

Decision VII/8b on compliance by Austria with its obligations under the Aarhus Convention

Progress Report on behalf of Austria

By decision VII/8b the Meeting of the Parties (MoP) reaffirmed decision VI/8b on compliance by Austria and stressed that Austria has not yet fulfilled its obligations under that decision.

Consequently, certain recommendations were made in paragraphs 2 (a)-(d) of decision VII/8b.

In addition, Austria was obliged by paragraph 2 (e) of decision VII/8b to provide the Aarhus Convention Compliance Committee (ACCC) with a plan of action. In order to fulfil this obligation, a Draft Plan of Action was sent to the ACCC by Austria on 1 July 2022 and the Final Plan of Action reached the ACCC on 7 October 2022.

Furthermore, in accordance with paragraph 2 (f) of decision VII/8b Austria was requested to provide the ACCC by 1 October 2023 with a progress report on the measures that have been taken and results achieved to implement the recommendations set out in paragraphs 2 (a) - (d) of decision VII/8b. The present progress report aims to fulfil this obligation.

Paragraph 2 (a) of decision VII/8b

In paragraph 2 (a) of decision VII/8b, the Meeting of the Parties requests the Party concerned:

As a matter of urgency, take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that criteria for non-governmental organizations to have 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 sectoral environmental laws, in addition to any existing criteria for non-governmental organization standing in its laws on environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability;

With regard to the standing criteria of environmental organisations under Austrian law we would like to make the following clarifications:

In order to be recognized as an environmental organisation in Austria the criteria of Article 19 (6) of the Austrian EIA Act have to be fulfilled: There needs to be an association or a foundation whose primary objective is the protection of the environment according to the association's statutes or the foundation's charter. In addition, it must be non-profit oriented and must have

been in existence for at least three years. Furthermore, an association must have at least one hundred members and a federation shall comprise of at least five member associations.

Recognized environmental organisations are granted party status in EIA procedures and are entitled to claim the observance of environmental provisions. In addition, they are entitled to appeal to the Federal Administrative Court (*Bundesverwaltungsgericht*) and to the Supreme Administrative Court (*Verwaltungsgerichtshof*).

The recognition criteria laid down in Article 19(6) of the Austrian EIA Act want to ensure that an organisation actually exists and is active in promoting environmental protection.

Although the criteria are only laid down in Article 19(6) of the Austrian EIA Act, all sectoral environmental laws when implementing participation of environmental organizations refer to that provision and it is therefore applicable in all relevant areas of environmental law.

By 1 October 2023, there are 61 recognised environmental organisations in Austria. The Ministry keeps and updates via its website the information on the status of the recognition of environmental organisations ("*Liste anerkannter Umweltorganisationen*").

Paragraph 2 (b) and (c) of decision VII/8b

In paragraph 2 (b) of decision VII/8b, the Meeting of the Parties requests the Party concerned:

Ensure that, when addressing subparagraph (a) above, members of the public, including non-governmental organizations, 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 law, including administrative penal laws and criminal laws, relating to the environment;

In paragraph 2 (c) of decision VII/8b, the Meeting of the Parties requests the Party concerned:

As a matter of urgency, arrange for a review of the relevant body of national law (at both the federal and the provincial levels) 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 and provide the review to the Committee as soon as possible and by no later than 1 July 2022;

In its Plan of Action Austria has already referred to several implementations of the Convention as well as planned ones. Austria is steadily continuing to implement the Aarhus Convention both at federal and at provincial level.

In order to demonstrate this we would like to refer to the implementations of the Convention since the adoption of decision VII/8b:

Amendments of the following laws at federal level:

- Amendment of the EIA Act 2000 (UVP-G 2000), BGBl. I Nr.26/2023:

The revised § 40 (1) of the Austrian EIA Act wants to ensure that the right of appeal cannot be restricted with one exception: If complaints are raised for the first time in an appeal, they shall not be admissible if their raising in the appeal proceedings is abusive or dishonest.

In addition, the new amendment also extended the scope of the EIA Act and thus the scope of the relevant provisions on public participation and access to justice of the EIA Act.

- Amendment of the Waste Management Act 2002 (AWG 2002) - the Amendment is expected to come into force in the fourth quarter of 2023:

§ 42 Abs. 1a of the Austrian Waste Management Act 2002 is going to contain a corresponding provision to § 40 (1) of the Austrian EIA Act.

- Planned Amendment of the Act on the SEA concerning high-level transport infrastructure (SP-V-G) – draft law in preparation, coordination with the governing partner planned for mid of 2024 (inter alia to improve opportunities for public participation)

- Revision of Transport Acts (road, cable cars, shipping and air traffic) – draft law in preparation (inter alia to better implement the Aarhus Convention)

- Revision of Energy Acts concerning permitting processes - draft law in preparation (inter alia to better implement the Aarhus Convention)

Amendments of the following laws at provincial level:

- Amendment of the Lower Austrian Nature Conservation Act of 2000 and the Hunting Act of 1974, LGBl. Nr. 41/2023

In the Lower Austrian Nature Conservation Act of 2000 there was an extension of the right of appeal for recognised environmental organisations to species protection exemptions concerning all native wild bird species as well as to decisions approving the release of alien species.

In addition, it was clarified that restrictions of the right of appeal are only acceptable in the case of abusive or dishonest submissions.

The Lower Austrian Hunting Act 1974 introduced the right of appeal against decisions pursuant to § 95a para. 8, with which the release of alien game species, wild rabbits and non-native bird species into the wild is authorised.

- Amendment of the Styrian Building Law of 1995, LGBl. Nr. 73/2023

Provisions regarding access to justice as well participation for the public concerned regarding building permit procedures concerning Seveso operations were introduced.

In addition, it was clarified that restrictions of the right of appeal are only acceptable in the case of abusive or dishonest submissions.

- Act amending the Styrian Law on Facilities for the Protection of the Environment 1988, the Styrian IPPC-Plants Act 2017 and the Styrian Nature Conservation Act 2017, LGBl. Nr. 70/2022

In the Styrian Nature Conservation Act 2017 participation for recognised environmental organisations in procedures concerning exceptions to prohibitions under species protection law was guaranteed.

In the Styrian Nature Conservation Act 2017 as well as in the Styrian IPPC-Plants Act 2017 it was clarified that restrictions of the right of appeal are only acceptable in the case of abusive or dishonest submissions.

- Act amending the law on spatial planning in Styria of 2010, LGBl. Nr. 15/2022

The Act introduced public participation in the context of strategic environmental impact assessments.

- Upper Austrian Aarhus Adaptation Act 2022, LGBl. Nr.64/2022

In the Upper Austrian Nature and Landscape Conservation Act 2001 there was an extension of the right of appeal for recognised environmental organisations regarding decisions according to § 31 (the approval of the release or introduction of alien species).

In the Upper Austrian Hunting Act of 1964 there was an extension of the right of appeal for recognised environmental organisations regarding decisions according to § 61 (the approval of the release of non-native game species).

- Act amending the Salzburg Nature Conservation Act 1999, the Salzburg National Park Act 2014, the Hunting Act 1993, the Fishing Act 2002 and the Environmental Protection and Environmental Information Act, LGBl. Nr. 41/2022.

The right of appeal of environmental organisations was extended to procedures in which the release of alien plants and the release or introduction of alien animals into the wild requires the approval of the nature conservation authority.

In addition, it was clarified that restriction of the right of appeal are only acceptable in the case of abusive or dishonest submissions.

- Amendment of the Tyrolean Hunting Act 2004, LGBl. Nr. 40/2022

- Amendment of the Carinthian IPPC-Plants Act 2002, LGBl. Nr. 58/2021

- Planned Amendment of the Upper Austrian Building Law of 1994 and Spatial Planning Law of 1994

- Draft of a Second Carinthian Aarhus Adaptation Law

The Amendments of the laws at provincial level mostly contain an extension of a right of appeal for recognised environmental organisations and/or a clarification that restrictions of the right of appeal are acceptable only in the case of abusive or dishonest submissions.

The identification of the areas of law “relating to the environment” that require adaptation in order to comply with the requirements (paragraph 2(c) of decision VII/8b) takes time as it is a very complex matter. However, this process is steadily continuing as has been demonstrated above.

The Austrian Ministry of Environment is regularly hosting Meetings of the **Austrian Aarhus Working Group**, which consists of members of the relevant Ministries as well as of the provinces. The last meeting of the Austrian Aarhus Working Group was held in June 2023. The aim of the meetings is to discuss recent judicial decisions, legislative proposals as well as implementation gaps. So the **Austrian Aarhus Working Group** is supporting and coordinating the process of identifying the areas of law that still require adaptation. A process that as mentioned above however takes time.

In conclusion, it can be said that Austria is hopeful to have demonstrated its willingness to implement the Aarhus Convention with its continuously introduction of new legislation and by attending all hearings before the ACCC as well as discussions on European and International level.

Paragraph 2 (d) of decision VII/8b

In paragraph 2 (d) of decision VII/8b, the Meeting of the Parties requests the Party concerned:

Develop a capacity-building programme and provide training on the implementation of the Convention for judges, prosecutors and lawyers;

The **Austrian Academy for Administrative Courts** held a **seminar under the title “The Aarhus Convention”** on 22.6.2023, which was attended by **administrative judges** as well as **legal staff**.

This seminar provided a comprehensive introduction to the application of the Aarhus Convention in the Austrian legal context. In this seminar, participants engaged with the relevant provisions of the Convention and their significance for practice. The seminar was designed for administrative judges in Austria who seek to deepen their understanding of the Aarhus Convention and enhance their skills in dealing with environmental disputes. It covered all pillars of the Aarhus Convention (access to information, public participation and access to justice) and discussed the application of the Convention in Austria. The seminar was advertised on the website of the Austrian Academy for Administrative Courts and is part of its official course catalogue(https://www.jku.at/fileadmin/gruppen/326/OEAVG_Programmheft_2023_Weiterbildung_NEU.pdf).

In addition, in the **Province of Carinthia a training regarding the Aarhus Convention** took place on the 3rd of March of 2023, which was primarily intended for administrative judges.

Many authorities of the federal provinces also gave the feedback that with regard to the Aarhus Convention **regular meetings are held with the departments** to discuss the implications of the Convention and if necessary also **special trainings are taking place**.

There are also lots of **trainings regarding environmental law in general** where the Aarhus Convention, its implications and new developments are discussed as well.

As already mentioned in the Plan of Action the Federal Ministry of Justice, inter alia, takes part in an **EU-funded project lead by the Austrian Criminal Intelligence Service** (Bundeskriminalamt) aiming at building capacity in the field of environmental (criminal) law. A relevant part of this project is the implementation of two training events for judges and prosecutors dealing with environmental cases. Not only national and international practitioners contributed to the specific design and to developing the content, but also representatives of the academia. The training events i.a. tackled the proposal for a new EU Directive on environmental crime of December 15th 2021, which takes up a number of provisions laid down by the Aarhus

Convention. The training events took place in January and April 2022 and were attended by a high percentage of Austrian judges and prosecutors dealing with environmental cases.

In addition, the Austrian judiciary will **continuously engage in offering and implementing training activities on Environmental (Criminal) Law** as well as **encourage** judges, public prosecutors and court staff to **take part in seminars on such topic offered by international judicial training providers such as EJTN and ERA.**

Conclusion

As a conclusion, Austria is convinced to have demonstrated that the standing criteria of environmental organisations are not too restrictive and public participation and access to justice for environmental organisations is guaranteed.

Moreover, Austria is hopeful to have appropriately demonstrated to the Committee - with its continuous adoption of laws and envisaged amendments at federal as well as at provincial level - that it is aiming to implement all provisions on access to justice in order to meet the requirements of decision VII/8b.

Furthermore, Austria has demonstrated that there are capacity-building programmes regarding the Aarhus Convention offered to judges, prosecutors and lawyers and is therefore convinced to have fulfilled the recommendation of paragraph 2 (d) of decision VII/8b.