires can therefore only be answered on a case-by-case basis. Although the Austrian legal framework on environmental permits might seem complex at first sight, our experience has shown that diligent preparation allows for an efficient permitting process, even in parallel with several authorities.

Transfer of permits

Environmental permits in Austria are usually linked to the operation (*in rem*) and not to the person. Whoever owns the plant also owns the permit for the plant. A plant permit does not have to be regularly transferred to a new owner. In an asset deal, the new owner in most cases must inform the relevant authority; in a share deal the owner of the plant does not change. On the other hand, a transfer of the permit without the plant is usually not possible.

Apart from plant permits, personal environmental permits may be necessary for running a certain business, such as waste collection, conducting certain trades or special water rights. Personal permits are linked to a qualified person. A transfer to another person is usually not possible; the other person must – in most cases – obtain their own permit.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

If an environmental permit is denied, the regulatory authorities' decision can be appealed before the administrative courts (and in a few cases first before another regulatory authority). The administrative courts' decisions can be appealed before the Constitutional Court (*Verfassungsgerichtshof*, VfGH) and the High Administrative Court (*Verwaltungsgerichtshof*, VwGH).

If an environmental permit is granted under certain conditions, the possibilities to appeal only against specific conditions are very limited. According to the VwGH, an appeal against a condition is usually seen as an appeal against the whole permit. In the appeal decision, the environmental permit, therefore, may also be denied.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Under the UVP-G, the environmental impact assessment and permit decision are combined in one comprehensive procedure. For projects that need a permit under the UVP-G, an environmental impact assessment is mandatory. Projects that are subject to the UVP-G cover most industries, e.g., waste, electricity, infrastructure, mining and different producing industries, if the project exceeds certain thresholds.

For plants that are subject to the Integrated Pollution Prevention and Control (IPPC) or Seveso III Directives, and the corresponding Austrian implementation acts, regular environmental inspections are mandatory. Plants under the Federal Trade Act must undergo periodic inspections for compliance with permits. Additionally, further audit obligations could arise from the conditions of other permits.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

In Austria, environmental incidents and breaches of law (also comprising breach of permits) can have consequences under criminal, administrative criminal, administrative and civil law. The regulatory authorities are only competent for the execution of administrative criminal and administrative law; the prosecution of severe incidents or breaches of environmental law is regulated in the Criminal Code (*Strafgesetzbuch*, StGB) and lies within the competence of the Public Prosecutor's Office (*Staatsanwaltschaft*)

and the criminal courts. Private damages from environmental incidents and breaches of environmental law must – in principle – be claimed by the damaged party; investigations related to private damages lie within the responsibility of the civil courts.

Investigative and access powers of regulatory authorities
The investigative and access powers of regulatory authorities are scattered over a wide range of federal and provincial acts, depending on the nature of the incident or the breach of environmental law in question. They range from access to private property, the collection of samples, interrogations, orders (e.g., on the operation of machines/plants or the implementation of mitigation measures), to the arrest of those suspected of having committed acts punishable under (administrative) criminal law.

The execution of investigative and access powers is limited by the principle of proportionality, requiring that the specific use of a power is proportional to its specific scope and that no milder measures are available. Thus, before severe measures (such as shutdowns or arrests) are implemented, the authorities will usually investigate via the collection of samples or interrogations (which may comprise, e.g., the discussion of voluntary mitigation measures). Finally, all actions taken by administrative powers for investigation and access are subject to contestation, although not all remedies automatically suspend the contested measures.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

In line with EU waste legislation, the Waste Act (*Abfallwirtschaftsgesetz*) defines waste from an objective and a subjective perspective. From an objective perspective, waste is defined as any movable object, whose collection, storage, transport, or treatment is necessary to avoid negative impacts on public interests. From a subjective perspective, waste is defined as any movable object that the holder has discarded or intends to discard. Liquids (and especially wastewater) are not regulated under waste law unless specifically mentioned.

The primary responsibilities and controls pertain to hazardous waste, specifically waste exhibiting hazardous characteristics (e.g., such as substances with explosive, flammable, acute toxic, carcinogenic properties, and more).

3.2 To what extent is a producer of waste permitted to store and/or dispose of it on the site where it was produced?

According to the Waste Act, producers and other holders of waste are obligated to hand waste over to persons authorised to collect and treat waste within three years if they are not authorised or capable of treating the waste in accordance with the Waste Act themselves. However, if waste is stored for more than one year and intended to be disposed of (and not recovered), the storing area may be considered a landfill (and might therefore require a separate permit).

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/ disappears)?

As mentioned above (see question 3.2), producers of waste are obliged to hand waste over to persons authorised to collect and treat it. Producers are responsible for ensuring that the recipient is authorised and instructed to recover or dispose of the waste. If waste is not handed over accordingly (i.e., to an authorised and instructed person), the producer remains responsible until the waste is recovered or disposed of in an environmentally sound way.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Waste producers may only be obliged to take back and recover or dispose of their waste if the above-mentioned obligations (see questions 3.2 and 3.3) to hand over their waste to persons authorised to collect and treat waste are not met.

Additionally, Austrian waste law – in line with EU law – provides for several take-back obligations for producers of specific goods (and therefore not waste), e.g., batteries, electronic and electrical devices, packaging materials, etc.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Breaches of environmental law (encompassing all kinds of environmental damage as well as environmental incidents) can lead to various liabilities of offenders under criminal, administrative, administrative criminal and civil law in Austria.

Due to the multitude of possible liabilities and the different prerequisites for the attribution of liabilities, potential defences against liabilities (and their prospects of success) can only be determined on a case-by-case basis. In general, liability for environmental damages under all legal regimes (criminal, administrative criminal, administrative and civil law) can be avoided if the defendant can prove that:

- there is no damage (e.g., if the "damage" turns out to be a natural process or is based on flawed investigations/ samples);
- the "damage" is covered by permits; or
- the damage is attributable to others (including authorities).

Other arguments can include (but are not limited to):

- limitations of time;
- lack of sufficient evidence;
- lack of jurisdiction;
- lack of causality;
- lack of negligence; and
- lack of proportionality.

The effectiveness of defences depends on the specific case. A lack of negligence will not be sufficient to avoid liability without fault (e.g., under certain provisions of civil law) and a limitation of time will not be sufficient to avoid liability if no limitation of time is foreseen (e.g., under certain provisions of administrative law).

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Notwithstanding that the polluting activity is within permit limits, an operator can be liable under the Federal Environmental Liability Act (*Bundes-Umwelthaftungsgesetz*, B-UHG) or the applicable Provincial Environmental Liability Act. Under those laws, operators may be obliged to implement prevention, reduction or restoration measures. Moreover, most environmental laws also

provide for retrospective additions to permits. The permit limits may thus be changed even years after they are granted. Finally, an operator may also be liable under civil law.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Under the Administrative Criminal Act (*Verwaltungsstrafgesetz*), the directors and other officers representing a company are the prime persons responsible for compliance with all relevant provisions of Austrian administrative law. Thus, directors' and officers' insurance (D&O policies) are common in the Austrian insurance market. Certain insurers will exclude certain liabilities/penalties based on the terms of insurance and the nature of the misconduct. Therefore, certain liabilities/penalties – for instance, caused intentionally or by gross negligence – could ultimately turn out not to be insurable.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

As environmental plant permits are usually linked to the asset, from an environmental liability perspective there is not much difference between share or asset deals (see question 2.1). In an asset deal, the buyer may have additional reporting obligations to the competent authorities. In addition, personal permits and authorisations may be required if the existing permittee does not act on behalf of the purchaser.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Austrian law does not stipulate liability for environmental damage or breaches of environmental law only based on business relations with the offender. However, if the business relationship encompasses co-management rights or the transaction/ownership of assets, the financial institutions or lenders may be liable.

Liability risks of financial institutions or lenders can be avoided by abstaining from (co-)management rights and the transaction/ownership of assets. If (co-)management rights and/or ownership of assets are transferred, (financial) environmental due diligence is common.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Regulations concerning contaminated land can be found in numerous laws in Austria, particularly the Water Act (*Wasserrechtsgesetz*), the Waste Management Act (*Abfallwirtschaftsgesetz*), the Trade Act (*Gewerbeordnung*) and the Contaminated Sites Remediation Act (*Altlastensanierungsgesetz*). Under all these acts, the "polluter pays" principle applies. The primary responsibility for remedying contamination thus lies with the polluter.

However, several provisions also provide for a subsidiary liability of the property owner. This subsidiary liability may arise, for example, if the person primarily obliged cannot be identified or is legally no longer able to carry out the remediation. This liability may also affect legal successors, in which case it does not matter how many owners lie between the historical last and the current owner.

5.2 How is liability allocated where more than one person is responsible for the contamination?

Typically, the polluter is liable for the contamination. If there are several polluters, all are jointly liable from an environmental law perspective.

Personal liability

As mentioned in question 4.3, directors and other officers representing a company are the prime persons responsible for compliance with all relevant provisions of Austrian administrative law. However, a company can name responsible persons to the authority for certain matters. If the announcement to the authority is lawful, only the responsible person is liable to the authority for the respective matter (e.g., compliance with waste regulations or with all administrative provisions at a certain site). Since possible penalties include fines ranging from the low hundreds of euros to six-digit (or even higher) sums, responsible persons must agree to their appointment.

5.3 If a programme of environmental remediation is "agreed" with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?

Remediation measures are typically ordered via administrative decision. The decision usually states specific remediation goals, e.g., chemical parameters for ground water, that must be met. Once the remediation goals are met and acknowledged by the authority, there is usually no basis for additional works (principle of proportionality). Third parties are usually not affected by the remediation measures and therefore cannot challenge such decisions. However, this may change due to EU legislation and case law and must therefore be assessed on a case-by-case basis.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination, and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

In principle, this is subject to private autonomy between the owner and previous owner. The relevant purchase contract can therefore distribute liabilities between the parties within the boundaries of a morality test (*Sittenwidrigkeitsprüfung*). Especially in business-to-consumer constellations, further restrictions for disclaimers of warranties can be relevant. However, a disclaimer of warranty for minor contaminations is common in the market.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

The sheer aesthetics of public assets, such as rivers or the scenery of a landscape, are usually protected solely by permitting obligations. Monetary fines are only foreseen if the damage is more than aesthetic and, for example, has an impact on the quality of the environment, such as waters, soil or air.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Please see question 2.4.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

According to the Federal and Provincial Environmental Liability Acts, such information obligations are only mandatory for the operator, i.e., usually any natural or legal person being responsible for specific economic activities listed in the Environmental Liability Acts (such as the operation of specific plants, waste management operations, discharges into surface or groundwater, etc.). Third parties may only request administrative action if they are affected or have another specified interest in the remediation of the pollution. Additionally, remedies under civil law may apply.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

Affirmative obligations of landowners or other persons (plant operators, tenants, etc.) to investigate land for contamination may only arise if such actions are ordered by authorities or courts. However, if suspicion over a possible contamination arises (or should arise), landowners often investigate their land of their own accord to avoid deteriorations (both to the environment and of their legal position in possible procedures following the negative impacts of the contamination).

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

There is no general legal obligation for a seller to disclose any environmental information to a purchaser. However, non-disclosure could violate pre-contractual duties of protection and care. Further, a seller must consider that potential future claims by a purchaser are less promising if the purchaser was precisely aware of the risks at the time of the purchase. In addition, a certain degree of environmental disclosure is common sense. A total absence of disclosure could therefore arouse the purchaser's suspicion. Disclosure could also be advisable if the purchaser explicitly requests certain information.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

Liability under administrative, civil and criminal environmental law cannot be avoided contractually. However, liability exclusions are common (e.g., between plant operators and landowners). The effectiveness of those exclusions is limited to the contracting parties and must – if put to the test before a court – withstand a morality test, especially regarding proportionality of the mutual rights and obligations.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

(Formal) Dissolution and liquidation require that all outstanding liabilities are covered. However, if environmental damages only arise after the (formal) dissolution and liquidation of a company, the liability may – in practice – be avoided. In such cases, Austrian environmental law often provides for subsidiary liabilities (e.g., of landowners).

Liabilities under criminal and administrative criminal law are usually (also) attributed to persons and therefore cannot be avoided by dissolving a company.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

Shareholders are usually not directly liable for breaches of environmental law. Only if a breach can be directly attributed to certain persons may direct liability (e.g., under civil or criminal law) be possible. Cases in which shareholders were directly held responsible are rare and, so far, have related to cases in which, for example, the company was massively undercapitalised and factually managed by a shareholder.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

The Whistleblower Protection Act (*HinweisgeberInnenschutzgesetz*) was enacted by the parliament in February 2023. Companies and legal entities in the public sector with more than 50 employees are obliged to set up internal whistleblower systems. This legislation is designed to safeguard individuals who, due to their professional affiliations with a legal entity, come across information concerning specific legal violations and choose to report them. This new act not only offers protection to whistleblowers themselves but also extends its safeguards to individuals in their social circles, including family members and colleagues.

The laws material scope encompasses all national legal provisions within the legal fields outlined in the legislation, which includes environmental protection. The legislation explicitly forbids civil, criminal, or administrative liability for whistleblowers. Additionally, it prohibits any employment-related consequences or reprisals.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

Austrian law only provides for a specific form of "group actions" if similar cases are consolidated into one proceeding. Penal or exemplary damages are not available under civil law. Compensation of losses can generally be claimed under civil law.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

No exemptions from cost liability are provided for individuals or public interest groups engaging in environmental litigation.

9 Climate Change and Emissions Trading

9.1 What is the overall policy approach to climate change regulation in your jurisdiction?

Like the European Union, Austria is a member of the Paris Convention on Climate Change. Therefore, the objectives of the Paris Convention, such as keeping anthropogenic global warming under 2°C, also apply to Austria. Within the European Union, by 2030, GHG emissions must be reduced by 55% compared to 1990 levels, the share of renewable energy must be 42.5% and energy efficiency must be improved by 11.7%. In 2050, GHG-emissions should reach "net zero" in the European Union (climate neutrality). The instruments to reach these goals include, for example, the acceleration of permitting procedures, the EU emission trading system including the "effort sharing" between Member States, as well as vast subsidies.

In Austria, some the main laws on these instruments are the Emission Trading Act (*Emissionszertifikategesetz*, EZG), the Climate Protection Act (*Klimaschutzgesetz*, KSG) – which currently does not provide for specific targets – and the Federal Energy Efficiency Act (*Bundes-Energieeffizienzgesetz*, EEffG). The key principles of the Austrian climate strategy are:

- expansion of the share of renewable energy;
- increase of energy efficiency;
- pricing of CO_2-emissions;
- use of renewable hydrogen in the industry sector;
- transformation to a "bio-economy";
- decarbonisation of the transport sector;
- thermal-energetic renovation of the building stock as well as efficiency improvement of heating systems; and
- development of strategies for nutrition, consumption and tourism.

9.2 What is the experience of climate change litigation in your jurisdiction?

While the Austrian legal system lacks a clearly defined term for "climate change litigation", six cases related to climate issues and presented to Austrian courts can be highlighted: four were brought to the Austrian Constitutional Court (VfGH); and one each to the VwGH; and the Administrative Court of Vienna (VwG Wien). These legal challenges encompass environmental impact (airport runway, tax advantages for aviation), regulatory compliance (Climate Protection Act, greenhouse gas targets), and individual rights (children's rights, demand for fossil fuel phase-out).

However, none of these cases concluded with an outcome beneficial to the parties involved. Typically, cases before the Constitutional Court – often the most high-profile – falter due to procedural deficiencies such as a lack of direct concern. Furthermore, the Constitutional Court only possesses the authority to annul existing laws. Positive legislative action of the courts is not foreseen in the division of competences. In the event of parliamentary inaction on climate protection (due to the absence of sector-specific targets in the Climate Protection Act), effective combatting of climate issues in Austria remains a formidable challenge.

9.3 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing?

Within the European Union's Climate and Energy Package, emissions trading forms a main pillar between Member States alongside "effort sharing". In Austria, it is predominantly regulated by the Federal Emission Certificate Act (*Emissionszertifikategesetz*, EZG). The trading system operates on the principle of "cap and trade". This involves establishing a predetermined cap on the total number of allowances (certificates) before the commencement of the trading period, limiting emissions from covered installations. No additional allowances can be issued during this period, and each installation is allocated a specific number of allowances.

Should a participant's actual emissions for a period exceed the allocated certificates, the participant has the option to acquire additional certificates through emissions trading. Approximately 200 energy-intensive industrial plants in Austria are obligated to partake in emissions trading, encompassing sectors such as iron and steel, energy utilities (power plants, district heating plants, refineries), the paper industry, cement plants, and other mineral industries, as well as various sectors such as the chemical industry and chipboard production. Despite a previous period of stagnation, the price for certificates under the Emission Trading System (ETS) surged in recent years.

At the national level, a tax reform aimed at favouring "better environmental accuracy" was enacted in 2021. Since October 2022, a tax is imposed per tonne of CO_2 emitted. This current tax rate of EUR 35 is set to incrementally increase to EUR 55 by 2025. An implementation of the new EU-ETS directive is currently under development.

9.4 Aside from the emissions trading schemes mentioned in question 9.3 above, is there any other requirement to monitor and report greenhouse gas emissions?

Obligations to monitor and report GHG emissions may arise from administrative decisions on the permitting of individual plants.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

As asbestos products have been banned in Austria for a very long time and strict rules for existing asbestos were implemented (see question 10.2), asbestos litigations became less relevant in recent years. However, asbestos litigation is still a factor in connection with demolitions or refurbishments, as the amount of asbestos, and therefore the costs of its professional disposal, are often not known exactly in advance.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on-site?

As soon as the harmfulness of asbestos was recognised, certain asbestos products were banned in Austria as early as 1978. In 1990, the placing on the market of all objects containing asbestos – with only a few exceptions – was finally prohibited. Since 2004, the placing on the market and use of asbestos has been generally prohibited (Chemicals Prohibition Ordinance). Since 2007, all asbestos waste must be collected, treated and disposed of as hazardous waste. The import of asbestos waste into Austria is also prohibited.

Built-in products containing asbestos should not be removed without cause, as installed asbestos-cement products do not automatically endanger the health of residents. However, an assessment of the building material condition or a comparison of indoor/outdoor air pollution can serve as the "cause" required for the removal of built-in asbestos products. During removal, products containing asbestos must be dismantled and stored in separate collection containers in order to prevent the release of asbestos fibres, while complying with employee protection regulations.

The protection of workers against risks relating to exposure to asbestos in the workplace is regulated by the Workers' Protection Act (*ArbeitnehmerInnenschutzgesetz*, ASchG). Additionally, specific ordinances provide for limit values, suitability and follow-up examinations in the case of asbestos exposure or the labelling of asbestos (products) at workplaces.

Asbestos waste may only be passed on to an authorised waste collector in compliance with the Waste Documentation Ordinance (*Abfallnachweisverordnung*). According to the Landfill Ordinance (*Deponieverordnung*), asbestos waste, including asbestos cement waste, may only be deposited in landfills for non-hazardous waste under very specific conditions.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

A wide range of environmental insurances are offered on the Austrian insurance market. The most common policies cover incidental environmental damages and related liabilities under civil and administrative law (see question 4.1; for D&O policies, see question 4.3). As usual, the specific risks covered depend on the terms of the policy. Typically included are:

- (costs for) remediation obligations;
- damage claims; and
- legal expenses.

Intentional breaches of environmental law typically render environmental damages uninsurable. Most policies cover only cases involving (very) mild negligence. For instance, damages resulting from the operation of facilities may be covered only if all obligations under environmental law and the necessary permits were observed, including maintenance obligations and limitations on the facility's operation.

11.2 What is the environmental insurance claims experience in your jurisdiction?

To our knowledge, there is no case law available on insurance claims for environmental damages in Austria. The cases in which we have been involved were all settled without the involvement of the courts.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in environment law in your jurisdiction.

Substantial amendments were introduced to the Environmental Impact Assessment Act 2000 (UVP-G 200) in March 2023, driven by ongoing EU infringement proceedings related to the Environmental Impact Assessment (EIA) Directive and recent judicial decisions. These amendments aim to expedite the approval process for projects associated with the transition to renewable energy and enhance the efficiency of EIA procedures.

The revised legislation addresses these objectives through several key changes. First, it aligns the law with ongoing EU infringement proceedings and decisions from the highest courts. Additionally, it classifies projects related to the transition to renewable energy as being of "high" public interest. Complaints lacking sufficient substantiation will no longer have a suspensive effect on the approval process.

Furthermore, the amendments shall provide more flexibility in permit modifications and avoid redundancies in landscape impact assessments. The EIA procedure's structure was also streamlined, with priorities set for assessing environmental impacts, clear deadlines established, and provisions enacted for online and hybrid hearings. The revisions emphasise the importance of climate protection and the reduction of land use.

Annex 1 of the Environmental Impact Assessment Act was updated and now encompasses several new project types, including in the categories waste treatment facilities, cable cars, ski resorts, urban development projects, industrial and commercial parks, accommodation facilities, shopping centres, parking lots, mining facilities, hydropower plants, land drainage systems, intensive livestock farms, deforestations, and pipeline installations. Additionally, a new category "logistic centres" was introduced.

In summary, these legal changes aim to align Austrian law with the EU directives and ECJ decisions, streamline the EIA process, prioritise environmental concerns, and expedite the approval of projects promoting the transition to renewable energy.

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