

Consultation Draft

April 2025
1023/2021-34

regarding Zl. 01-VD-LG-

**Explanatory Notes
on the Draft Act amending
the Carinthian Building Code 1996 and the Carinthian Heating Systems Act**

General Part

The Oil Boiler Installation Prohibition Act – ÖKEVG 2019 – has been in effect since 1 January 2020. It prohibits the erection and installation of centralised heat supply systems for liquid fossil fuels or solid fossil fuels in newly constructed buildings. The installation of decentralised heat supply systems based on fossil oil or coal as well as fossil gas heating systems was not covered by this ban.

The Renewable Heat Act – EWG – was adopted by the National Council on 15 December 2023. This Act was promulgated by Federal Law Gazette I No 8/2024, entered into effect on 29 February 2024 and has since replaced the ÖKEVG 2019. The EWG has expanded the existing ban on fossil oil and coal-based heating systems to all systems that can be operated with fossil fuels.

According to the current Austrian federal division of competence, the federal states have nearly comprehensive competence in both legislation and enforcement to regulate heating systems with their competence in building law, air pollution control and heating systems.

The competence coverage clause in § 1 EWG provides the federal legislature with the necessary powers to enact a prohibition of heat supply systems for new buildings that can be operated with fossil fuels. In the field of enforcement, the traditional structures in the federal states are simultaneously to be maintained or will have to be adapted accordingly by state-law accompanying regulations for the effective implementation of federal law requirements. The enforcement is to be carried out by the already competent authorities in their respective spheres of activity.

Under § 1 EWG, the state legislature remains responsible in its area of competence for issuing regulations for heating systems that do not conflict with the Renewable Heat Act. § 4 EWG provides that the provisions of the EWG shall be implemented by the competent authorities in accordance with the relevant federal or state legislation.

The present amendments to the Carinthian Building Code 1996 – K-BO 1996 and the Carinthian Heating Systems Act – K-HeizG are intended to enact accompanying regulations to ensure that the EWG is implemented by the competent authorities under the K-BO 1996 and the K-HeizG and that the relevant criminal provisions are applied in the event of infringements of the EWG.

Specific part

Amendment to the Carinthian Building Code 1996 (Article I)

Re Points 1 to 4 (§ 2(2)(t); § 6(e), § 7(1)(a) Point 2):

Against the background of the prohibition of heat supply systems for new buildings that can be operated with fossil fuels in accordance with the provisions of the EWG, § 6(e) only has a limited scope of application. For that reason, this provision should be deleted. In addition, single-room space heaters as defined by § 3(18a) K-HeizG are to be excluded from the scope of the K-BO 1996 (regarding tile stoves, even if they heat up to three rooms). This is done against the background that these are already subject to regulation under the provisions of the K-HeizG and additional provisions under building law do not appear necessary.

In addition, it should be taken into account that all furnaces with a rated heat output of up to 50 kW – and not only central furnaces – are now only to be subject to notification. In addition – regardless of the number of kW – all building systems that generate renewable energy as defined by § 7(1)(a)(5) Spatial Planning Act [K-ROG] 2021, i.e. including heating systems that generate this energy from e.g. ambient energy (e.g. by means of heat pumps), landfill gas, sewage gas or biogas, are only subject to notification pursuant to § 7(1)(a)(20).

Re Point 5 (§ 26):

§ 26(a) is in line with the current legal situation. §26(b) is intended to ensure that the EWG is enforced by the competent authorities under the K-BO 1996 and that the corresponding criminal provisions are applied in the event of violations of the EWG (see the General Part of the Explanatory Notes). § 26(c) takes into account that construction-related requirements for the planning and execution of projects also result from directly applicable provisions of EU law (see e.g. Article 8 of Regulation (EU) 2024/573 and Article 20 of Regulation (EU) 2024/590 with requirements for the recovery and destruction of fluorinated greenhouse gases and ozone-depleting substances when carrying out renovation, renovation or demolition work on buildings; see also Article 7 of Regulation (EU) 2024/1309 Gigabit Infrastructure Regulation), which must be enforced directly by the construction authorities. The provision should make a declarative reference to this.

Re Point 6 (§ 27):

reference is already made under the current legal situation to the requirements for construction products under Regulation (EU) No 305/2011. This declarative reference is now to be made to the directly applicable provisions of EU law in general. This is because corresponding requirements can be found not only in the implementing ordinances to Regulation (EU) No 305/2011, but also e.g. in Regulation (EC) No 1907/2006 (requirements concerning chemical substances). It should also be noted that Regulation (EU) No. 305/2011 will be replaced by the new Regulation (EU) 2024/3110 on 8 January 2026.

Re Point 7 (§ 35(1)(a)):

As in the case of the establishment of the lawful condition as per § 36, minor deviations from the building permit during construction work should also be irrelevant for the suspension of construction works pursuant to § 35(1)(a).

Re Point 8 (§ 52(1)):

The provision in its current version has been enforced differently by the building authorities. At the proposal of enforcement, the provision is expressly intended only to cover all building systems intended for use by the general public.

Re Point 9 (§ 57):

The implementation instructions are now to be included collectively in K-BO 1996. This is because the K-BO 1996 in its entirety serves to implement these directives, in particular by means of the exemption provisions, the projects subject to notification, the provisions on the requirements for building systems and maintenance thereof, the restoration of the lawful condition as well as the administrative penalties.

Amendment to the Carinthian Heating Systems Act (Article II)

Re Points 1 to 3 (§§ 4, 10 and 20):

In order to clarify that the authorities under the K-HeizG, in particular the municipalities in their own sphere of activity, must enforce the provisions of the EWG, it is standardised in the relevant provisions that furnaces may only be constructed and installed if the federal provisions on the renewable heat supply in new buildings are complied with.

These obligations already arise for the parties subject to the standard directly from § 3 EWG. However, the states may continue to adopt rules for heating systems in their area of competence which do not conflict with the EWG.

The amendment to § 20 also makes it clear that compliance with the EWG requirements must be checked by the authority in the event of a notification under § 20.

Re Point 4 (§ 23(4)):

The monitoring function of the chimney sweep, which has a central function in the system of heating system law and the fire police, is to be expanded in order to ensure the effective enforcement of the EWG in the field of K-HeizG. As soon as the chimney sweep comes into contact with a newly installed furnace in a new building, be it during a visual inspection or while sweeping the flue gas systems as per the Carinthian Hazard Police and Fire Police Regulations or on the occasion of inspections of the furnaces as per the K-HeizG and the Carinthian Heating Systems Ordinance, Provincial Law Gazette No 19/2015, as amended by Provincial Law Gazette No 86/2019, he must determine whether the provisions of the EWG have been complied with during the construction (installation) of the furnaces. If this is not the case, the

chimney sweep shall immediately report to the mayor and the district administrative authority. The new provisions are in line with the current system of effective enforcement of the K-HeizG.

Re Point 5 (§ 29):

In the event of a breach of the provisions of the EWG, the authority shall act in accordance with § 26(4) and issue the necessary orders by way of official decision. The criminal provisions of § 29 also apply.

Impact on the achievement of Sustainable Development Goals (SDGs)

Department 7 stated in a letter dated 2 July 2024, Zl. 07-GVO-12787/2024-10, that ‘there is no apparent impact on the achievement of Sustainable Development Goals (SDGs) at present. However, it should be noted that the amendments made to the Carinthian Building Code 1996 in recent years have made a significant contribution to achieving SDGs Goal 13: Climate protection measures, Sub-Goal 13.2 Integrating climate protection measures into national policies, strategies and planning; as well as Goal 7: Affordable and clean energy, Sub-Goal 7.1 Ensure universal access to affordable, reliable and modern energy services by 2030; Sub-Goal 7.2 Significantly increase the share of renewable energy in the global energy mix by 2030.’

Financial impact

Department 7 stated in a letter dated 2 July 2024, Zl. 07-GVO-12787/2024-10, that according to present estimate, the amendment to K-BO 1996 is not expected to have any financial impact on local authorities and outsourced legal entities.

By email of 24 July 2024, Department 15 – Site, Spatial Planning and Energy of the Office of the Carinthia Provincial Government stated that the amendment to the K-HeizG did not entail any significant additional costs for chimney sweeps and that the additional activity (notification duty under § 23(4) new) was to be regarded as cost-neutral.

Impact of EU legislation

§ 26 and § 27 K-BO 1996 should now expressly state that requirements for construction projects and construction products also arise from directly applicable provisions of EU law. These are to be enforced directly by the building authorities.

As in the current legal situation, the references in § 26 and § 27 K-BO 1996 to the Carinthian Building Regulations and the Carinthian Construction Products Act indirectly transpose numerous directives relevant to building law (see Article III(1)).

Since this Act contains technical regulations as defined by the Carinthian Notification Act, it must be subject to an information procedure as defined by Directive (EU) 2015/1535 (see Article III of the draft).