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The Legal 500 Country Comparative Guides

Austria

RENEWABLE ENERGY

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

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AUSTRIA
RENEWABLE ENERGY

1. Does your jurisdiction have an established renewable energy industry? What are the current production levels?

The Austrian primary energy production is dominated by a remarkably high share of renewable energies. Compared internationally, Austria holds a pioneering role in this segment, as almost 85% of the domestic primary energy production is based on renewable energy sources ("**renewables**"). Due to its topography, Austria provides two of the most important renewables to a considerable extent (i.e., hydropower and biomass). However, the share of renewables in Austria's gross final energy consumption accounts for only approx. 36.5%.

Owing to political efforts and the promotion of renewable energy, there are several other renewables that have gained importance over the past few years including wind, geothermal and solar energy.

In 2020, 445 petajoules (PJ) of energy were produced from renewables: biomass accounted for 38.6%; hydropower for 34%; firewood for 12.6%; wind power for 5.5%; heat pumps for 3.8%; biogas for 2%, solar photovoltaic for 1.7%, solar thermal for 1.6% and geothermal energy for 0.2%.

2. Who are the key regulators for renewables industry in your jurisdiction? How do they impact the industry?

Regulatory policies and decisions regarding the generation of energy from renewables are set by the "**BMK**", the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology.

E-Control is the regulatory authority for renewable energy. E-Control undertakes investigations and provides expert opinions on the market and competition situation in the fields of electricity (and gas). Furthermore, E-Control is responsible for monitoring the issuance, transfer, and cancellation of guarantees of origin for energy from renewables. For this purpose, it administers a computerised database (*Herkunftsnachweisdatenbank*). Moreover, E-Control is obliged to submit the annual Monitoring-Report for renewables to the BMK.

The competence for the regulatory framework for the funding of renewables is shared between the BMK and E-Control.

3. How are rights to explore/set up renewable energy projects, such as solar or wind farms, granted? How do these differ based on the source of energy, i.e. solar, hydropower, wind, geothermal and biomass?

The Electricity Sector Act (*Elektrizitätswirtschafts- und -organisationsgesetz 2010*; "**ELWOG**") provides the regulatory framework for the enactment of provisions governing the generation, transmission, distribution, and the supply of electricity, as well as the organisation of the electricity industry. Moreover, it aims to support the further development of electricity generation from renewables and to ensure access to the electricity grid for electricity from renewables.

The goal of the European Union to cover at least 32% of the gross final energy consumption by renewables and the Austrian aim to achieve climate neutrality by 2040 are enshrined in the Renewable Energy Expansion Act (*Erneuerbaren-Ausbau-Gesetz*; "**EAG**"). Further, the EAG defines national rules regarding the funding of renewables (i.e., a market premium via tendering procedures or investment grants), sets out the regulatory framework for renewable energy communities, lays down rules on guarantees of origin for energy from renewables and an "integrated Austrian network infrastructure plan".

Since Austria is still dominated by federalism, the nine Austrian provinces have far-reaching legislative authority in many areas (e.g., building law, regional planning law).

Furthermore, each province enacts its own Electricity Act due to the framework legislation on federal level in the energy sector.

In principle, renewable energy facilities require a construction permit (*Baugenehmigung*) according to the respective regional building code. However, the differences in the provinces range from complete exemption (from the permit necessary or from the scope of application of the respective provincial building regulations), to the exemption from authorisation (if a permit under the regional Electricity Law is required), to a simple-notification procedure up to a permit requirement.

Furthermore, renewable plants must be compliant with provincial planning regulations (i.e., zoning, provincial development, and planning purposes) and possible municipal regulations to protect the landscape (*Ortsbildschutz*).

In addition, a permit under the respective provincial Electricity Act (*elektrizitätsrechtliche Bewilligung*) is required. Owing to the various laws of each province, those provincial regulations stipulate different requirements to obtain the permit for the generation, transmission, and distribution of renewable electricity (i.e., permit requirement, simple-notification procedure, or no permit requirement). Mostly, the respective form of the permit under the provincial Electricity Act depends on the maximum capacity (*Engpassleistung*) of the generation plant. However, there is an exemption from any permit or notification requirement for installations that require authorisation under trade law (*Betriebsanlagengenehmigungsausnahme gemäß § 12 Abs 2 ElWOG*).

For hydropower facilities a permit under the Austrian Water Act (*Wasserrechtsgesetz 1959,* "**WRG**") is additionally required.

Moreover, hydropower, off-/onshore wind, geothermal and biomass facilities could be subject to an environmental impact assessment (*Umweltverträglichkeitsprüfung*), depending on numerous factors (e.g., size, maximum output etc.)

In addition, the operation of biomass plants could require a permit under the Waste Management Act (*Abfallwirtschaftsgesetz 2002*, "**AWG**")

Geothermal plants require a permit according to the WRG. Each province defines areas where such permits are necessary; outside such areas no permit is required.

4. What does the energy split look like in your jurisdiction and how is this changing as a result of the green energy transition?

The Austrian internal energy supply is based on a balanced mix of energy sources. About one-third of the energy needed is produced in Austria and the rest is imported. Approximately 83% of the internal Austrian primary energy production is based on renewables. Imports consist mainly of hydrocarbons. Therefore, the primary energy sources used to cover the Austrian energy consumption are diverse: in 2020, approximately 34.1% oil; 22.7% gas; 32.8% renewable energies; 7.6% coal; and 2.2% combustible waste were used. The remaining 0.6% comprises net import of electricity. The production of nuclear energy was banned in 1978 according to the Federal Law for a non-nuclear Austria. In line with the Austrian energy transition, the Republic of Austria endeavours to continuously increase the share of renewables in the domestic energy mix.

5. Is the government directly involved with the renewables industry? Is there a government-owned renewables company?

The main electricity companies in Austria are at least majority owned by the federal state or by the federal provinces. All these companies are active in the renewable energy sector. For example, the federal state holds 51% of the shares in one of the largest suppliers of electricity from hydropower, namely *Verbund AG*, whereas for instance the shares in TIWAG (*Tiroler Wasserkraft AG*; another company active in the field of hydropower) are 100% owned by the province of Tyrol.

6. What are the government's plans and strategies in terms of the renewables industry? Please also provide a brief overview of key legislation in the renewable energy sector?

In June 2019, the EU enacted a comprehensive update of its energy policy framework to facilitate the transition away from fossil fuels towards cleaner energy and to deliver on the EU's Paris Agreement commitments for reducing greenhouse gas emissions. The completion of this new energy rulebook – the Clean Energy for all Europeans Package – marks a significant step towards the implementation of the energy union strategy, adopted in 2015. It is focused on the promotion of energy efficiency, security of supply, development of renewable energy and reduction of carbon dioxide at the same time.

To act in line with the new EU energy package, the Austrian government initiated a climate and energy strategy called "#mission2030" in June 2018, setting out strategies to cope with the ambitious 2030 targets. Furthermore, the federal government aims to achieve a climate-neutral Austria by 2040. Building on this, the current government programme includes the topics of enhancement of renewable energies in Austria's total energy consumption, mobility services, infrastructure measures and fleet decarbonisation in road transport. This government programme, however, did not include concrete steps to achieve the goals in many areas.

With regard to the objective to minimise the use of oil, the Austrian government started an initiative to support consumers, municipalities, and businesses to switch from their oil-fired heating to one working with renewable energy under the headline "Away from Oil". There are currently around 600,000 oil-fired heating systems in Austria, which account for approx. 14% of all heating systems. The current "Away from Oil" promotion campaign is part of the restructuring offensive for companies and private individuals. 400 million euros are reserved for boiler replacement and the "Away from Oil" promotion campaign. In addition to the federal subsidy, Austrian provinces support the changeover to environmentally friendly heating systems with their own subsidy programmes.

For a brief overview of the most important legislation regarding renewables, please see question 3.

7. Are there any government incentive schemes promoting renewable energy? For example, are there any special tax deductions or incentives offered?

In principle, the EAG provides three support mechanisms (i.e., marked premiums based on tendering procedures, marked premiums based on applications and investment grants). Before the EAG entered into force, the Green Electricity Act 2012 (*Ökostromgesetz* 2012; "**ÖSG**") offered support to producers of renewable energy that fed green electricity into the grid by means of feed-in tariffs (*Einspeisetarife)* on the basis of a contract concluded with the Green Electricity Settlement Agency ("**OeMAG**"). Unlike under the ÖSG, OeMAG is no longer obliged to purchase the electricity generated from renewables. The electricity producers now have to market the electricity themselves. The market premium represents the subsidy that can be obtained for the electricity from renewables which is sold and fed into the public grid. Therefore, this subsidy aims to compensate for the difference fully or partially between the production costs of electricity from renewables and the average market price for electricity for a certain period. It is calculated from the difference between the value to be applied in cents per kWh determined in the context of a tendering procedure or established by ordinance and the respective reference market value or reference market price in cents per kWh.

A market premium may be obtained by means of a tendering procedure for selling electricity generated by photovoltaic, hydropower, wind, biomass-based and green gas facilities. The annual tender volumes are 700.000 kW peak for photovoltaic, 7.500 kW for biomass, 390.00 kW for wind power and 20.000 kW for joint tenders for wind and hydropower installations. For administratively determined market premiums, the tender volume is lower, and they are not available for all the renewables mentioned above.

As a rule, the market premium is paid out monthly by the competent body yet to be established (namely the *EAG-Förderabwicklungsstelle*; currently OeMAG has been entrusted with this task on an interim basis).

Apart from this, support by means of an investment grant is also possible under the EAG. Investment grants are subsidies for the construction, revitalisation, and expansion of renewables. This support mechanism is intended for photovoltaic, hydropower, wind power, biomass and green gas facilities. The investment grants are awarded through subsidy calls (*Fördercalls)* with a limited time frame for applications. Furthermore, the "first come, first served principle" applies here. The exact implementation and handling of investment grants are set out in ordinances issued by the Federal Minister for Climate Protection, Environment, Energy, Mobility, Innovation and Technology in agreement with the Federal Minister for Agriculture, Regions, and Tourism. The respective Investment Grant Ordinance for Electricity (*EAG-Investitionszuschüsseverordnung-Strom*) entered into force on 07 April 2022 and will expire on 31 December 2022. The Investment Grant Ordinance for Green Gas is still pending.

Further to the funding on federal level, there are also funding programmes for renewables and energy efficiency at provincial level.

In addition, end-users of self-produced renewable energy are exempted from electricity tax (*Elektrizitätsabgabe)*. This also applies to the consumption within renewable energy communities.

8. How have private companies outside of the renewable energy sector responded to

the renewables industry? Have you seen more companies set net-zero and/or science-based targets?

According to a recent survey that surveyed the largest companies in Austria, sustainability is already a part of the corporate strategy: Three out of five companies have already integrated a sustainability-concept into their strategy; every third company at least partially. However, only about half of the executives surveyed were able to give concrete information on the goals set regarding climate neutrality.

9. What are the key contracts you typically expect to see in a new-build renewable energy contract?

The primary objective of key contracts is to secure the necessary land for the respective project. Therefore, typical contracts in this segment are those between the landowner and the project developer. For photovoltaic installations, easement or rental contracts are often concluded for the roof area necessary for realisation. In this context, photovoltaic facilities are frequently erected, developed and operated by a contractor on behalf of the homeowner. Since the own use of self-produced renewable energy is free of electricity tax, such contracts stipulate that the homeowner is the primary user and operator of the roof top photovoltaic plant.

10. Are there any restrictions on the export of renewable energy, local content obligations or domestic supply obligations?

There are no restrictions to that effect.

11. Does the regulatory regime include any specific decommissioning obligations? How do these obligations differ across solar, hydropower, wind, geothermal and biomass?

There are no obligations to decommission a renewable energy production plant after a certain period. The decision whether to decommission the respective plant is up to the operator. Notwithstanding this, any plant has to comply with the respective legal operation requirements which might change from time to time, make the further operation uneconomical and thus may trigger decommissioning. The specific rules might differ, depending on the respective province, since this is subject to the Electricity Law of each province. In general, in case of decommissioning, the operator has to notify the competent authority which has to establish the necessary measures by separate decree. In case of wind plants, the parts of the plant above ground have to be removed (e.g., Sect. 49 provincial Electricity Act of Salzburg, Sect. 18 provincial Electricity Act of Lower Austria).

12. Could you provide a brief overview of the major projects that are currently happening in your jurisdiction?

Austria's largest photovoltaic plant is currently located in *Schafflerhoftstraße* (22nd district of Vienna). With 11.45 MW, the photovoltaic plant can supply the equivalent of around 4,900 Viennese households with electricity. The unique feature of this installation is that it is a so-called citizens' power plant (*Bürger-Photovoltaikanlage*). Viennese citizens can participate via voucher packages and thus reduce their own electricity bills. This project was initiated by *Wien Energie*, the largest energy supplier in Vienna and one of the energy suppliers with the highest turnover in Austria.

The largest solar thermal system in Austria was installed in *Friesach* (municipality in the province of Carinthia). In the summer months it covers 100% of the hot water needs of the district heating customers in *Friesach* and contributes to the heating in the transitional period. In future, 2.5 million kW/h will be generated by the large-scale solar thermal plant, which corresponds to the annual consumption of around 500 flats. The heat from the *Friesach-solar-park* is fed into the more than 10 km long, district heating network of *KELAG Energie & Wärme GmbH*.

13. Who are the key players that are driving the green renewable energy transition in your jurisdiction?

Essentially, the key players driving the Austrian energy transition are the energy companies either controlled by the federal state or the provinces (e.g., *Verbund AG*, *EVN AG*, *Energie AG Oberösterreich*, *Energie Burgenland* AG, *Salzburg AG für Energie*, *Verkehr und Telekommunikation*, *Energie Steiermark AG*, *KELAG-Kärntner Elektrizitäts- Aktiengesellschaft*, *TIWAG-Tiroler Wasserkraft AG*, *illwerke vkw AG*) as well as some privately owned companies (e.g., *oekostrom AG für Energieerzeugung und -handel*, *PÜSPÖK group*, *CLEEN Energy AG*). Moreover, there are many other small undertakings active in this field; especially since the EAG entered into force.

Further, the Austrian federal government, is constantly launching new policies (i.e., political climate targets) to expedite the energy transition (please see question 6).

14. Please can you give a summary of the key renewable projects in the pipeline in your jurisdiction?

One of the key renewable projects in the pipeline is the research project "*GeoTief Wien*" currently taking place in the eastern area of Vienna. When drilling for oil and gas in this area in 1974, no fossil energy sources were discovered, but a large hot water reservoir directly under the city of Vienna. Research is currently being conducted to find out how warm and large the heat reservoir actually is. At present, it is estimated that in future up to 125,000 households could be supplied with district heating through this geothermal energy source.

15. What are the key issues facing the renewables industry in your jurisdiction across solar, hydropower, wind, geothermal and biomass?

The first key issue lies in the acceptance of the population, which is necessary for the implementation of energy projects since any kind of opposition can massively delay the permitting procedure by years and make it uneconomical. The best example of this delaying effect is the construction of the *Salzburg-line, a* project by APG (the Austrian TSO). At the end of 2012, it filed an application for approval of a 380 kV power line under the Environmental Impact Assessment Act. After the decision of the Federal Administrative Court ("**BVwG**") various municipalities and citizens' movements immediately lodged an appeal against this decision. They did not oppose the power line as such but demanded that the required cable should be laid underground to prevent severe damage to the environment. In its 295-page (!) decision the Supreme Administrative Court ("**VwGH**") spoke the "last word" and dismissed all appeals, hence the construction work could be continued.

Another impediment is the territorial planning procedure. This applies in particular to wind farms or photovoltaic plants. Due to the Austrian federalism, the zoning plan of the spatial planning is prepared by each provincial government. The federal government is unable to exert any influence on this matter, as land-use planning lies within the competence of the respective province.

16. How has the consequences of the Covid-19 pandemic particularly impacted the renewables industry?

To our knowledge, the COVID-19 pandemic had no particular impact on the renewable energy sector. The most significant effect of the pandemic in the energy sector was the sharp decline in energy consumption. Compared between 2020 and 2021, it fell by over 7%. Mid-March 2020 the Austrian energy consumption decreased by 13% within two weeks.

17. How do you think the impact of foreign investment and changes in regulation will affect investment in the renewables industry?

According to our assessment, foreign investment would not have influence since there are enough financial resources available in Austria. However, the enactment of the EAG, especially the new funding mechanisms regarding renewable energy projects are likely to boost the renewable energy sector.

The objective of the Austrian government to reduce gas-powered heating systems in households to zero by 2040 is a priority at the moment. Due to the war in Ukraine, the Austrian population has realised that alternatives must be implemented quickly, as 80% of the natural gas consumed in Austria is imported from Russia. Thus, there is currently a strong motivation in the country to push ahead quickly with the expansion of renewables.

18. How has your jurisdiction performed against its commitments as part of the Paris Agreement?

The European "Green Deal" which is based upon the implemented strategy of the climate protection agreement of Paris consists of various political initiatives which should ensure the achievement of these goals. In this regard an essential intermediate target is the reduction of greenhouse gas emissions by 55% in relation to the period from 1990 until 2030. Within the framework of the EU climate and energy package, Austria committed itself to increase the percentage of renewable energy in the national energy mix to 34.0% in 2020. This target has been reached with a percentage of 36.5% in 2020. The rapid increase of the percentage of renewables from 33.8% in 2019 to 36.5 % in 2020 is due to the measures implemented because of the COVID19-crisis. Above all the curfew and travel restrictions of the first lockdown in 2020, it led to a significant decrease of predominantly fossil end energy consumption in the transport sector with a percentage of 18.0%. The next

energy and climate policy goals of the Austrian federal government are to convert Austria's electricity supply to 100% electricity from renewable energy sources by 2030 and to achieve climate neutrality in Austria by 2040. (please see question 6, "#mission2030")

19. How has the government used COP26 as an opportunity to drive the green energy transition?

At COP26, Austria supported the EU's plan to reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990.

The former Austrian Chancellor Alexander Schallenberg emphasised at the conference: "*Climate protection is one of the most important challenges of our generation, which we are meeting with innovations and global cooperation. Austria is ready to take on this task*".

20. How is the government stepping up its commitment as a part of the COP26 agreement?

(please see question 6, 18 and 19)

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