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Austria

ENVIRONMENT

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Austria.

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AUSTRIA
ENVIRONMENT

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

Especially in the area of public law the Austrian legal system is characterized by its federalist character. Therefore, according to the division of competences by the constitution, the legislative power in environmental law is not only vested in the federal legislator, but also in the federal state legislators. This divided competence to legislate is accompanied by the fact that there is no uniform environmental law, but the provisions of environmental law are allocated among numerous separate acts. Due to Austria's membership in the European Union, the far-reaching influence of Union law must be regarded. National environmental regulations are largely determined by EU directives, whereby national legislators are given a certain amount of leeway regarding the implementation. In contrast EU regulations are directly applicable, which is why implementation in national law is not necessary.

Among the environmental standards under federal law, the Water Act (Wasserrechtsgesetz 1959), the Forestry Act (Forstgesetz 1975), the Waste Management Act (Abfallwirtschaftsgesetz 2002), the Act on the Remediation of Contaminated Sites (Altlastensanierungsgesetz) and the Trade, Commerce and Industry Regulation Act (Gewerbeordnung 1994) are of high importance, in addition to the Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz 2000). At the level of state law, it should be noted that the laws of the individual federal states differ in terms of content and also the titles are different. Of central importance, however, are regularly the nature conservation laws (Naturschutzgesetze) of the federal states as well as the regional planning and building codes (Raum- und Bauordnung). The implementation of the Habitats Directive 92/43/EWG takes place in the already mentioned nature conservation laws of the federal states. In addition, there are national park acts (Nationalparkgesetze) that establish special protection measures for national parks.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The above-mentioned fragmentation of environmental legislation also means that there is no single authority competent for enforcing all environmental provisions. The competence is determined by the applicable law, whereby the legal basis for competence with regard to enforcement can also be found in the constitution. The fact that the power to legislate on a certain matter belongs to the federal government does not necessarily mean that the enforcement of this provision is also within the competence of a federal authority. In other words, it is not unusual for the legislative power on the one hand and the competence to enforce on the other hand to diverge, i.e. to be divided between the federal states and the federation. Finally, it should be noted that the competence for enforcement in matters of environmental law often falls to the district administrative authorities or the state governor.

Environmental provisions are enforced through imposing administrative penalties, which are usually laid down in the respective act. Compared to general administrative law, the special procedural provisions of the Administrative Penal Act (Verwaltungsstrafgesetz) apply. In addition to fines, custodial sentences can be imposed. Furthermore, in addition to the administrative penal provisions, the applicability of the Criminal Code also comes into consideration. The applicability of these criminal provisions is limited to serious crimes against the environment.

3. What is the framework for the environmental permitting regime in your jurisdiction?

In principle, a permit is required for facilities or activities that are potentially capable of having a negative impact on the assets protected under environmental law. In this context the different provisions in the individual acts

must be taken into account. If a project is subject to several provisions, all necessary permits must be obtained. The applicant is obliged to participate in the administrative proceeding and to submit the necessary documents.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

A differentiated approach is required with regard to the transfer of permits. In principle, it can be stated that permits that are linked to specific persons and their individual skills or qualifications cannot be transferred.

In contrast, plant licenses generally have an effect in rem. This means that the permit is not linked to the owner or operator of the plant, but to the plant itself. This is comprehensible as the environmental impact of operation in compliance with the permit does not depend on the ownership structure. In some cases, however, the permit provisions require the authority to be informed of changes in ownership.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

It should be noted in advance that the permit can be granted or the application of the project applicant can be rejected. The granting of the permit can be linked to compliance with certain incidental provisions if this is the only way to ensure that the environmental impacts remain within the permissible range. However, the authority is not authorized to interfere with the intentions of the project applicant in such a way that another project is permitted. Incidental provisions that change the nature of the project are therefore inadmissible.

The applicant has the right to appeal against the rejection of the permit or the imposition of certain incidental provisions. In addition, affected residents and other parties also have the right to appeal. The right to appeal varies depending on the applicable provisions.

The competent administrative court shall decide on appeals against decisions of the authority. If this is requested by the complainant or one of the parties, an oral hearing shall be held. The administrative court may decide on the matter itself or refer the matter back to the authority for a further decision. An extraordinary appeal against the decision of an administrative court may be lodged with the Higher Administrative Court (Verwaltungsgerichtshof) or the Constitutional Court (Verfassungsgerichtshof). In principle, these appeals do not have a suspensive effect, but they can be applied for.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

The relevant national provisions for carrying out an environmental impact assessment are standardized in the Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz 2000/UVP-G) and are based on Directive 2011/92/EU. On the one hand, an environmental impact assessment must be carried out for projects listed in Annex 1 of the UVP-G. On the other hand, an environmental impact assessment must be carried out for projects listed in Section 3 of the UVP-G. With regard to projects listed in Annex 1, the exceeding of certain threshold values is regularly taken as a basis in order to cover only those projects whose effects on the environment require an overall consideration. On the other hand, an environmental impact assessment is required for the construction or expansion of federal highways as well as for the construction or modification of high-speed railroad lines. In this context, the EIA obligation is linked to the length of the project.

Within the scope of application of the UVP-G, a concentrated approval procedure is to be carried out in principle. This means that the competence with regard to all applicable material laws is concentrated with the EIA authority. If an environmental impact assessment is to be carried out on the basis of a federal highway or high-speed railroad project, this is done in a partially concentrated approval procedure. In this case, competence is divided between a state and a federal authority.

Of particular practical relevance is that other projects with similar environmental effects in the vicinity must also be taken into account when assessing whether an environmental impact assessment is to be carried out for a project. Simplified procedural provisions apply to certain projects.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction,

and what are the applicable regulatory regimes?

Old landfills and old sites, as well as soil and groundwater bodies contaminated by them, which pose significant risks to human health or the environment, are to be qualified as contaminated sites and are subject to the Act on the Remediation of Contaminated Sites (Altlastensanierungsgesetz/AlSAG). This law is intended to create the financial and organizational conditions for securing and remediating contaminated sites. An earmarked fee is imposed for this purpose. In addition, the AlSAG standardizes the official obligation to survey suspected contaminated sites. Suspected contaminated sites are definable areas of old landfills and old sites that may pose a significant risk to human health or the environment due to previous forms of use.

If an area has been proven to pose a significant hazard, it must be registered in the contaminated site atlas (Altlastenatlas/Verdachtsflächenkataster) – a register in the form of an ordinance. The technical basis for the registration in the contaminated site atlas is a hazard assessment carried out by the Federal Environment Agency (Umweltbundesamt).

In connection with the remediation of contaminated sites, the state governor has concentrated competences. He can order safeguarding and remediation measures, whereby he must also apply the provisions of the Water Act, the Trade, Commerce and Industry Regulation Act and the Waste Management Act. Remediation within the meaning of the Contaminated Sites Remediation Act means the elimination of the cause of the hazard and the elimination of contamination in the surrounding area. The necessary measures must be tolerated by the landowner or the person entitled in rem, even if he did not cause the contamination.

If someone has caused the contamination through their activities, or if the landowner has consented to an action causing the contamination, these individuals may be held responsible for remediation and containment.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

As just described, the obligation to survey contaminated sites is generally addressed to the authorities. Obligations to tolerate securing and remediation measures concern the landowner or other person entitled in rem even if they did not cause the contamination. Further liability exists for persons who have carried out or permitted the action leading to the contamination. Even if there is no legal obligation, it is therefore advisable to check a property regarding contamination and to follow up on any other indications before purchase. In this context the contaminated site atlas can be very useful.

A legal obligation to survey the baseline status is stated in Section 134a of the Water Act for operators of facilities in which activities listed in Annex I of Directive 2010/75/EU are carried out, if the production, release and use of hazardous substances occur in the course of these activities. The obligation to prepare a report is limited to the baseline condition with regard to possible pollution of groundwater.

In addition, Directive 2010/75/EU provides the establishment of an environmental regulatory review system for IPPC plants by the member states. In this context, environmental investigations are to be carried out and the results are to be summarized in a report.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Such an obligation cannot be derived directly from the Contaminated Sites Remediation Act. An explicit reporting obligation to the competent authority can be found in Section 36 of the Emission Protection Act for boiler plants (Emissionsschutzgesetz für Kesselanlagen). According to this provision, the operator must immediately report significant exceedances of emission limits due to malfunctions. Also in other cases where an environmental hazard is to be expected, the applicable material laws will regularly result in an obligation to report the hazard situation.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

In the case of the purchase of land, contamination basically constitutes a defect, i.e. a deviation from what was contractually agreed. If the contract does not exclude liability for any contamination, the purchaser may assert warranty claims in accordance with the general principles of civil law.

In addition, remedies under the law on damages may also be considered, whereby the limitation period (in principle 3 years from knowledge of the damage and the damaging party) must be observed. The contamination may also constitute a significant reduction in the value of the object of purchase and thus a reduction by more than half (laesio enormis), which entitles the buyer to rescind the contract, is possible.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The central waste law provision in Austrian law is the Waste Management Act (Abfallwirtschaftsgesetz 2002/AWG). This law, enacted in implementation of the Waste Directive 2008/98/EC, regulates obligations for the collection, handling, storage and transport of waste. It is based on the hierarchical principles of waste prevention, preparation for reuse, recycling, other use and disposal. The scope of application of the Waste Management Act extends exclusively to waste as defined in this provision. Accordingly, waste is movable property which the owner or holder intends to dispose of or has disposed of, or whose collection and treatment as waste is required in the public interest.

For plants with more than 20 employees, a waste management concept must be drawn up. In plants with 100 or more employees, a qualified waste management officer (Abfallbeauftragter) must be appointed. The competent authority must be notified of the appointment. The waste management officer is responsible for providing information, advice and organization to the company owner.

In addition to the provisions of the AWG, there are numerous other provisions – in particular national ordinances – that must be taken into account in connection with waste. Examples are the Waste Catalogue Ordinance (Abfallverzeichnisverordnung), the Packaging Ordinance (Verpackungsverordnung) and the Landfill Ordinance (Deponieverordnung).

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

Section 15 (1) of the Waste Management Act lays down general principles to be observed by the waste owner when treating waste. Section 15 (5a) of the Waste Management Act specifies these obligations to the effect that the waste owner is responsible for ensuring that the waste is handed over to an authorized waste collector or waste handler and that the environmentally sound use or disposal of this waste is explicitly commissioned.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Take-back obligations are set down in various laws. Examples include the Ordinance on Waste Electrical Equipment (Elektroaltgeräteverordnung), the Packaging Ordinance (Verpackungsverordnung) and the Battery Ordinance (Batterienverordnung). In this context, legal obligations apply not only to manufacturers but also to final distributors.

With regard to portable batteries, final consumers must be given the opportunity to return them free of charge to collection points or to the final distributor. Manufacturers must set up at least one collection point in each political district. Similar obligations exist for vehicle batteries. The obligations can be met by participating in a collection and recycling system.

The take-back obligation for waste of electrical and electronic equipment is systematically identical. The establishment of collection points for free return must be ensured.

Generally, manufacturers, packers and importers are obliged to participate in a collection and recycling system for the commercial packaging they put into circulation. Manufacturers of household packaging and single-use plastic products are also obliged to participate in a collection and recycling system. Furthermore, foreign players must/can appoint an authorised representative who is responsible for the fulfilment of the obligations under the Waste Management Act and further ordinances.

Finally, the End-of-Life Vehicles Ordinance (Altfahrzeugeverordnung) also stipulates an obligation to take back end-of-life vehicles. Accordingly, manufacturers or importers are obliged to take back the brands that they have placed on the market.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

The manufacture and sale of materials containing asbestos is prohibited in Austria. Further restrictions are standardized in the Chemicals Prohibition Ordinance (Chemikalien-Verbotsverordnung), the Waste Catalogue Ordinance (Abfallverzeichnisverordnung) and EU Regulation 2006/1907/EC.

In connection with the Limit Values Ordinance (Grenzwerteverordnung) and the Employee Protection Act (ArbeitnehmerInnenschutzgesetz), deployed employees are subject to certain reporting obligations.

If the materials are waste within the meaning of the Waste Management Act, the scope of application of this Act is opened. The Waste Management Act differentiates between hazardous and non-hazardous waste. Whether a waste is hazardous waste can be seen in the already mentioned Waste Catalogue Ordinance. Accordingly, asbestos is a hazardous waste and is therefore subject to a stricter waste management regime.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Product regulations are scattered throughout various provisions in the Austrian legal system. In this regulatory area, there is a far-reaching influence of European law.

The REACH Regulation 2006/1907/EC is directly applicable in Austria and regulates the registration, evaluation, authorization and restriction of chemicals. The direct applicability of regulations means that, unlike directives, they do not have to be implemented by national provisions. The legal subjects can directly refer to the regulation under European law. The REACH Regulation has harmonized and simplified chemicals legislation in the European Union.

The CLP Regulation 2008/1272/EC, which entered into force on 20.01.2009, is also directly applicable in Austria. This is a chemicals regulation as well that deals with the classification, labeling and packaging of substances and mixtures.

For products containing genetically modified organisms, Section 54 (1) of the Genetic Engineering Act (Gentechnikgesetz) provides a permit requirement. The Federal Minister must prohibit the distribution and use of the product if there are reasonable grounds to suspect that the product could be harmful to health.

In connection with the issue of plastic pollution, which has been very present in the public discourse over the past year, Directive 2019/904/EU should be mentioned. In particular, Articles 6 and 7 of the directive are worth mentioning in this context, as they standardize product requirements and labeling regulations. The deadline for implementation into national law ends between 2021 and 2024, depending on the individual provisions. Separately from this, a fundamental ban regarding plastic carrier bags has already been set down in the Austrian Waste Management Act and is in force since the beginning of 2020. Exceptions exist for fully biodegradable and reusable bags. Final distributors were authorized to sell plastic carrier bags to final consumers until 31.12.2020.

Further product regulations are contained in EU Regulation 2009/1107/EC concerning the distribution of plant protection products on the market. This regulation contains provisions on the admission of plant protection products in commercial form and on their placing on the market as well as use and monitoring within the Community. The aim of the regulation is to establish a high level of protection for humans, animals and the environment. In this context, the Commission has already stated that the complete ban on glyphosate demanded in Austria is in conflict with the provisions of European law. Therefore, the Plant Protection Products Act (Pflanzenschutzmittelgesetz) now stipulates (just) a partial ban on glyphosate. The placing on the market of glyphosate for use in certain sensitive areas is prohibited.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

The provisions relating to the efficient use of energy are also extensively determinated by European law. The Energy Efficiency Directive 2012/27/EU pursues the goal of preventing dependence on energy imports and scarce energy resources, and putting a stop to climate change. The directive was implemented in Austria by the Federal Energy Efficiency Act (Bundes-Energieeffizienzgesetz). An amendment to the Federal Energy Efficiency Act is currently under evaluation.

The law requires companies to conduct regular energy audits. Such audits must allow detailed calculations for the proposed measures and thus provide clear information on potential savings. In addition, the Energy Efficiency Act provides for uniform quality standards for energy service providers. Energy suppliers are also required to provide evidence of efficiency measures on an annual basis.

Finally, the Energy Performance Certificate Presentation Act (Energieausweis-Vorlage-Gesetz 2012) should be mentioned, which regulates the obligation of the seller or lessor to present and hand over an energy performance certificate to the buyer or tenant when selling or renting. Furthermore, the seller or lessor is obliged to provide certain indicators of the energy quality of the building in advertisements that serve to prepare the legal transaction.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

With the European Green Deal, especially the Fit for 55 package, the European Union has set itself far-reaching goals. The Fit for 55 package is a set of proposals to revise and update EU legislation and to put in place new initiatives regarding energy efficiency, renewable energy, emissions trading system, energy taxation and a few more. The main target is to make the EU climate neutral by 2050. Greenhouse gas emissions are to be reduced by 20 % from the 1990 level.

With regard to energy transition projects, special mention should be made of the Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy that came into force on december 30th. The ordinance ensures far-reaching simplifications and accelerations for the implementation of renewable energy projects (e.g. solar, wind power). The ordinance is directly applicable in Austria and is temporarily in force until 30.06.2024.

The Austrian federal government also set ambitious targets in its 2020-2024 government program, with 100% of electricity to come from renewable energy sources by 2030 and the goal of a climate-neutral Austria to be achieved by 2040 at the latest.

At the national level the Renewable Energy Expansion Act (Erneuerbaren-Ausbau-Gesetz/EAG) creates the framework conditions for the conversion of the Austrian electricity system to 100 percent electricity from renewable sources. Furthermore, it regulates the funding of the production of electrical energy from renewable energy sources. In particular, the law also allows the establishment of energy communities.

What is missing at the national level, however, is a binding stipulation of emission ceilings. For almost two years now, work has been underway on a new Climate Protection Act (Klimaschutzgesetz) that is supposed to set those caps on emissions for the coming years. Due to political differences, however, a breakthrough is not expected soon.

18. Does your jurisdiction have an overarching “net zero” or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

Austria’s climate protection policy is largely determined by European legal acts. Austria is contributing to the European Union’s (EU) European Green Deal with the goal of reducing greenhouse gas emissions by a total of 55 percent compared to 1990 levels. The legal basis for national action plans is the Climate Protection Act. As already mentioned, a new Climate Protection Act with binding targets is still missing. In the government programme of the Austrian Federal Government, as well as in Renewable Energy Expansion Act, the achievement of climate neutrality by 2040 is stipulated as a target. There is currently no comprehensive concept of measures to achieve the objectives described. However, the efforts in the respective legislation are evident.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms? 9.3 To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms? Who are the regulators in relation to greenwashing allegations?

The Austrian product labelling provisions are also largely based on Union law requirements. In this context, Regulation (EU) 2018/848 (Labelling of Organic Food), which is directly applicable in Austria, should be mentioned. In addition, there is a confusing multitude of quality labels, which are, however, only partially defined by law or subject to official controls.

In this context, it is worth mentioning the efforts of the federal government to improve the origin labelling of food. The government’s programme includes mandatory origin labelling of the primary ingredients milk, meat and eggs in communal catering and in processed foods. The first steps towards implementation have already been taken.

Regarding greenwashing, it should be mentioned that the European Commission has already proposed several amendments to the Unfair Commercial Practices Directive (UCPD) in March 2022. The proposal adds additional commercial practices which are to be considered unfair in all circumstances. For instance, making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.

With respect to the commercial practices to be considered misleading actions if they cause or are likely to cause the average consumers to take a transactional decision that they would not have otherwise taken the proposal moreover adds two additional practices in relation to greenwashing. For instance, making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system. However, the proposal has not yet been adopted.

It turns out, greenwashing is to be prevented primarily by competition law. Also at the national level, greenwashing violates the general prohibition of misleading statements under competition law. Violations of the prohibition of misleading statements result in claims under civil law. So far, therefore it has been primarily up to the civil courts to prevent greenwashing.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

With the amendment of the Antitrust Act (Kartellgesetz 2005) in 2021, aspects of climate protection are addressed in national antitrust law for the first time. Sufficient consumer participation, which justifies, among other aspects, an exemption from the basic ban on cartels, is now also given if the profit resulting from the improvement of the production or distribution of goods or the promotion of technical or economic progress contributes significantly to an ecologically sustainable or climate-neutral economy. Similar considerations also exist at European level, but so far without results.

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

After years of legal proceedings, the approval for the construction of a third runway at the Vienna International Airport was finally upheld by the Higher Administrative Court in 2019 (VwGH 06.03.2019, Ro 2018/03/0031). Nevertheless, the court made it clear that the impact of a project on the climate is one of the relevant issues of the EIA. The climate as a protected good is to be understood comprehensively and includes not only the effects on the local climate (microclimate) but also all aspects concerning climate change (global dimension).

In general, it can be noted that the courts are increasingly sensitive to climate protection issues. Especially in connection with renewable energy projects, a climate-friendly attitude of the courts can be seen. Renewable energy projects are regularly considered to be in the public interest. In its decision on the wind farm “Spannberg IV”, the Federal Administrative Court clearly stated that the public interest in the implementation of the project clearly outweighed the interest in preserving the landscape. In order to limit climate change, action must be taken now; its consequences – once they have occurred – are likely to be difficult to reverse, as the court emphasises in conclusion (BVwG 02.08.2022, W118 2252460-1/25E, Windpark Spannberg IV).

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

Austrian politics is taking numerous steps towards climate protection and sustainability, both at federal and provincial level. In addition to the aforementioned building regulations, incentives are to be created to switch from individual transport to public transport. For example, an increased mineral oil tax and CO2 pricing has come into effect in October 2022. But positive incentives have also been created, as shown by the Renewable Energy Expansion passed in 2021. Since October 2021, there is also a single ticket for all means of public transport in Austria at a reduced price. It remains to be seen whether these measures will be sufficient to achieve the ambitious goals and the energy transition. The expansion of the high-level electricity grids, which would be necessary due to the changing supply situation, could prove to be a problem. EIA procedures must be carried out for such projects, which are often associated with long procedural times.

23. Has the energy crisis/global events resulted in any impact on environmental

regulations and/or change in approach to environmental and climate change policy?

Due to the Russian war of aggression and the current energy crisis, questions of supply security and the search for alternatives to Russian gas have come to the fore at both European and national level. However, it is emphasised that this should not compromise the climate goals. Effects on environmental regulations and/or a change of approach in environmental and climate policy, however, are not really visible.

24. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

In general, violations of environmental law provisions are to be qualified as administrative offenses. The penal provisions of the applicable act are applied together with the Administrative Penal Act (Verwaltungsstrafgesetz 1991). In administrative penal proceedings, custodial sentences can be imposed in addition to the usual fines. Only natural persons can be prosecuted as defendants. If an administrative offense is committed by a company or other legal entity, the bodies authorized to represent the company are generally liable under administrative criminal law. This result is not considered satisfactory in some cases, as the bodies authorized to represent the company – especially in large companies – can hardly exert any direct influence on the actual compliance with administrative regulations in day-to-day operations. For this reason, the Administrative Penal Act grants legal entities the option of appointing one or more responsible persons within the company. The person must consent to his or her appointment, be vested with the necessary authority to issue orders regarding compliance with administrative regulations, and be subject to administrative criminal prosecution. The scope of the responsible person's responsibility may extend to the entire company or only to individual parts. It should be noted that the company is also liable for the fines imposed on the representative body or the responsible person.

Liability under administrative criminal law only exists if the administrative violation was culpably committed. Culpability can be negated if the responsible person has implemented an effective control system in the company, which ensures that the administrative regulations are complied with by means of clear instructions for action, training and regular checks. If an administrative violation nevertheless occurs, the responsible person must provide evidence of the implementation of the control system.

In addition to the provisions of administrative criminal law, the Criminal Code (Strafgesetzbuch) also contains offences relating to the impairment of the environment and acts that are harmful to the environment. In general only natural persons can be prosecuted. However, according to the Association Responsibility Act (Verbandsverantwortlichkeitsgesetz), legal entities can also be subject to criminal sanctions for acts of their decision-makers and employees that are punishable by law. The prerequisite is that the criminal act was committed for the benefit of the legal entity and that it involves the violation of a provision addressed to the legal entity.

Furthermore, the Federal Environmental Liability Act (Bundes-Umwelthaftungsgesetz), which is based on the Environmental Liability Directive 2004/35/EC, should be mentioned. In addition, environmental liability laws also exist at the state level. The environmental liability laws provide for strict liability for environmental damage, which primarily affects the operators of plants and is not limited to natural persons. The primary aim is to impose the costs of remedial measures on the polluter who causes environmental damage, in accordance with the polluter-pays principle. In addition, a preventive effect is also to be achieved.

In addition, the parties responsible for the damage can also be prosecuted under general provisions of tort law. Liability for parent companies or persons who have provided capital to the company is not stipulated in Austrian law.

25. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

Under general principles of civil law, the acquirer of a company is liable for obligations that were known or should have been known to him. This liability is generally limited to the value of the company.

In the case of a share deal, no change occurs with regard to the company as a legal entity. Environmental obligations therefore also remain unchanged. If the

obligations are to be qualified as a defect of the purchase object, the purchaser can assert claims under warranty law.

In the case of an asset deal, the acquirer enters into the existing legal relationships of the company and consequently also assumes existing obligations. Deviations from this statutory liability rule are only permitted in compliance with strict disclosure requirements. In addition to the liability of the acquirer, the liability of the seller remains for claims falling due within five years from the conclusion of the contract.

26. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

In general, the seller is obliged to provide information about the relevant properties of the object of purchase on the basis of pre-contractual duties. If certain facts are not apparent from the documents provided, the seller must point this out separately. If facts relevant under environmental law are not presented transparently by the seller, this may entitle the buyer to assert warranty claims or claims for damages.

Due diligence audits are regularly carried out in Austria in connection with company purchases. Of course, these audits also include environmental law issues. The extent to which the focus is placed on environmental conditions or environmental risks depends to a large extent on the company's field of activity. Particularly noteworthy in this context is the generally required review of the register of contaminated sites in connection with the acquisition of real estate. Other possible environmental impairments should also always be investigated due to the company's liability – for example under environmental liability laws.

27. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

Environmental liability insurance is offered in Austria and is a supplement to business liability insurance. In principle, liability claims due to damage caused by environmental impacts are insured. The scope of coverage of such insurance policies is linked to obligations based on environmental liability laws. It therefore covers, in particular, damage caused by the impairment of water, soil and air due to unforeseeable events that deviate from the normal operation of the plant.

28. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

At this point, reference should be made to the already mentioned contaminated site atlas and the register of suspected contaminated sites, from which contaminated sites as well as further details on contamination and the associated risk can be seen. The contaminated site atlas can be viewed online by anyone. Furthermore, the water register (Wasserbuch) provides information on water use and the entitled parties. This information is also available online. In addition, there is a register for waste collectors and treaters, which can also be accessed online.

29. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

With regard to approval procedures, according to the general provisions of administrative law, in principle only parties of the procedure are entitled to inspect the file. These are persons to whom the activity of the authority relates and who are involved in the matter on the basis of a legal claim or a legal interest.

However, the Environmental Information Act (Umweltinformationsgesetz) must also be observed. The Environmental Information Act is based on the European Environmental Information Directive. Its objectives are free public access to environmental information and its systematic publication. Furthermore, the Environmental Information Act, in conjunction with the Major Accidents Information Ordinance (Störfallinformationsverordnung), regulates the duty of plant operators to provide information on potential hazards and the correct course of action in the event of accidents in the vicinity of particularly hazardous plants. In principle, any natural or legal person has the right to access environmental information held by bodies required to provide information. Which information is covered by the scope of the law and the obligation to provide information is a question of interpretation.

30. What impact, if any, has COVID-19 had in relation to environmental regulations and enforcement in your jurisdiction?

No influence of COVID-19 on environmental regulations can be noticed. Only within the procedural law – as in all legal areas – the special requirements were taken into account.

31. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

The already mentioned Renewable Energy Expansion Act entered into force in summer 2021. Since then, the law has already been amended several times. The Renewable Energy Expansion Act is a comprehensive legislative package that creates the framework conditions for the conversion of the Austrian electricity system to 100 percent electricity from renewable sources. In particular, the law also allows the establishment of energy communities. Furthermore, it regulates the funding of the production of electrical energy from renewable energy sources. In particular, the law also allows the establishment of energy communities.

With regard to renewable energies, the above-mentioned initiatives of the European Union are particularly notable.

With the amendment of the Waste Management Act in 2021, a mandatory deposit system for single-use beverage packaging must be implemented from 2025.

A draft amendment to the Environmental Impact Assessment Act has been submitted in summer 2022. The draft includes provisions to accelerate proceedings, especially for renewable energy projects. In addition, land use and greenhouse gas emissions are to be considered in the future when deciding whether to grant a permit. Finally, the list of projects that are subject to the environmental impact assessment obligation will be expanded and existing facts regarding projects listed in Annex 1 will be tightened. The draft is currently still subject of political coordination. However, the law should be passed soon.

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