

Energy Efficiency Legislation and Policies

Austria

Legal Analysis

Justice and Environment 2011

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During the year 2011 J&E analyzed whether certain member states took effective legal measures in order to comply as to the 2020 targets. This is the national report for Austria.

1. Energy Efficiency Act

1.1. Is there an overarching Energy Efficiency Act in your country?

No, Austria has not adopted any overarching Energy Efficiency Act yet, however see 1.2.

1.2. Has your national parliament adopted any specific legislation on energy efficiency?

In Austria, competences to regulate a matter are divided between Federation and the Laender. According to Art. 15 Federal Constitutional Law, insofar as a matter is not expressly assigned by the Constitution to the Federation for legislation or also execution (Arts. 10 – 14 Federal Constitutional Law), it remains within the Laender's autonomous sphere of competence. Consequently, as energy efficiency and energy saving is not an explicit competence of the Federation, and as long as it is not associated with any other competence assigned to the Federation such as *e.g.* traffic systems, it remains for the Laender to provide for the framework in this matter.

However, according to Art. 15a Federal Constitutional Law, agreements (state treaty) may be concluded between the Federation and the Laender, and the Austrian Federal Ministry of Economic Affairs has negotiated a draft of such with the Laender, which was adopted on 9 July 2010 by the national parliament (Federal Law Gazette I No. 5/2011, Vereinbarung zwischen Bund und Ländern gemäß Art. 15a B-VG zur Umsetzung der Richtlinie 2006/32/EG über Endenergieeffizienz), containing provisions of coordination and harmonization of measures relating to energy efficiency, in transposition of Directive 2006/32/EC.

In particular, the state treaty contained provisions regarding the national energy savings target, the framework for a joint compilation of information regarding the national energy efficiency action plans, the inclusion of voluntary commitments concluded between the Federal Ministry of Economic Affairs and energy suppliers, distributors and trading associations, and the provision that the federal authorities as well as the Laender shall pass such legislation as is required to reach the energy savings target.

In addition to the abovementioned state treaty, the national parliament has passed/supplemented/altered following legislation in transposition of Directive 2006/32/EC:

- 2010 State Treaty between the Federation and the Laender according to Art 15a Federal Constitutional Law in transposition of Directive 2006/32/EC ((Federal Law Gazette I No. 5/2011, Vereinbarung zwischen Bund und Ländern gemäß Art. 15a B-VG zur Umsetzung der Richtlinie 2006/32/EG über Endenergieeffizienz)

- 2010 General Act on Electricity (Federal Law Gazette I No 110/2010, Elektrizitätswirtschafts- und organisationsgesetz [EIWOG]) und Energy Control Act (Federal Law Gazette I 110/2010, Bundesgesetz über die Regulierungsbehörde in der Elektrizitäts- und Erdgaswirtschaft, Energie-Control-Gesetz)
- 2010 Federal Eco Power Act (Federal Law Gazette I No 75/2011, Bundesgesetz über die Förderung der Elektrizitätserzeugung aus erneuerbaren Energieträgern [Ökostromgesetz 2012 – ÖSG 2012])
- 2007 Federal Procurement Law (Federal Law Gazette I No. 86/2007, Bundesvergabegesetz)
- 2008 Federal Act on the Promotion of the Installation of District Heating and Cooling Pipelines (Federal Law Gazette I No 113/2008, Bundesgesetz, mit dem die Errichtung von Leitungen zum Transport von Nah- und Fernwärme sowie Nah- und Fernkälte gefördert wird (Wärme- und Kälteleitungsausbaugesetz)
- 2009 Federal Act on the Establishment of a Climate and Energy Fund (Federal Law Gazette I No 37/2009, Bundesgesetz über die Errichtung des Klima- und Energiefonds – Klima- und Energiefondsgesetz (KLI.EN-FondsG)
- 2009 State Treaty between the Federation and the Laender according to Art 15a Federal Constitutional Law regarding measures in the building sector with the aim of reducing greenhouse gases (Federal Law Gazette II No 251/2009, Vereinbarung gemäß Art. 15a. B-VG zwischen dem Bund und den Ländern über Maßnahmen im Gebäudesektor zum Zweck der Reduktion des Ausstoßes an Treibhausgasen)

Other acts of legislation:

- Intelligent Meter Standards Ordinance (Federal Law Gazette II No. 339/2011, Verordnung der E-Control, mit der die Anforderungen an intelligente Messgeräte bestimmt werden (Intelligente Messgeräte-AnforderungsVO 2011 – IMA-VO 2011)
- 'Product Consumption Information Ordinance' (Federal Law Gazette II No 232/2011, Verordnung des Bundesministers für Wirtschaft, Familie und Jugend über Grundsätze der Verbrauchsangaben bei energieverbrauchsrelevanten Produkten mittels einheitlicher Etiketten und Produktinformationen (Produkte-Verbrauchsangabenverordnung 2011 - PVV 2011)

1.3. Do drafts for this type of legislation exist?

Not yet (see 1.5.).

1.4. Does existing and/or planned legislation contain a binding or indicative energy efficiency target?

The abovementioned state treaty (Federal Law Gazette I No. 5/2011) in Article 2 contains the determination that the Austrian national savings target shall be 80,4 PJ until the end of 2016 (9 % of the annual average amount). An intermediate target for the end of 2010 was determined with 17,9 PJ (2 % of the annual average amount).

1.5. If no draft exists, is Energy Efficiency a topic on the political agenda? Have political documents been produced covering the issue of energy efficiency?

In July 2011, a resolution was adopted unanimously in the Austrian Parliament (182/E XXIV. GP) that the Federal Ministry of Economic Affairs should work out a draft on an overarching Energy Efficiency Act until June 2012.

2. End-use efficiency and energy services

2.1. Has an indicative energy savings target of at least 9% by 2016 been adopted in your country?

Yes, see 1.4.

2.2. Which authority has been appointed for the monitoring of the process?

According to Article 6 of the state treaty (Federal Law Gazette I No. 5/2011), the Federal Ministry of Economic Affairs is responsible within the sphere of competence of the federal authorities, and the provincial governments are responsible within their sphere of competence. Third parties may be authorized to fulfill the obligation of monitoring. Consequently, the Austrian Energy Agency, which acts as Austria's national energy agency (www.monitoringstelle.at), has been entrusted by the Ministry of Economic Affairs as the monitoring body in accordance with the Directive.

2.3. National Energy Efficiency Action Plan

- Has a second National Energy Efficiency Action Plan been adopted in your country?

Yes, and timely submitted. An English version is available on the website of the European Commission (http://ec.europa.eu/energy/efficiency/end-use_en.htm).

- If yes, does it contain the information necessary according to Art 14 par 2¹ of Directive 2006/32/EC on energy end-use efficiency and energy services?

In general, the information according to Article 14 para 2 of the Directive is given. While the first NEEAP is touched upon only briefly, previous measures are addressed and evaluated.

¹ According to this Article the second and third EEAPs shall:

- include a thorough analysis and evaluation of the preceding EEAP;
- include the final results with regard to the fulfilment of the energy savings targets set out in Article 4(1) and (2);
- include plans for – and information on the anticipated effects of – additional measures which address any existing or expected shortfall vis-à-vis the target;
- in accordance with Article 15(4), use and gradually increase the use of harmonised efficiency indicators and benchmarks, both for the evaluation of past measures and estimated effects of planned future measures;
- be based on available data, supplemented with estimates.

Please check if these requirements are fulfilled and possibly provide a short assessment of the quality of information.

Estimates and charts regarding achieved savings and estimated savings targets until 2016 are provided for as well. The methods of measurement of energy savings employed by the monitoring office are in conformity with the directive.

Assessment:

The criticism received by the European Commission regarding the first NEEAP has been responded to by a more clearly structured presentation of measures, including thorough description of the contents of the measure, the authorities executing it, the financial and budgetary resources employed/estimated, and the expected outcome regarding energy savings. Moreover, where available, websites referring to further information has been included.

- If no, why is the deadline of 30 June 2011 exceeded and when will the EEAP be provided?

2.4. Energy efficient public procurement

- Have at least two energy efficient public procurement measures² been incorporated into national public procurement legislation?

Austria's procurement legislation is one of the most complex in the EU, containing very detailed provisions. The Federal Procurement Law (Federal Law Gazette I No. 86/2007, Bundesvergabegesetz) was revised in 2007 to incorporate the obligations arising from Directive 2006/32/EC. This included especially provision § 19(5), stating that procurement must take into consideration the environmental compatibility of the service, especially ecological aspects, *i.e.* energy efficiency.

Furthermore, the Federal Procurement Law contains provisions regarding environmental management (§ 77), contents of the tendering (§ 79 (2)), strong legal conditions regarding road vehicles (transposition of Directive 2009/33/EC), in particular with regard to energy consumption, carbon dioxide and nitrogen oxide. Moreover, § 68 para. 1(5) stipulates that in case of verifiably and severely violated environmental law, that as a legal consequence the tenderer is eliminated from the bidding process by the contracting authority.

According to a report prepared by the Joint Research Centre of the European Commission on Energy Efficiency in Public Procurement (2010), Austria has chosen measures under Annex VI (a), (b), and (c), *i.e.*, use of financial instruments to deliver energy savings, purchase of energy-efficient equipment and vehicles, purchase of equipment with efficient energy consumption in all modes.

- Have guidelines on energy efficiency and energy savings as a possible assessment criterion in competitive tendering for public contracts³ been published?

In 2010, Austria adopted a new action plan for sustainable public procurement (www.nachhaltigebeschaffung.at/), serving as guideline for procurement of environmentally friendly products and services. This is binding for Ministries and other direct civil service institutions and consequently applies with regard to the procurement of supplies to the federal offices, state offices and local authorities.

² See Art 5 and Annex VI of Directive 2006/32/EC.

³ See Art 5 of Directive 2006/32/EC.

The federal action plan defines core criteria, including energy efficiency, to be taken into consideration during the procurement process, specified according to sectors. So far, core criteria for 16 product groups have been defined (from paper, textiles etc., to construction, green events..), based on the criteria of the EU Toolkit (under the green public procurement communication).

On a state level, there have been similar measures (see, *e.g.*, www.oekokauf.wien.at (for Vienna: doku.cac.at/oekoleitfaden.pdf (for Upper Austria), www.umweltverband.at/index.php?id=384 (for Vorarlberg)).

2.5. Energy distributors, distribution system operators and retail sellers

- Are regulations in place, which ensure that energy distributors, distribution system operators and retail sellers are ready to provide the information defined in Art 6 par 1 a of Directive 2006/32/EC?

As part of the transposition of the Directive, Austria (via the Federal Ministry of Economic Affairs) has opted to conclude voluntary agreements with interests groups of the energy industry, *i.e.*, energy distributors, distribution system operators and retail sellers.

The agreements provide for specific savings targets, however the measures to achieve these savings targets can be freely selected. Three agreements have been concluded with the following savings targets: Professional association of gas and heat supplying enterprises: 1.800 TJ; Association of Austrian energy utilities ('Österreichs Energie'): 1.512 TJ; Professional association of the petroleum industry and professional association of the energy trading industry (a voluntary agreement in which both associations participate): 7.560 TJ. In total this amounts to 10.872 TJ by 2016 (the voluntary agreements are available at www.monitoringstelle.at/Freiwillige-Vereinbarungen.596.0.html)

As with regard to the general compliance with the Directive, the Austrian Energy Agency (www.monitoringstelle.at) is responsible for monitoring the voluntary agreements as well. Experience has shown that in particular the assessment of final energy savings has proven difficult, as certain overlaps of measures conducted by the industry as well as by public authorities might result in counting measures double.

- Has one of the requirements referred to in Art 6 par 2 a of Directive 2006/32/EC been implemented?

According to Article 6 (2)(a) of the Directive, energy distributors, distribution system operators and retail sellers must ensure and promote energy services (i), and energy audits (ii) with competitive pricing, as well as contribute to the funds and funding mechanisms referred to in Article 11 of the Directive.

Each of the three voluntary agreements Austria has concluded (see also above questions) provide for these requirements (in § 5). Moreover, according to Austria's 2nd NEEAP, monitoring shows that these have been implemented as well. So far, more than 200 000 energy advice services have been conducted, and more than 300 energy audits at enterprises were reported.

In 2007, Austria established the climate and energy fund (Federal Act on the Establishment of a Climate and Energy Fund, Federal Law Gazette I No 37/2009, Klima- und Energiefondsgesetz – KLI.EN-FondsG, www.klimafonds.gv.at), one primary aim being energy efficiency. While the fund is primarily funded by federal funds, § 5 of the respective

voluntary agreements includes the requirement to co-finance investments regarding energy efficiency. However, the NEEAP does not mention how far this requirement has been put into operation.

- Are energy audit schemes in place as foreseen in Art 12 of Directive 2006/32/EC?

Austria has introduced (non-mandatory) energy audits schemes for large, medium-sized and small enterprises. They are conducted by various institutions, *i.a.*, by the environmental promotion programme (Umweltförderung Inland, UFI), but especially for small and medium-sized enterprises audits are also conducted by the Energy Institute of the Austrian Economy (Energieinstitut der Wirtschaft), and with funds of the Climate and Energy Fund. The Laender offer several promotion programmes conducting energy audits as well. In order to support these energy audits, enterprises can apply for up to two 'energy efficiency vouchers' a year – one for an initial advisory service, one for a follow-up regarding the implementation of the advice given.

According to the 2nd NEEAP, Austria estimates that these measures will result in energy savings of 1.544 TJ.

2.6. Please list any other relevant measure or legislation

Regarding **Article 7** of the Directive (availability of information), there are a wide range of informational and promotional measures available in Austria. In particular, Austria has introduced 'klima:aktiv' (www.klimaaktiv.at/), a climate protection initiative, combining a wide range of measures, in such key areas as construction and renovation, energy savings, renewable energies, and mobility (all with at least 2 sub-programs). As such, it serves as a hub for voluntary and supportive measures, putting emphasis *inter alia* on awareness raising and providing information (Art. 7 of the Directive) regarding improvements in the aforementioned areas. More than 40 industrial enterprises participate in the program. Detailed information and advice service is available regarding numerous projects, especially building construction and building shells.

Regarding the transposition of **Article 13** of the Directive (Metering and informative billing of energy consumption), Austria has amended its General Act on Electricity (Elektrizitätswirtschafts- und organisationsgesetz [ElWOG]), introducing §§ 83 *et seq.* The provisions authorize the Minister of Economic Affairs to introduce 'smart meters', and consequently informative billing. The regulatory authority (E-Control, www.e-control.at/en/home_en) is authorized to pass an ordinance specifying the technical requirements for such smart meters. In October 2011, E-Control has passed the 'Intelligent Meter Standards Ordinance' (Federal Law Gazette II No. 339/2011, Verordnung der E-Control, mit der die Anforderungen an intelligente Messgeräte bestimmt werden (Intelligente Messgeräte-AnforderungsVO 2011 – IMA-VO 2011, entered into force 1 November 2011).

So far, smart meter pilot projects have been introduced in three Austrian states (Salzburg, Upper Austria and Burgenland), and currently there are over 60.000 smart meters employed.

3. Energy Consumption Labelling

3.1. Has legislation been put in place, which obliges suppliers to provide technical information as well as labels and fiches (standard table of information relating to the product) in accordance with Art 5 of Directive 2010/30/EU⁴?

In transposition of the Energy Labelling Directive, the Austrian Minister of Economic Affairs has passed the 'Product Consumption Information Ordinance' (Federal Law Gazette II No 232/2011, Verordnung des Bundesministers für Wirtschaft, Familie und Jugend über Grundsätze der Verbrauchsangaben bei energieverbrauchsrelevanten Produkten mittels einheitlicher Etiketten und Produktinformationen (Produkte-Verbrauchsangabenverordnung 2011 - PVV 2011)), ensuring coherence with the standards of the Directive by the end of 2011.

§§ 4-6 of the 'Product Consumption Information Ordinance' contain the obligations referred to in the Directive, applicable to dealers and suppliers.

3.2. Has legislation been put in place which ensures that dealers (retailers) display labels properly and provide for fiches in accordance with Art 6 of Directive 2010/30/EU?

See question 3.1.

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⁴ Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products