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Objet : Comments by OEKOBUERO regarding cases 48 and 63 (Austria)

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With regard to ACCC-C 63 Austria submitted its response following the public hearing on 5. November 2012.

On page one Austria argues that the draft EC Access to Justice directive of 2003 excludes criminal matters. The reason for this is that in 2003 there was no EC competence in env. criminal matters. The env. crime directive was adopted only in 2008 following two ECJ judgements clarifying competences and its scope.

Regarding the possibility to extend the env. liability act to overcome non compliance: This can be critical since liability is triggered by a damage, whereas Art 9/3 by breach of law.

As for the progress in implementing the ACCC recommendations in case ACCC 48 the situation is as follows: Whereas Austria shows in its statement of 5. November different policy options and efforts taken by the administration of MoE to raise awareness, there is little interest and political will of the competent institutions to follow the recommendations. We appreciate the efforts of MoE, also including the communicant into the process of following the ACCC decision. Though, we do not expect any legislative changes before the next MoP. In contrast to Austria in its statement, we do not see any discussion of extending NGO standing rights in course of the Administrative Court reform, rather the opposite (see example Tyrol below).

The lately adopted right to appeal EIA screening decisions is a great success, but the outcome of an EU infringement procedure regarding the EIA directive. We are not convinced the new provision is in line with Article 9 of the Convention for various reasons ( such as no access to review omissions, no right to initiate screening procedures, no suspensive effect, not access to highest courts, unbalanced rights compared to other parties to the procedure).

Whereas the outcome of case 48 is to strengthen access to justice in Austria, factual developments tend to go to another direction. Environmental Ombudsman are under constant pressure that their standing rights (mainly in nature conservation procedures) will be abolished, in particular in those Länder, where they are very active. In Tyrol, in the framework of the Administrative Court reform, a bill proposed to abolish Ombudsman nature conservation standing rights this summer. This could be stopped only by a comprehensive lobbying effort until Nov 2012.

Furthermore we can feel a certain discomfort towards NGOs from various Env. Ombudsman offices since there are rumors Ombudsmen would lose their (though, compared to what is needed for NGOs, rather limited) standing rights if NGOs get more powers. It seems there is

a strategy to split the until now well functioning partnership and faithful relationship between NGOs and Ombudsmen. We therefore welcome the effort of the MoE to strengthen both the powers of Ombudsmen and NGOs, but strictly oppose any effort of weakening the rights of Ombudsmen when granting rights to NGOs.

Best wishes,

Thomas Alge

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