Perchards

Austria

Legislation and Public Policy - 1

updated 18 November 2009

The two key legislative instruments on packaging waste, adopted in 1992, were the Packaging Ordinance and the Objectives Ordinance. The Packaging Ordinance was modelled on the German Ordinance, but with important differences. In September 2006 it was amended to take account of the amendments to the Packaging and Packaging Waste Directive, and it now incorporates the provisions of the Objectives Ordinance, which has been repealed.

The 2006 text transposes EU rules more precisely. New provisions included higher recycling targets for recovery organisations as a penalty if the national recycling targets are not met, and in-store take-back for secondary packaging. Despite the objections of Austrian industry, the requirement to report on packaging reuse remains, but this may now be done on a sectoral basis.

A 2007 amendment to the Waste Management Act requires all approved recovery organisations to support prevention projects.

An amendment to the Packaging Ordinance is under discussion that would open the way for recovery organisations to compete with ARA in the household packaging waste sector.

TABLE OF CONTENTS

Austria

Legislation and Public Policy - 2

updated 18 November 2009

Packaging Ordinance

Background

A Packaging Ordinance originally adopted in 1992 required a nationwide recovery system to be in place by October 1993. The Ordinance was revised in 1995, and in November 1996 it was amended for a second time (VVO 648/1996) to bring it into line with the newly amended Waste Act and the EC Packaging and Packaging Waste Directive (for instance by transposing the Essential Requirements, heavy metal limits and data reporting requirements), and to deal with some legal challenges under Austrian law.

On 26 September 2006 Austria amended the Packaging Ordinance again to take account of the new provisions of the revised Directive (2004/12/EC). Before the 2006 amendment (VVO 364/2006) was adopted, Austrian law imposed three separate sets of packaging recovery and/or recycling targets:

- The material-specific overall national target in the 'Objectives' Ordinance, which was expressed as percentages of packaging placed on the market which must be delivered to a recycler;
- material-specific targets for individual company compliance, set out in the Packaging Ordinance and expressed as percentages of packaging taken back and own packaging waste arisings which must be recycled;
- targets for recovery systems, which are negotiable but may not be lower than the minimum rates in the Directive.

The 2006 amendment repeals the 'Objectives' Ordinance but incorporated its main objectives into the Packaging Ordinance.

Targets

VVO 364/2006 imposes a new obligation on companies, or recovery organisations acting on their behalf, to meet the material-specific recycling targets in the Directive. These targets replace those in the 2000 Objectives Ordinance, which the 2006 amendment repealed. Although the Directive allowed Austria until 2008 to reach these targets, VVO 364/2006 said that the targets must be met each calendar year from 2007. There are also recycling targets for beverage cartons and for 'other composites'.

A second set of recycling targets applies to sales or transport packaging arising as waste on the premises of manufacturers, importers, packers and distributors:

	Overall recycling targets	***Recycling targets for commercial & industrial packaging waste arisings***
Paper, board, corrugated board	60%	90%
Glass	60%	93%
Ceramics	-	95%
Metals	50%	95%
Plastics	22.5%	40%
Wood	15%	15%
Beverage composite board	25%	40%
Other composite materials	15%	15%

The Objectives Ordinance set progressively reduced limits on the tonnages of each packaging material that may be disposed of in landfill in a given year, as well as stipulating how the disposal limits were to be measured. From 2007 landfilling limits apply only to glass and metals because, due to changes in the landfilling regulations, only pre-treated waste can be landfilled. Until 2006 the landfill limits did not apply to beverage containers, but since 2007 all packaging is included.

The landfill limits set by the 2006 amendment are as follows:

'000 tonnes	
Glass	40
Metals	17

The net tonnage of packaging waste (dried, net of residue) is measured. In 2007 the limit for metals was met, as only 11,570–11,770 tonnes were landfilled. However the limit for glass was exceeded, as some 46,550–47,450 tonnes of glass were landfilled.

The 2006 amendment sets out some new penalties for failure to meet the recycling targets and for exceeding the landfill limits. It specifies that an obligation for the final user to return packaging may be imposed, or the collection and recycling targets for recovery organisations increased.

Collection and recovery systems

The Packaging Ordinance envisages an integrated system covering both household and commercial and industrial waste. Manufacturers, distributors and importers must take back used packaging and disposable dishes and cutlery free of charge; used packaging taken back, and packaging waste arising on company premises, must either be passed to a company upstream with a take-back obligation or be reused or recovered. Companies can opt to participate in collection and recycling systems, which will use local authority waste management operations, but if they do not, an upstream or downstream stage of distribution may join the system instead. In that case the company with the obligation must provide written evidence of how it has met the legal requirements.

Companies joining a recovery system delegate their obligations to it. Companies not joining must comply with reporting requirements and meet recovery targets. The target must be met for each individual material or else the company must sign up with the ARA system. Energy recovery is permitted for the material not recycled, provided certain conditions are met.

The 2006 amendment says that provided it is in the interests of the environment and of the national economy, approval notices for recovery organisations shall require at least 60% of the quantity of each packaging material covered by the organisation to be collected. This includes collection with residual waste, insofar as this is used for energy recovery in waste incineration systems, as well as separate collection for recycling. At least 55% overall and at least the percentages set out in the material-specific targets must be recycled.

Exceptions shall be limited to cases where approval of the collection and recycling system only covers packaging from a single material or if the economic and technical framework conditions of the system make such targets disproportionate, in which case a minimum rate of at least 15% shall be stipulated.

For companies complying individually rather than through a system, packaging must be recycled by the end of the calendar year after that in which it was taken back. 95% of the ceramic and metal packaging collected, 93% of the glass, 90% of the paper and board, 40% of the plastics and composite board for beverages, and 15% of other composite materials must be sent on for recycling, and untreated wood packaging sent on for recovery. Retailers must provide facilities for consumers to discard secondary packaging in-store.

The 2006 amendment reinstated a provision which was deleted from the Ordinance when it was amended in 1996, which provides that final distributors must accept back *secondary packaging* free of charge when it is left behind by final consumers at or close to the point of sale when packaged products are purchased.

The Packaging Ordinance created a special business category, 'large waste holders'. Businesses on whose premises more than 80 tonnes of paper/board, 300 tonnes of glass, 100 tonnes of metals, or 30 tonnes of plastics becomes waste each year, now have the option of registering as 'large waste holders'. 'Large waste holders' are responsible for reusing or recycling the packaging waste on their premises and suppliers have no obligations in respect of packaging supplied to them. The idea is that since this material can be collected relatively cheaply, allowing the user to take control is more cost-effective than for the supplier to pay a fee to ARA.

For some years after the list of companies choosing this option was first published, take-up remained stable at around 20 companies, though some companies had de-registered while new ones had been added. However, in 2008 the number of companies registered fell to 13. Companies registered as large waste-holders are predominantly in the automotive and electronics sectors, but some grocery-related businesses have also registered.

Final consumers who acquire packaging or packaged goods for use within their company must, unless otherwise exempted, get it recycled or reused. Unless registered as a large waste holder, they must join a collection and recovery system in respect of these packaging waste arisings.

To improve controls on 'free riders', businesses that are not already members of a recovery organisation, or which cannot show that they have taken back and recycled the appropriate quantity of packaging, must join recovery systems in respect of residual quantities of packaging waste:

- If they have achieved a return rate of 50% or more, they must sign up with an organisation such as ARA for the difference between their return rate and 90% of the packaging they have placed on the market;
- if they have achieved a return rate of less than 50% they will have to sign up for the difference between their actual return rate and 100% of what they place on the market.

This is intended to avoid situations where an individual company recycles 60% of its packaging waste and some of the residual 40% ends up in ARA collections without a licence fee having been paid.

Several companies have been prosecuted for failing to license their packaging with one of the recovery organisations. Fines have ranged between EUR 363 and EUR 730 and offenders also have to pay the *Lebensministerium's* enforcement costs, typically EUR 1450 - 2200. *(The* Lebensministerium's *responsibilities include environmental protection, and it is hereafter referred to as 'the Environment Ministry'.)* Companies prosecuted a second time must pay a fine equivalent to double the licence fees they would have paid if they were members of a recovery organisation. Most companies have been prosecuted for more than one offence and have typically paid fines and costs of EUR 7270. Some of the cases were brought by companies to challenge the take-back requirements and the Ordinance has been amended as a result, to ensure that it is legally watertight.

To clarify and tighten up the rules for recovery systems, the 1996 version of the Ordinance required that:

- recovery systems must achieve the collection and recycling targets for the packaging contracted to them;
- in their application for approval, systems must show how their fees are calculated;
- fees must reflect actual costs of collecting and recycling materials (i.e. no cross-subsidies);
- systems will no longer be required to be geographically comprehensive ('flächendeckend'), but they must still establish collection points within reasonable distance of places where waste arises;
- systems must keep a list of commercial holders from where packaging waste is retrieved;
- in their application for approval, recovery systems may undertake to achieve different recycling rates from the targets, but in any case not less than 50% of each material covered by the system must be recovered and at least 25% recycled, with each material recycled at not less than 15%;
- recovery systems must provide the Environment Ministry with evidence of recovery and recycling rates achieved, details of packaging recovered from commercial holders and from public collection, a list of members, and an activity and financial report.

Packaging contaminated with hazardous waste, non-packaging waste or foodservice disposables may only be introduced into collection and recovery systems if the operator of the respective collection and recycling system expressly permits it.

Austria

Legislation and Public Policy - 5

updated 18 November 2009

In 2008 the Environment Ministry started preparing proposals for amendments to the Packaging Ordinance that may open up the collection and recycling of household packaging waste to competition. ARA currently has a monopoly in the household sector except for beverage cartons, which are handled by Öko-Box (ARA's approval excludes these packs). However ARA does compete with other systems for commercial and industrial packaging waste and these systems (and possibly some new ones) would be able to compete with ARA in the household sector.

ARA opposes competition, and argues that is has achieved high recycling rates and cost savings in recent years. ARA wants the new requirements to rule out any operator cherry-picking the most lucrative materials and customers, or the most promising collection areas. It proposes that it should retain its monopoly on collection, so that competition would apply only to sorting and recycling, with each operator (including ARA) being allocated material according to its market share. ARA also argues that the fluid demarcation between household packaging and commercial packaging needs to be made clearer.

The municipalities are understood to want to take back control of collection, while the Ministry's priority is to maintain the principle of producer responsibility and to ensure that all households continue to have access to segregated collection of packaging waste.

Other stakeholders insist on a clear demarcation between collection and recycling, which could lead to the formation of a new independent infrastructure company to operate collection.

The Ministry is still considering the options, but is thought to favour separating collection from sorting and recycling, along the lines proposed by ARA. To facilitate this, the demarcation between packaging waste in households and on commercial sites will be improved, based on current practice. The revised requirements are expected to come into effect during 2010.

Exemptions

Sales packaging kept with durable products during their lifetime (CD cases, games boxes etc) is exempt. So are small manufacturers and distributors of transport and sales packaging – those placing on the market less than 300 kg paper and board, 800 kg glass, 100 kg metals, 100 kg plastics, 100 kg wood and 50 kg of all other packaging materials, or whose annual turnover does not exceed EUR 726,728. This exemption does not apply to service packaging or any other packaging of which packers/fillers are the first users, nor to the packaging of goods placed on the market by importers.

Certain obligations set out in the Ordinance do not apply to deposit-bearing packaging and pallets intended for reuse, and any closures and labels attached to them which together do not account for more than 5% by weight of the reusable container.

Material identification

The 2006 amendment sets out the material identification numbers and letters from Commission Decision 97/129/EC and makes clear that their use is voluntary. It repealed the 1992 Austrian Ordinance that made the material identification of plastics mandatory.

Data reporting

The 2006 amendment requires obligated producers and importers to submit data on the packaging they place on the market that is not handled through an approved recovery organisation. Data must be submitted by individual compliers and on packaging supplied to

registered 'large end-users'. Data for the 2007 calendar year, which was to be submitted by 31 March 2008, had to be submitted online to the authorities' data reporting portal (*www.edm.gv.at*). Paper submissions have not been permitted since then.

The 2006 amendment includes a requirement to report on the weight of refillable containers filled for the first time, arising as waste and recovered or recycled. Sectoral organisations may report on behalf of individual companies.

The reporting requirements for refillable drinks containers relate to a voluntary agreement, the *Sustainability Agenda for Beverage Containers (see **Austria – Beverage Containers Policy**)*. The requirement to report on refillables remains in place although the latest (2008) version of the agreement no longer contains any commitment to maintain refillables.

Adjusting to the Directive

The 2006 amendment transposed the EC Directive's definition of packaging, adding additional criteria and illustrative examples.

Other changes to bring Austrian requirements into line with EU rules include the following:

- any new exemptions from the EU heavy metal limits can be automatically transposed into Austrian law by publishing the text in the Austrian Official Journal.
- the definition of material recycling now includes 'organic recycling',
- the provisions on packaging waste being exported outside the EU now include a reference to reprocessing being undertaken under equivalent conditions.

The Essential Requirements

The Packaging Ordinance contains no conformity assessment procedure and no indication of how a company should conform with the Essential Requirements, but it says that *'in accordance with standards to be adopted … packaging shall satisfy the following Essential Requirements. A special announcement of these standards will be published in the federal law gazette, thereby rendering them binding.'*

Cost-benefit analysis on recycling/treatment of different packaging materials

On 9 April 2002, the Federal Environment Agency (UBA) published a cost-benefit analysis which concluded that the separate collection of packaging waste in Austria produces overall savings of around EUR 270 million per annum.

The study, which aimed to identify ways of improving the system, concluded that pre-treating residual waste would yield the most improvement.

It suggested that

- a further 8% increase in the already high rate of separate collection of packaging and non-packaging paper from households would produce positive cost-benefit results;
- further expansion of glass collections would not be sensible, but there is scope for improving the efficiencies of the system;

- the separate collection of plastics from households has gone beyond the optimum, and it would be better to reduce the gross collection rate to 50% and concentrate on large containers which are readily recyclable. The benefits would be even greater if more residual waste were pre-treated by incineration or mechanical-biological processing;

- as regards the separate collection of commercial plastic packaging, the results are not clearcut – even slight changes in the model assumptions change the cost-benefit balance from positive to negative and vice versa;

- the separate collection of beverage cartons by ArgeV and Ökobox involve heavy financial costs, and the report suggests that it would be preferable to leave this fraction with the residual waste, particularly if the residual waste were pre-treated;

- separate collection of metal packaging from households is positive when compared with landfilling, but as steel packaging is extracted from residual waste by magnetic separation, modelling was confined to the aluminium fraction. The arguments for separate collection of aluminium beverage containers are not clearcut, as the costs and benefits are heavily dependent on the assumptions made.

Plastic carrier bags – ECJ ruling

In 2006, the European Court of Justice (ECJ) further clarified who is the 'producer' in relation to the Packaging and Packaging Waste Directive. This was the Court's second ruling in a case involving a producer of plastic carrier bags, Plato Plastik, and its distributor in Austria, Caropack.

The first case (C-341/01) was referred by an Austrian regional court to the ECJ, seeking a ruling on the following questions about the Austrian Packaging Ordinance:

- Do carrier bags fall within the definition of packaging under the Directive on Packaging and Packaging Waste, if they are sold by the retailer if the customer asks for one and/or if they are supplied free of charge regardless of whether the customer asks for one?

- If they are not packaging, can the Austrian government or the Commission make them subject to the provisions of the Directive anyway?

- If they are not packaging, can a fee be charged on them merely because they are marked with the Green Dot?

- Does the operation of a packaging recovery system, such as ARA, conflict with the principle of proportionality?

- Should the term 'producers' apply only to packers/fillers or could the definition also cover producers of packaging materials and of packaging? If so, should these upstream players also have to participate in a recovery system?

- Does the exclusion of consumers from the definition of 'producers' conflict with the polluter pays principle? *(N.B. the original Austrian Ordinance imposed obligations on consumers to sort packaging waste, but this was repealed after it was ruled unconstitutional.)*

- Is the existence of a monopoly recovery organisation appropriate under Articles 30 *et seq* of the Treaty? In particular, does it deny consumers the right, granted under the Sixth VAT Directive, of a reduced rate of VAT on household waste disposal?

The ECJ ruled that

- plastic carrier bags are packaging regardless of whether they are supplied free of charge or sold to the consumer;
- the 'producer' is the producer of the goods, not the manufacturer of the packaging or the packaging materials.

The Court did not answer the other questions submitted, because it said that they were not central to the case.

The definition of producer in the 2004 ruling offered little guidance in this dispute involving a packaging converter and its distributor. Plato had passed responsibility for compliance with the Austrian Packaging Ordinance to Caropack by contract, but Caropack had refused to take any action.

Following a further referral back by the Austrian court, the ECJ ruled in February 2006 (Case C-26/05). Noting that the Austrian Packaging Ordinance imposes take-back obligations on all stages of the supply chain including packaging manufacturers, the Court ruled that:

- the producer is not necessarily the party who puts products into packaging – the producer of plastic carrier bags is a producer of packaging;

- there is no conflict between the Directive and national rules (such as those in Austria) that require a packaging producer either to take back packaging waste or to participate in a recovery system, unless a subsequent operator in a subsequent stage of distribution participates. Member states have some leeway in determining which categories of producers should participate in recovery systems.

Waste Management Act

The framework legislation on which the Packaging Ordinance is based, is the 2002 Waste Management Law (AWG 2002), successor to the 1990 Law as amended in 1996.

Rules for Collection and Recovery Systems

The 1996 amendment set rules for collection and recovery systems:

- systems must be approved by the Environment Ministry and must carry out collection and recovery using best available environmental technology;

- applications for approval must indicate the type, scope and duration of the proposed scheme, types of wastes and materials handled, operating and waste licences needed, description of operating methods (collection density, recovery options etc.), and financial information;

- local authority associations and other approved systems operating in the same area (in terms of geography or type of waste) have a right to comment on the application;

- approval will be granted for not more than 10 years (or for a shorter period if the applicant so wishes);

- conditions may be attached to the approval, or imposed subsequently, if this is necessary to ensure proper fulfilment of tasks;

- approved systems are subject to supervision by the Environment Ministry, which may make recommendations, demand improvements or withdraw the approval.

In cases where a competing recovery organisation shares use of recovery facilities with the recovery organisation operating the facilities, the operator can claim back from the competing organisation the costs normally arising (in EUR/kg) from the shared use.

Other rules on recovery systems include assessing the competition position if a system does not operate as per its approval, and that supervision by the Environment Ministry should include an assessment of whether costs and fees charged by recovery systems are reasonable.

Other relevant provisions include the following:

- the Environment Ministry may require certain types of obligated party to be listed on a public register (e.g. large holders of packaging waste);

- the Environment Ministry will decide on borderline cases (whether a particular item is subject to an Ordinance or not, e.g. on what is or is not packaging);

- costs incurred by the Environment Ministry in supervising the obligation to take-back, reuse or recover packaging waste, particularly from use of expert advice, may be passed on to parties with an obligation under the law if the investigations give rise to a prosecution which results in a fine being imposed.

The 2002 revision established more detailed requirements for recovery organisations, including promotion of prevention, maximising participation rates by consumers, and rules for allocating costs where there is shared use of local authority facilities.

Packaging Recovery Systems – prevention activities

Among the provisions of a revision to waste framework legislation published in Official Gazette 43/2007 on 9 July 2007 was a new requirement that approved recovery organisations must devote 0.3% of their fee income to supporting prevention projects. Activities should promote:

- preventing the use of materials that adversely affect the quality of waste;

- reducing the quantity of production waste or packaging waste;

- contributing to improving the logistics of waste prevention; or

- information or training that affect waste prevention.

Activities solely aimed at sorting and recycling (additional 'bring' containers, etc) are not acceptable under this heading. Recovery organisations must submit a list of projects to the Environment Ministry. The Ministry comments that projects must aim to improve resource efficiency and sustainability and that climate protection should be taken into account.

The amendment also contains new rules governing the operation of recovery systems once their approval period has expired. Materials received by the system during the validity of the approval must be removed and handled appropriately, and relevant reporting requirements must be complied with. These requirements were introduced mainly because of concerns about recovery organisations for WEEE, but they also apply to packaging.

In July 2009 the Environment Ministry published a list of all prevention projects supported by the various recovery organisations. For further details see *Austria – Recovery Organisations*.

Segregated collection of biodegradable waste

Ordinance 68/1992 on the separate collection of organic wastes requires biodegradable waste not recovered in the immediate vicinity of households or commercial premises to be collected separately or brought to a special collection point. Biodegradable waste containing hazardous substances is excluded. An Ordinance of 2001 regulated the type and origin of input materials for compost.

European Bioplastics, the Berlin-based organisation formerly known as IBAW, is running a pilot collection project in Linz along very similar lines to one that operated in Kassel, Germany, between 2001 and 2004. Local retailers are selling biodegradable plastic packaging marked with the organisation's logo. The project aims to test packaging in a real market situation and to establish whether Austrian consumers will sort the special packs correctly.

Austria

Legislation and Public Policy - 10

updated 18 November 2009

Implementation of the Landfill Directive

Ordinance 49/2004 amending the Landfill Ordinance (164/1996) requires all waste to be pre-treated before landfilling, including the non-recyclable fraction from ARA's segregated collections *[see **Austria – Recovery and Recycling Organisations**]*.

The basic landfill tax is now EUR 87 per tonne, but there is a surcharge of EUR 29 per tonne if the landfill has no basement seal system or no vertical enclosure and a surcharge of a further EUR 29 per tonne for municipal waste landfills which have no landfill gas collection and treatment system. There is also an incineration tax of EUR 7 per tonne.

The tax was increased from EUR 7 per tonne in 1999 to EUR 44 in 2001, EUR 65 in 2005 and EUR 87 in 2006. Between 1999 and 2006, the proportion of municipal waste landfilled fell from 29% to 4%. The proportion of waste incinerated increased from 6% to 24% over the same period, but the proportions recycled or composted increased only slightly.

Summary of marking and identification rules

The 2006 amendment to the Packaging Ordinance repealed Ordinance 137/1992 on the marking of plastics packaging, which required plastics packaging to be marked or labelled with the full name of the polymer or an abbreviation.

Sales (i.e. consumer) packaging participating in the ARA packaging recovery system is usually marked with the Green Dot, but marking is optional. Transport packaging is not marked.