

**Aarhus Convention Secretariat**

c/o Fiona Marshall

Palais des Nations

8-14 Avenue de la Paix

1211 Geneva 10, Switzerland

Vienna, 23 October 2023

**Regarding: Comments on the progress report to Decision VII/8b (Austria)**

Dear Ms. Marshall,

Dear Aarhus Secretariat,

OEKOBÜERO - Alliance of the Environmental Movement appreciates the opportunity to comment on the progress report regarding the implementation of Decision VII/8b of the Meeting of the Parties to the Aarhus Convention concerning Austria. OEKOBÜERO is the alliance of the Austrian Environmental Movement. It consists of 20 Austrian organizations engaged in environmental, nature, and animal protection. OEKOBÜERO works on the political and legal level for the environmental movement. OEKOBÜERO welcomes the issuing of a progress report with concrete steps for the implementation of Austria's obligations under international law resulting from the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention). Since there have not been comprehensive legal changes to the legal landscape in Austria, many of our comments regarding last October's action plan still ring true. Nonetheless, we appreciate the steps that have been taken and would like to comment on them as follows:

**1) Paragraph 2 (a) of decision VII/8b**

Since all previously adopted provisions implementing Art 9 (3) of the Aarhus Convention refer to Section 19 EIA Act, it also affects access to justice. Within the scope of Art 9 (3) of the Aarhus Convention, it is unlawful to set strict participation criteria, as they prevent members of the public - in particular environmental protection organizations - from the opportunity to appeal. While the general rule that environmental protection organizations are only recognized if they include 100+ members does not contravene Art 9 (3) in principle, they must be alternative indicators, so that smaller organizations can prove their credibility and attain procedural rights.

While it is necessary that it must be ensured that only credible and active organisations can participate in the procedures, clear conclusions on credibility and activity cannot be drawn from the number of members only. It is regrettable that the recent novelization of the EIA Act was not used as an opportunity to revoke the stricter recognition criteria of 2018's novelization.

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

We appreciate any steps taken towards the consistent implementation of the Aarhus Convention and acknowledge that consistent implementation proves difficult with the separation of competences between the federal and the provincial level. We especially encourage amendments of the provincial laws on environmental law in a broad sense (not limited to environmental law as determined by Union law - Salzburg Nature Conservation Act 1999, Salzburg National Park Act 2014, Hunting Act 1993, Fishing Act 2002, Environmental Protection and Environmental Information Act) and include full party status for environmental organisations, which remains the exception. We also want to stress that the inadmissibility of "abusive or dishonest" appeals leaves room for interpretation. According to the case law of the CJEU, such a preclusion provision due to lack of participation is only possible to a very limited extent "if the organisations cannot be justifiably accused of not having participated". This means that the accusation must be justified and thus substantiated. In order to avoid legal uncertainty caused by the vague wording and an inadmissible restriction of the right of appeal, ÖKOBÜRO therefore suggests a definition of the terms in question for the sake of legal certainty.

Regarding **paragraph 2 (d) of decision VII/8** OEKOBÜERO appreciates the information on the provided trainings and encourages a broad range of offered trainings also in the future.

While we appreciate the implementation progress made, we also must stress that we consider further improvements necessary.

Yours sincerely,



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**Thomas ALGE**

Managing Director, OEKOBÜERO – Alliance of the Austrian Environmental Movement