

A legal framework for a climate neutral built environment? Open legal issues in the building related climate protection regime

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Buildings & Construction Sector Remains 'off track'



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- Ambitious goals of the **European Green Deal** are being watered down
- 2020-2030 decisive for achieving energy and climate goals

Focus of Presentation

- *What are the most **pivotal policy areas & legal instruments**?*
- *What are **open & controversial legal issues**?*
- *How can **spatial planning & planning authorities** promote resource efficiency & decarbonisation?*

What Are the Most Pivotal Policy Areas?

Three Pillars of Climate Action in the Building Sector

I Energy Efficiency

- Strong energy efficiency standards, especially for new buildings
- Energy Performance of Buildings Directive (EPBD)
- Focus exclusively on energy use during **operational phase**



II Resource Efficiency

- Introduction of **life-cycle thinking** in building regulation
- Reduction of energy and emissions related to construction, building products & demolition (= “**whole life carbon emissions**”)

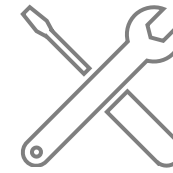


III Decarbonisation

- **Phasing-out** of fossil based heating systems (oil & gas)
- Integration of **renewable heat** (heat pumps, geothermal energy, district heating, etc)

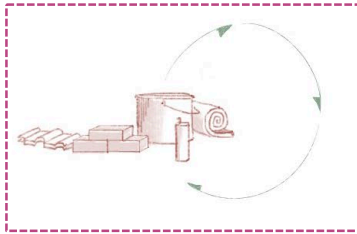


Legal Instruments in Austria – New Buildings

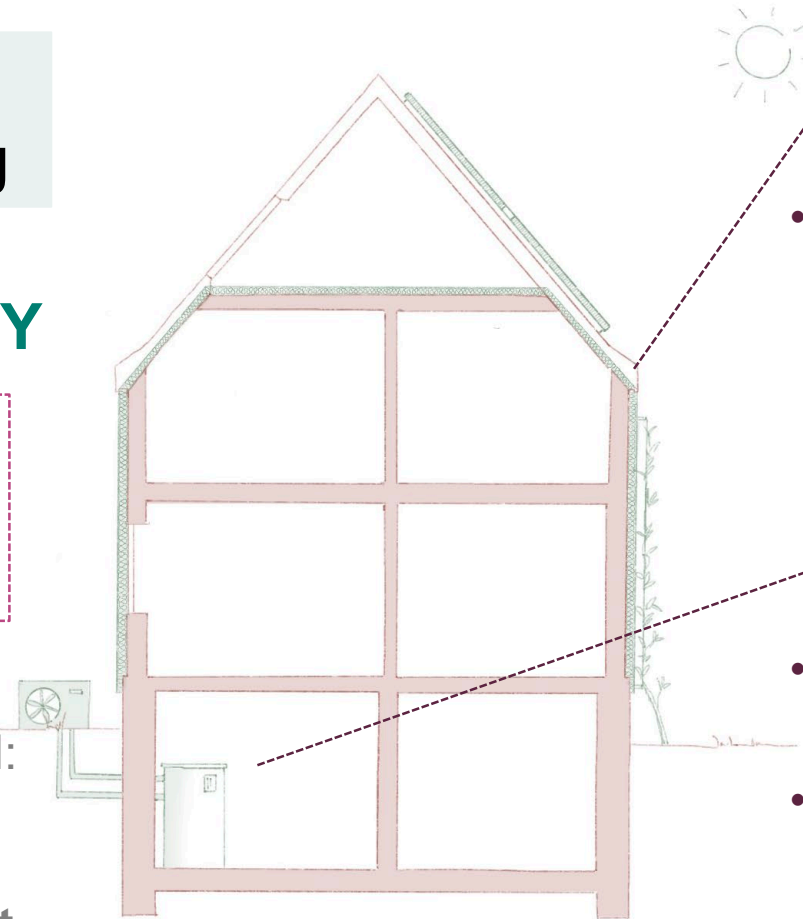


EPBD Recast:
Zero-emission building

RESOURCE EFFICIENCY



- Calculation & disclosure of **life-cycle Global Warming Potential**: Art 7 para 2 EPBD Proposal¹
- **Environmental building product requirements & manufacturers' obligations**: Art 5 & Art 22 CPR Proposal²



ENERGY EFFICIENCY

- **Minimum energy performance requirements**: § 118 Building Code Vienna + Construction Technology Regulation Vienna + OIB-Guideline 6

DECARBONISATION

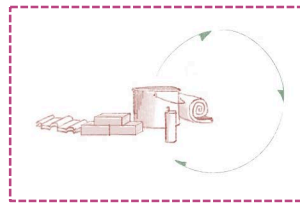
- **Federal ban on oil heating**: § 2 ÖKEVG 2019
- **Regional ban on gas heating**: § 2b Building Code Vienna – Energy Planning | § 5 Federal Renewable Heat Act
- **PV obligation**: § 118 Abs 3c Building Code Vienna | Art 9a EPBD Proposal¹

¹ COM(2021) 802 final; ² COM(2022) 144 final

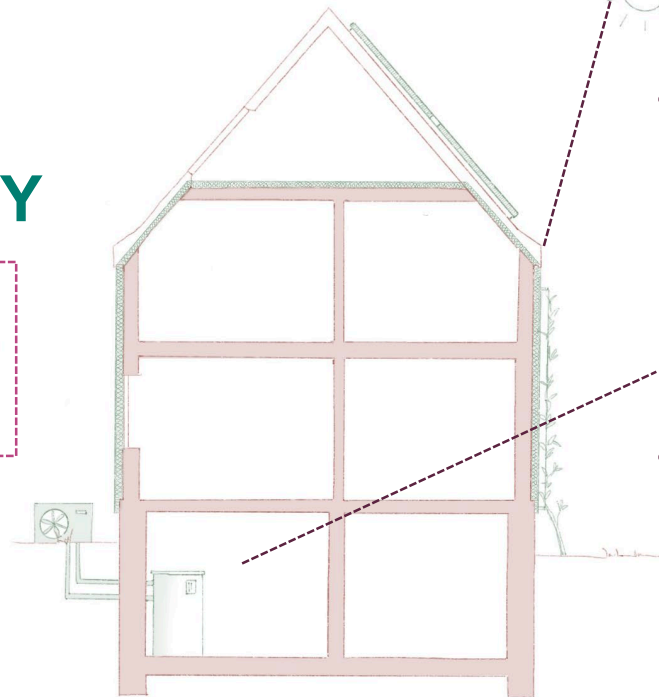
Legal Instruments in Austria – Existing Buildings

EPBD Recast:
Zero-emission building

RESOURCE EFFICIENCY



- Tackling **vacancies in residential areas**: ‘Leerstandsabgabe’ e.g. in Salzburg
- Renovation Wave (COM/2020/662 final)
- ...



ENERGY EFFICIENCY

- **Efficiency upgrade** in case of **major renovation**: § 118 Building Code Vienna
- **The 15% worst performing residential buildings** must be renovated until 2030 (Art 9 EPBD Proposal¹)

DECARBONISATION

- Change to **renewable heat** in case of **major renovation** (technically, functionally and economically feasible): § 118 (3) Building Code Vienna
- **Phasing-out obligation** for fossil heating until 2035/2040: Federal Renewable Heat Act

¹ COM(2021) 802 final

Open & Controversial Issues

- **Scattered multi-level governance** = obstacle for managing transformation processes?
- Renovation & phasing-out obligation: **fundamental rights**
- Open issues → fierce public debate

Public Debate on Controversial Issues

Regierungsvorlage   **Parlament Österreich**

Bundesgesetz zum Ausstieg aus der fossil betriebenen Wärmebereitstellung (Erneuerbare-Wärme-Gesetz - EWG)

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Neuer EU-Plan

Zwangssanierung von Häusern droht

Wer betroffen ist, wie teuer es wird

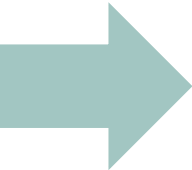
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Key Parliament committee backs industry-friendly revamp of EU construction product rules

By Nikolaus J. Kurmayer | EURACTIV.com © Est. 5min

📅 24. Mai 2023

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- Political leaders and legislators are currently unable to ensure the sustainability transformation in the building sector
 - ***Can spatial planning provide the necessary incentives?***

Planning Authorities' Scope of Action – Resource Efficiency

2023 amendment to Building Code Vienna

7. In § 1 Abs. 2 Z 17 wird der Punkt durch einen Strichpunkt ersetzt und folgende Z 18 angefügt:
„18. Förderung der nachhaltigen Nutzung natürlicher Ressourcen.“

Can planning authorities specify **environmental requirements** for building materials and products in development plans?

- e.g. Global-Warming-Potential (kgCO₂eq/m³)



Wooden shingles in Vorarlberg

Construction Products Regulation (EU) 305/2011

- Art 8 (4) CPR prohibits additional requirements by Member States when harmonized standards exist ☹️
- CJEU interprets this provision narrowly: C-100/13 (16.10.2014) & C-475/19 P & C-688/19 P (17.12.2020)
- European Single Market: freedom of goods

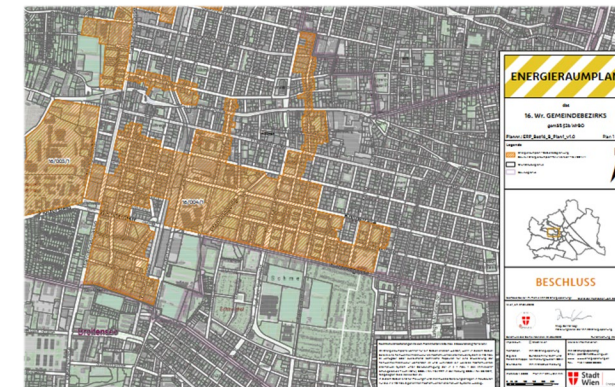


Planning Authorities' Scope of Action – Decarbonisation

§ 2b Building Code Vienna:

“Klimaschutzgebiete” - Energy Planning

- Ban of fossil based heating in designated areas (no feasibility assessment required)



2023 amendment to Building Code Vienna: **District Heating Areas**

- Obligation to connect could be introduced in the future



Fernwärme: Preiserhöhung um 92 Prozent

Die von Wien Energie angekündigte Preiserhöhung bei der Fernwärme um 92 Prozent hat scharfe Kritik ausgelöst. Das Verfahren für die Erhöhung dauert einige Wochen, besonders betroffene Menschen sollen unterstützt werden.

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Planning authorities play a **key role** in the **decarbonization process**

- Procedural fairness?
- District heating: consumer protection?

Conclusions

Resource Efficiency (Building Products)

- Regulatory competence of planning authorities limited by CPR
- Responsibility of higher-ranking governmental bodies and industry (standardization)
- Building and planning authorities can take responsibility for setting up the required **data management** (e.g. digital building logbooks and renovation passports)

Decarbonisation

- Planning authorities play a **key role**
- Promotion of district heating must be accompanied by additional regulatory measures, such as **consumer protection** and **participation, tariff transparency** and **price limits**