

# Report on recent environmental law developments in Austria

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## **1. POLITICAL DEVELOPMENTS**

With the exception of certain popular environmental measures against the transit of heavy lorries on the Austrian motorways and nuclear energy in the neighbouring countries the Austrian right wing government continues to deregulate and to lower the level of environmental protection at an astonishing pace. This became most obvious with the so called golden plating prohibition as part of the Austrian deregulation law adopted in December 2001. According to this prohibition the Austrian Parliament decided not to "overfulfil" the standards prescribed in EC Directives in the course of their implementation into Austrian law. This attitude is in line with earlier political commitments to favour environmental agreements with industry rather than binding legislation and enchains on the merger of the Ministry for Environment with the Ministry for Agriculture to the Federal Ministry for Forestry and Agriculture, Environment and Water Management.

Regarding the popular environmental issues the Austrian Freedom Party initiated a referendum against the Czech Nuclear Power Station Temelin. The goal of this referendum is to force the Austrian legislator and government to take various measures against the start or continuation of operation of Temelin, for example by blocking the completion of the energy chapter in the course of the accession negotiations with the Czech Republic.

Austria succeeded in obtaining the EC permission to continue the eco point scheme, initially fixed before the accession of Austria to the EU, until 2004. According to this scheme an amount of CO<sub>2</sub>, the emission of which is deemed to be acceptable for the environment, is split into small units, which are equivalent to eco points. As each truck driving through Austria "consumes" such eco points, the availability of eco points determines the overall transit capacity of Austria.

## **2. LEGISLATION**

### **2.1. Environment Management Act**

The new Environment Management Act (Umweltmanagementgesetz BGBl I 96/2001) "implements" the Eco-management and audit scheme (EMAS) II Regulation (EC) 761/2001 in Austria and introduces a number of deregulation measures for EMAS registered organisations. The concept of this law is to grant certain privileges, in particular in the permitting area to organisations, which take part in the EMAS scheme. The Environment Management Act foresees inter alia the following points:

1. Notification procedure for the modification of certain installations  
Modifications of installations, which are not falling into the scope of the EC Directive 85/337/EEC on the environmental impact assessment (EIA) or the Directive 96/61/EC on the integrated prevention and pollution control (IPPC) are only subject to a facilitated procedure basically consisting of a notification. Regarding these installations the control of compliance with the state of the art and the consequences for the environment are transferred to environmental verifiers. The (potentially concerned) public needs to be informed by the operator of the installation (and subsequently by the authority) and in the case objections are raised by the (potentially concerned) public the facilitated procedure cannot take place. Also, the envisaged modification must lead to an improvement of the environmental performance of the installation.
2. Consolidated permit  
At the request of the operator of an installation the authority is obliged to issue a consolidated permit.
3. Abstention from penalties  
In the case an enterprise sets up voluntarily an environment management system and identifies in the course of this work infringements of regulations to protect the environment, the administrative authority should abstain from penalties against this enterprise with regard to the respective infringements if the enterprise notifies these infringements voluntarily to the authority before the authority knows about the respective infringements.
4. Reduced control intervals and reporting requirements  
As EMAS organisations need to accomplish environmental declarations each year, the authorities have to control these organisations at the earliest every five years. Also the authorities can exempt these organisations from certain reporting requirements.

## **2.2. Electricity Management and Organisation Act**

The main parts of the Austrian Electricity Management and Organisation Act (ElWOG) (BGBl I 121/2000) entered into force and were implemented through laws of the Austrian Bundesländer. From the environmental point of view the promotion of renewable energies as well as the stipulations against nuclear energy need to be cited. Regarding the first item the rate of renewable energies, excluding hydro power stations, will be progressively raised up to 4% by 2007. In addition, 8% of the energy supplied in Austria to final customers has to stem from small hydro power stations. Furthermore, the generation of renewable energies is promoted by facilitated authorisation requirements, privileged access to the grid etc. The import of electricity from countries, which are not part of the EU and which generate electricity in nuclear power stations, is forbidden. An exemption to this prohibition is made with regard to all

candidate countries for the accession to the EU with the exception of the Czech Republic (Temelin).

### **3. CASE LAW**

In a remarkable waste case the Austrian Administrative Court (VwGH 99/07/0177) classified metallurgical residues as non waste in the case they are intended for a recovery procedure and properly packed. In the case the Court maintains this jurisdiction a high proportion of recyclable waste would be qualified as products in Austria and thus escape waste legislation.

### **4. INSTITUTIONAL/ADMINISTRATIVE CHANGES**

In 2001 the Austrian right wing government initiated a major reform of the Austrian administration with the main aim of speeding up administrative procedures. The contents of this reform include a concentration of the administrative competencies at the level of the district administrative authorities (Bezirksverwaltungsbehörden). This is considered to be problematic because the district administrative authorities are really assumed to be overburdened both regarding the quantity and the subjects of often quite complex environmental issues. Appeals against decisions of these authorities are not any more dealt with by other administrative authorities (State government, Federal Ministry) but directly by special courts.