

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VI/8b  
on compliance by Austria with its  
obligations under the Convention**

Contents

	<i>Page</i>
I. Introduction .....	2
II. Summary of follow-up action on decision VI/8b.....	2
III. Considerations and evaluation by the Committee .....	2
IV. Conclusions and recommendations .....	10

## **I. Introduction**

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8b on compliance by Austria with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## **II. Summary of follow-up**

2. On 9 March 2018, the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 submitted written statements concerning the implementation of decision VI/8b.

3. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8b in open session with the participation by audio conference of representatives of Austria and the communicant of communication ACCC/C/2010/48.

4. On 27 September 2018, the communicant of communication ACCC/C/2010/48 submitted comments on Austria's first progress report on decision VI/8b.

5. On 2 October 2018, Austria submitted its first progress report on decision VI/8b, one day after the deadline of 1 October 2018.

6. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63, inviting their comments by 1 November 2018.

7. On 30 October 2018, the communicant of communication ACCC/C/2011/63 provided comments on the first progress report and the communicant of communication ACCC/C/2010/48 submitted additional comments. On 1 November 2018, the communicant of communication ACCC/C/2010/48 submitted an update on legislative developments.

8. On 18 December 2018, the communicant of communication ACCC/C/2010/48 submitted comments on the Aarhus-Participation Act 2018.

9. On 20 December 2018, in response to a specific request from the Committee, Austria provided the text of the Aarhus-Participation Act 2018 as published in Austria's official gazette, along with an official English translation. The Committee had also requested Austria to provide consolidated versions of the relevant provisions of the sectoral laws, as amended by the Aarhus-Participation Act 2018, together with an English translation thereof, by this date.

10. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 22 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Austria, the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63.

## **III. Considerations and evaluation by the Committee**

11. In order to fulfil the requirements of paragraph 3 of decision VI/8b, Austria would need to provide the Committee with evidence that:

(a) As a matter of urgency, it had taken the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that criteria for non-governmental organization (NGO) standing to challenge acts or omissions by private persons or public authorities that contravene national law relating to the environment under article

9(3) of the Convention are revised and specifically laid down in sectorial environmental laws, in addition to any existing criteria for NGO standing in the environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability laws;

(b) When addressing subparagraph (a) above, it ensured that members of the public, including NGOs, have access to adequate and effective administrative or judicial procedures and remedies in order to challenge acts and omissions of private persons and public authorities that contravene national laws, including administrative penal laws and criminal laws, relating to the environment;

(c) It provided the Committee as soon as possible and no later than 1 October 2018, with a detailed plan of action on how it will implement the above recommendations;

(d) It developed a capacity building programme and provided training on the implementation of the Convention for judges, prosecutors and lawyers.

### **General comments**

12. Both Austria and the communicant of communication ACCC/C/2010/48 provide hyperlinks in their submissions to draft laws and further details concerning parliamentary procedures. While the Committee encourages timely updates on developments, it clarifies that it can only consider information that has been properly submitted to it in document form.<sup>1</sup>

13. Moreover, the Committee notes that both Austria and the communicant of communication ACCC/C/2010/48 provide some annexes to their submissions in German only. The Committee reminds Austria and the communicant that, in order to be considered by the Committee, the material must be provided in one of the official languages of the Convention.

### **Scope of the Committee's review**

#### *The proposed federal Location Development Act*

14. In their comments on Austria's first progress report, the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 draw the Committee's attention to a specific legislative proposal, namely the federal Location Development Act ("Standort-Entwicklungsgesetz – StEntG"). According to the communicants, this draft legislation includes a proposal to the effect that certain projects requiring an environmental impact assessment would automatically be given approval within 12 months if the government determines that they are relevant for economic growth.<sup>2</sup> Moreover, the communicant of communication ACCC/C/2010/48 argues that this legislative proposal would impose restrictions on review procedures that are contrary to article 9(2) and 9(4).<sup>3</sup> The Committee understands that this proposal was at the time of the communicants' comments still at a draft stage. Austria makes no reference to this legislative proposal in its first progress report.

15. Based upon the information before the Committee, the communicants have not shown how the above legislative proposal is within the scope of decision VI/8b. Thus, the Committee will not examine the legislative proposal further in the present progress review, while not precluding the possibility to examine these points further if the adopted legislation is put before it in a future case.

#### *Amendments to the Environmental Impact Assessment Act*

16. In its comments on Austria's first progress report, the communicant of communication ACCC/C/2011/63 refers to a proposed amendment to the Environmental Impact Assessment

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<sup>1</sup> ECE/MP/PP/C.1/2014/2, para. 48.

<sup>2</sup> Comments on the Party's first progress report from the communicant of communication ACCC/C/2010/48, 27 September 2018, pp. 3-4, and annex 2, p. 2, and comments on the Party's first progress report from the communicant of communication ACCC/C/2011/63, 30 October 2018, p. 2.

<sup>3</sup> Ibid.

Act 2000 (EIA Act).<sup>4</sup> The communicant of communication ACCC/C/2010/48 discusses this proposed amendment in its additional comments on Austria's first progress report as well.<sup>5</sup>

17. According to the communicants, this amendment would set stricter criteria and procedural requirements for being recognized pursuant to section 19 of the EIA Act.<sup>6</sup> The communicant of communication ACCC/C/2010/48 explains that such recognition not only determines whether an NGO or association of NGOs has standing to participate in, and access to justice with respect to procedures under the EIA Act, thus engaging article 6 and 9(2), but would also affect NGO standing under article 9(3).<sup>7</sup> It claims that this amendment would impact various other acts because these acts refer to section 19 of the EIA Act, including permitting procedures under the Industrial Code, the Water Act 1959, the Air Pollution Control Act, the Waste Management Act as well as the Nature Protection Act, the Fishery and Hunting Acts, National Park Management Act and others.<sup>8</sup>

18. Upon reviewing the legislation Austria provided on 20 December 2018, which is discussed further below, the Committee considers that section 19 of the EIA Act indeed appears to be used as the basis for establishing the rights of NGOs in the sectors of water, waste and air. The provisions inserting access to justice rights refer not to "environmental organizations" but "environmental organizations recognised pursuant to section 19 of the Environmental Impact Assessment Act 2000."<sup>9</sup> Moreover, it seems there is a further limitation in that such recognised organisations shall only have the right to resort to a remedy "in their respective geographical area of recognition."<sup>10</sup> Thus, to the extent that section 19 of the EIA Act determines the standing criteria for NGOs to challenge acts and omissions within the meaning of article 9(3) of the Convention, the amendments concerning the criteria and procedural requirements fall squarely within the ambit of the Committee's review of the implementation of decision VI/8b. The Committee accordingly examines these amendments in paragraphs 33-37 below.

### **Paragraph 3(a) and (b) of decision VI/8b**

#### *The state of play concerning the legislative amendments*

19. With regard to paragraph 3(a) and (b) of decision VI/8b, in its first progress report, Austria provides an update on the national discussion processes it had reported in the context of decision V/9b during the last intersessional period.<sup>11</sup> Specifically, Austria reports that, on 19 September 2018, the Federal Government adopted a legislative proposal, the "Aarhus-Beteiligungsgesetz 2018" (Aarhus-Participation Act 2018) for a law to improve access to justice in environmental matters for environmental NGOs and individuals in the areas of waste, water and air quality.<sup>12</sup> Austria explains that the legislation seeks to amend the corresponding environmental laws at the federal level: the Waste Management Act ("Abfallwirtschaftsgesetz 2000"), the Water Act 1959 ("Wasserrechtsgesetz 1959") and the Air Pollution Control Act ("Immissionsschutzgesetz-Luft").<sup>13</sup> On air quality, Austria adds that provisions on access to justice are also part of the legislative proposal for a recast National Air Emissions Act 2018 (Emissionsgesetz-Luft 2018).<sup>14</sup>

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<sup>4</sup> Comments on the Party's first progress report from the communicant in communication ACCC/C/2011/63, 30 October 2018, p. 2

<sup>5</sup> Additional comments on the Party's first progress report from the communicant of communication ACCC/C/2010/48, 30 October 2018, p. 2.

<sup>6</sup> Ibid., and annexes 1-2, and comments on the Party's first progress report from the communicant in communication ACCC/C/2011/63, 30 October 2018, p. 2.

<sup>7</sup> Additional comments on the Party's first progress report from the communicant of communication ACCC/C/2010/48, 30 October 2018, p. 2.

<sup>8</sup> Ibid.

<sup>9</sup> Aarhus-Participation Act, enclosed in email from the Party concerned, 21 December 2018.

<sup>10</sup> See e.g. Aarhus-Participation Act, enclosed in email from the Party concerned, 21 December 2018, p. 2.

<sup>11</sup> Party's first progress report, 2 October 2018, p. 1.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

20. Austria reports that, as of 2 October 2018, both the draft laws for the Aarhus-Participation Act 2018 and the National Air Emissions Act 2018 had been submitted to the Austrian Parliament and would be debated in the Environment Committee of the National Council.<sup>15</sup> Austria anticipates that the Environment Committee would deliberate on these matters at its meeting on 4 October 2018.<sup>16</sup> Austria reports that the adoption of the legislation in the plenary session of the National Council and the Federal Council was scheduled for November 2018.<sup>17</sup> Austria therefore states in its first progress report that it envisaged that the laws at the federal level would be adopted by the end of 2018.<sup>18</sup>

21. In its comments of 18 December 2018, the communicant of communication ACCC/C/2010/48 reports that the amendments were approved by the National Council on 25 October 2018 and the Federal Council's approval was given on 8 November 2018.<sup>19</sup>

22. In its additional comments of 30 October 2018, the communicant of communication ACCC/C/2010/48 reports that the amendments to the EIA Act had been approved by the National Council on 25 October 2018 and would become law within the next few weeks.<sup>20</sup>

23. As regards the legislative processes at the level of the provinces (Bundesländer), in its first progress report Austria reports that several provinces have already started preparations for draft laws amending their corresponding legislation concerning nature protection and also the laws on hunting and fishing (Styria, Tyrol, Vorarlberg, Upper Austria, Lower Austria and Vienna).<sup>21</sup>

24. The Committee notes that the text of the Aarhus-Participation Act provided by Austria on 21 December 2018 shows that the adopted Act was published in the official gazette on 22 November 2018.<sup>22</sup>

25. The Committee welcomes the information provided by Austria regarding the legislative initiatives at the federal level. However, it regrets the lack of more detailed information regarding the content of the proposed legislation as well as the complete lack of detailed information regarding any developments at the provincial level to implement paragraph 3(a) and (b) of decision VI/8b. The Committee reminds Austria that decision VI/8b applies to all political, administrative and judicial levels under its jurisdiction, which includes the federal as well as provincial level. Accordingly, Austria is requested in its second progress report to report on any relevant measure at the provincial level also.

#### *The scope of the Aarhus-Participation Act 2018*

26. The Committee has, so far, received very limited information from Austria concerning the specific provisions of the Aarhus-Participation Act and how they will operate in practice to improve access to justice for NGOs in the context of article 9(3) of the Convention. The Committee emphasizes that it would have been helpful had Austria in its first progress report provided legislative drafts and more information about the forthcoming amendments, in particular to enable the Committee to assess at an early stage how these amendments fit with the specific recommendations in paragraph 3(a) and (b) of decision VI/8b.

27. The communicant of communication ACCC/C/2010/48, whilst generally welcoming the steps taken in the Aarhus-Participation Act, submits that the amendments do not lead to full implementation of the Convention in respect of all areas of environmental law. The communicant claims it is not sufficient to focus on waste, water and air quality legislation alone and, moreover, even then only with respect to violations of European Union

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<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Comments on the Aarhus-Participation Act 2018 from the communicant of communication ACCC/C/2014/48, 18 December 2018, p. 1.

<sup>20</sup> Additional comments on the Party's first progress report from the communicant of communication ACCC/C/2010/48, 30 October 2018, p. 1.

<sup>21</sup> Party's first progress report, 2 October 2018, p. 2.

<sup>22</sup> Aarhus-Participation Act enclosed in email from the Party concerned, 21 December 2018.

environmental law in those sectors. The communicant maintains that other federal environmental legislation (for example in the area of chemicals and forestry) has not yet been adapted to meet the requirements of the Convention.<sup>23</sup>

28. The communicant of communication ACCC/C/2010/48 also alleges that a number of elements of the amendments to waste, water and air quality legislation under the Aarhus-Participation Act 2018 are not compatible with and/or fall short of what is required under article 9(3) and (4) of the Convention.<sup>24</sup> More specifically: legal standing in the water sector to bring a complaint is limited to projects which are likely to have significant environmental effects (section 104a of the Water Act 1959); discrimination towards environmental organizations as participants compared to parties; a failure to provide for the ability to challenge plans and programmes and a lack of legal remedies against omissions of private persons and public authorities, apart from under the Air Quality Management Act; a limitation on a right to appeal under section 42(3) of the Waste Management Act to alleged violations of European Union environmental law; and restrictive transitional provisions in the Water Act 1959 as amended by the Aarhus-Participation Act.<sup>25</sup>

29. The communicant of communication ACCC/C/2011/63 also alleges that there is still non-compliance with article 9(3) and (4) of the Convention. It highlights an alleged lack of effective remedies in cases concerning environment, wildlife, endangered species and Convention on International Trade in Endangered Species of Wild Fauna and Flora.<sup>26</sup>

30. The Committee emphasizes that the obligation to provide access to justice under article 9(3) of the Convention extends to challenges to acts and omissions by private persons and public authorities which contravene provisions of “national law relating to the environment”. As the Committee clarified in its findings on communication ACCC/C/2011/63, this “covers any law that relates to the environment, i.e. a law under any policy, including and not limited to, chemicals and waste management, planning, transport, mining and exploitation of natural resources, agriculture, energy, taxation or maritime affairs, which may relate in general to, or help to protect, or harm or otherwise impact on the environment.”<sup>27</sup> Accordingly, laws on the protection of wildlife species and/or trade in endangered species are also subject to article 9(3) of the Convention.<sup>28</sup> Moreover, while it is clear that for European Union member States, some European Union law should be considered to be part of the domestic law of the member States covered by article 9(3) of the Convention,<sup>29</sup> the Committee fails to see why Austria would limit the right to appeal challenges under the Waste Management Act to violations of European Union law only. Finally, as paragraph 3(b) of decision VI/8b makes clear, article 9(3) requires that members of the public also have access to administrative or judicial procedures and remedies in order to challenge acts and omissions that contravene administrative penal laws and criminal laws relating to the environment.<sup>30</sup>

31. Thus, in light of the broad scope of article 9(3), it is clear that amending the law to provide for access to justice only in the sectoral areas of waste, water and air quality is not sufficient to meet the requirements of paragraph 3(a) and (b) of decision VI/8b.

32. Austria should, as a matter of urgency, arrange for a review of the relevant body of national law (at both the federal and provincial level) to identify the outstanding areas of law “relating to the environment” that require adaptation in order to comply with the requirements of paragraph 3(a) and (b) of decision VI/8b. A complete list of the areas of law identified as

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<sup>23</sup> Comments on the Party’s first progress report from the communicant of communication ACCC/C/2010/48, 27 September 2018, p. 2.

<sup>24</sup> Comments on the Aarhus Participation Act from the communicant of communication ACCC/C/2010/48, 21 December 2018.

<sup>25</sup> *Ibid.*, pp. 3-5.

<sup>26</sup> Comments on the Party’s first progress report from the communicant of communication ACCC/C/2011/63, 30 November 2018, pp. 2-3.

<sup>27</sup> ECE/MP.PP/C.1/2014/3, para. 52, see also *The Implementation Guide*, United Nations publication, Sales No. E.13.II.E.3, p. 197.

<sup>28</sup> ECE/MP.PP/C.1/2014/3, para. 55.

<sup>29</sup> ECE/MP.PP/2008/5/Add.4, para 27.

<sup>30</sup> See also ECE/MP.PP/C.1/2014/3, paras. 64 and 66.

requiring to be adapted in this context, together with details of the proposed legislative measure(s) considered necessary to address any implementation gaps and the indicative time frame for the relevant legislative process(es), should be provided to the Committee with Austria's second progress report due on 1 October 2019. Moreover, the Committee takes note of the shortcomings alleged by the communicants with respect to the amended legislation concerning the waste, water and air quality sectors (see para. 28 above) and invites Austria's comments thereon before the Committee undertakes an assessment of these issues. To that end, the Committee will invite Austria to comment on this issue at its sixty-third meeting (Geneva, 11-15 March 2019) and would also welcome participation by communicants and observers.

*Paragraph 3(a) of decision VI/8b – Amendments restricting standing criteria for NGOs*

33. The Committee has not been able to review the proposed amendment to section 19 of the EIA Act as it has not yet received its text. However, as set out in paragraph 171918 above, based on the information before it, the Committee considers the proposed amendment to be of direct relevance to the issue of the criteria governing standing for NGOs in the context of article 9(3) of the Convention. The communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 submit that the proposed amendment would include a new provision to the effect that, to be recognized, an environmental organisation must be composed of a minimum of 100 members. Specific membership requirements are also foreseen for associations (a minimum membership of five organisations with a required minimum total membership of 500 members).<sup>31</sup> Both communicants claim that adequate proof that the minimum numbers are met must be provided, with the communicant of communication ACCC/C/2011/63 claiming that the draft amendment also requires the names and addresses of members.<sup>32</sup>

34. The communicant of communication ACCC/C/2010/48 submits in its additional comments of 30 October 2018 that 57 NGOs are recognized under section 19 of the EIA Act, only 30 of which can be effective in the entire country, with the scope of action of others being limited to certain regions. Should the amendment enter into force, the communicant considers that many NGOs would lose their recognition.<sup>33</sup>

35. The communicant of communication ACCC/C/2010/48 argues that the proposed minimum membership requirement in section 19 of the EIA Act is discriminatory against smaller NGOs, which might have the same expertise, and that there is no objective reason to differ between NGOs with 100 members and those with less.<sup>34</sup>

36. The Committee regrets that Austria has not brought this proposed amendment of section 19 of the EIA Act to the Committee's attention. In order to assess the implications of any recent amendment to the EIA Law for NGO standing, the Committee requires further information from Austria. If indeed section 19 of the EIA Act has by now been amended, the Committee will need the text of this provision as amended, as well as information on the rationale for the amendment; the basis on which the specific membership quotas were selected; and the likely implications of the amendment in practice. In particular, Austria should explain to the Committee how this amendment fits with the recommendations in paragraph 3(a) of decision VI/8b. The Committee would also require clarification on what sort of evidence Austria would consider necessary for NGOs and their associations to demonstrate that membership quotas are met.

37. Without coming to any conclusion on the matter at this stage, it appears to the Committee that this amendment may be a step in the wrong direction in terms of compliance with article 9(3) of the Convention. In the absence of more information from Austria on the amendment and its implications, the Committee will not undertake an assessment of the amendment in the context of the present progress review. The Committee will however invite

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<sup>31</sup> Additional comments on the Party's first progress report from the communicant of communication ACCC/C/2010/48, 30 October 2018, p. 2, and annex 2, and comments on the Party's first progress report from the communicant in communication ACCC/C/2011/63, 30 October 2018, p. 2.

<sup>32</sup> Additional comments on the Party's first progress report from the communicant of communication ACCC/C/2010/48, 30 October 2018, p. 3.

<sup>33</sup> *Ibid.*, p. 2.

<sup>34</sup> *Ibid.*, p. 3.

Austria to comment on this issue at its sixty-third meeting (Geneva, 11-15 March 2019) and would also welcome participation by communicants and observers.

*Paragraph 3(b) of decision VI/8b – Exclusion of suspensive effect in water and waste legislation*

38. The communicant of communication ACCC/C/2010/48 draws the Committee's attention to the fact that, under the amendments introduced in the Aarhus-Participation Act 2018, complaints filed by NGOs against decisions in water and waste procedures will not have automatic suspensive effect.<sup>35</sup> In the case of waste law, for example, such suspensive effect may be granted only on application by the NGO filing the complaint "if, after consideration of the public interests, the exercise of the right granted through the contested notice would lead to disproportionate disadvantage for the environment". Austria does not refer to this aspect of the Aarhus-Participation Act 2018 in its first progress report, perhaps because this change to the draft legislation was reportedly only added on 25 October 2018, the day the draft was approved by the National Council.<sup>36</sup>

39. The communicant of communication ACCC/C/2010/48 submits that the general rule in Austria according to section 64 of the General Administrative Procedure Act 1991 (Allgemeines Verwaltungsverfahrensgesetz 1991) is that appeals that have been filed in due time and are permissible have a suspensive effect. The communicant states there is no explanation for excluding this general rule.<sup>37</sup>

40. The Committee recalls that article 9(4) of the Convention requires that the review procedures must provide "adequate and effective remedies, including injunctive relief as appropriate". While article 9(4) does not require suspensive effect as such, the minimum requirements governing adequate and effective remedies must be met in every case. In its findings on communication ACCC/C/2013/89 (Slovakia), the Committee emphasized that it is implicit from the wording of article 9(4) that in a review procedure within the scope of article 9 of the Convention the courts are required to consider any application for injunctive relief to determine whether the grant of such relief would be appropriate, bearing in mind the requirement to provide fair and effective remedies.<sup>38</sup>

41. Noting that the proposed amendment regarding the availability of suspensive effect was reportedly only added to the draft legislation on 25 October 2018, after the submission of Austria's first progress report (see para. 38 above), the Committee will not undertake an assessment of this aspect in the context of the present progress review. The Committee will, however, invite Austria to comment on this issue at its sixty-third meeting (Geneva, 11-15 March 2019), in particular as regards the rationale behind this particular amendment.

42. In the light of the above, while welcoming the initiatives taken to date, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3(a) and (b) of decision VI/8b.

**Paragraph 3(c) of decision VI/8b**

43. In respect of paragraph 3(c) of decision VI/8b, in its first progress report Austria acknowledges the requirement to provide the Committee with a detailed plan of action on how it will implement paragraphs 3(a) and (b) of decision VI/8b.<sup>39</sup> Yet in its first progress report Austria provides only a general update on progress as of 2 October 2018 as regards proposed legislative developments and details of two specific capacity building initiatives. Accordingly, its first progress report does not provide a detailed plan of action for the Committee to consider. Such a plan should include for both paragraph 3(a) and (b) of decision VI/8b: the specific actions proposed to be taken by Austria at both the federal and

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<sup>35</sup> Comments on the Aarhus Participation Act from the communicant of communication ACCC/C/2010/48, 18 December 2018, p. 6.

<sup>36</sup> Additional comments on the Party's first progress report from the communicant of communication ACCC/C/2010/48, 30 October 2018, p. 5.

<sup>37</sup> *Ibid.*

<sup>38</sup> ECE/MP.PP/C.1/2017/13, para 97.

<sup>39</sup> Party's first progress report, 2 October 2018, p. 1.

provincial level; the procedural steps associated with these actions; and the anticipated timeframe to complete these actions.

44. In the absence of any detailed plan of action on how Austria proposes to implement the recommendations set out in paragraph 3(a) and (b) of decision VI/8b, the Committee finds that Austria has not yet fulfilled the requirements of paragraph 3(c) of decision VI/8b.

**Paragraph 3(d) of decision VI/8b**

45. With regard to paragraph 3(d) of decision VI/8b, in its first progress report Austria reports that the Austrian Academy for Administrative Courts (“Österreichische Akademie der Verwaltungsgerichtsbarkeit”) of the Johannes Kepler University of Linz would organize a special seminar in December 2018 on the Aarhus Convention and its three pillars.<sup>40</sup> Austria also provides a description of the content of this seminar with its first progress report.<sup>41</sup> The Academy organizes training and capacity-building activities in relation to administrative law.

46. Austria further reports that a capacity-building project “KOMM-Recht Reloaded” (2017-2018), led by the environmental NGO Umweltdachverband, has been launched.<sup>42</sup> The project is focused on legal questions in relation to requirements governing access to justice under the Convention and European Union environmental law, including the jurisprudence of the Court of Justice of the European Union.<sup>43</sup> Austria reports that a core element of the legal study, which was expected to be finalized by the end of October 2018, is an analysis of the findings of the Committee on article 9(3) of the Convention, with a focus on standing for environmental NGOs.<sup>44</sup> Austria also explains that, in order to gain a better understanding of the Convention’s compliance mechanism, the study will provide a translation in German of the relevant findings of the Committee. The guidance document and studies prepared in the context of the “KOMM-Recht Reloaded” project will be used as training material in the special seminar on the Convention organised by the Austrian Academy for Administrative Courts in December 2018.<sup>45</sup>

47. The Committee welcomes the seminar on the Convention scheduled for December 2018 and the launch of the “KOMM-Recht Reloaded” project as evidence of specific capacity building activities. It recalls, however, that paragraph 3(d) of decision VI/8b requires the development of a “capacity building programme to provide training on the implementation of the Convention for judges, prosecutors and lawyers”. Austria has provided the Committee with information on one seminar and on one capacity building project only, the main purpose of which appears to be to develop a range of training materials relating to inter alia article 9(3) of the Convention. Austria has provided the Committee with no information that would indicate that these two specific initiatives are part of a wider capacity building programme and training that Austria has developed for judges, prosecutors and lawyers on the implementation of the Convention. In particular, very limited detail is provided in the first progress report regarding the specifics of the “KOMM-Recht Reloaded” project.

48. The Committee emphasizes that, in order to fulfil the requirements of paragraph 3(d) of decision VI/8b, Austria will need to provide information to show that it has developed a capacity building programme and provided training (or arranged for such training to be provided) specifically for judges, prosecutors and lawyers. Such information should include: (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered, (b) the organizers of the trainings and the profession and relevant experience of each trainer and speaker, and (c) the number of judges, prosecutors and lawyers who have attended the trainings and in which court and town or region each judge, prosecutor and lawyer is based. Austria has provided no such evidence to the Committee in its first progress report.

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<sup>40</sup> Ibid., p. 2.

<sup>41</sup> Ibid., annex.

<sup>42</sup> Party’s first progress report, 2 October 2018, p. 2.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

49. In the light of the above, while welcoming the initiatives taken to date, the Committee finds that Austria has not yet provided for sufficient capacity building and training for judges, prosecutors and lawyers as required by paragraph 3(d) of decision VI/8b.

## **IV. Conclusions**

50. The Committee finds that Austria has not yet met the requirements of paragraph 3 (a), (b), (c) and (d) of decision VI/8b, and expresses its concern at the slow progress by Austria to address the recommendations set out in those paragraphs, in particular given the time that has passed since the findings and recommendations of the Committee on communications ACCC/C/2010/48 and ACCC/C/2011/63 were endorsed by the fifth session of the Meeting of the Parties (Maastricht, the Netherlands, 30 June-2 July 2014).

51. The Committee invites Austria, by 1 October 2019:

(a) To provide as a matter of urgency a detailed plan of action on how it will implement paragraphs 3(a) and (b) of decision VI/8b. Such a plan should include for both paragraph 3(a) and (b) of decision VI/8b: the specific actions proposed to be taken by Austria at both the federal and provincial level; the procedural steps associated with these actions; and the anticipated timeframe to complete these actions.

(b) To provide:

(i) Clarification as to whether the proposed legislative amendments to the EIA Act were in fact adopted and, if so, the text of section 19 of that Act, as amended.

(ii) A capacity building programme setting out the details of training for judges, prosecutors and lawyers on the implementation of the Convention and other capacity building initiatives and;

(iii) Evidence that the training provided for judges, prosecutors and lawyers was in fact widely attended by such persons.

(c) To provide a detailed second progress report to the Committee on the measures taken and the results achieved, at both the federal and provincial level, in the implementation of the recommendations in paragraph 3 (a), (b), (c) and (d) of decision VI/8b. Any documentation submitted together with the progress report should include official translations of such documentation in English.