

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

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I. Introduction

1. At its seventh session (Geneva, Switzerland, 18-21 October 2021), 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 VII/8b on compliance by Austria with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

II. Summary of follow-up

2. At its seventy-third meeting (Geneva, 13–16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. Representatives of the Party concerned and the communicant of communication ACCC/C/2010/48 took part in the open session.

3. On 7 February 2022, on the Committee's instructions, the secretariat sent an information note and a template to the Party concerned to assist it to prepare its plan of action.

4. At its seventy-fourth meeting (Geneva, 15–16 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from Parties regarding the format or content of their plan of action. Representatives of the Party concerned, the communicant of communication ACCC/C/2010/48 and the observer Justice and Environment took part in the open session.

5. On 1 July 2022, the Party concerned submitted a draft version of its plan of action and, on 19 July 2022, the communicant of communication ACCC/C/2011/63 submitted its comments thereon.

6. On 10 October 2022, the Party concerned submitted the final version of its plan of action.

7. On 10 October 2022, the secretariat forwarded the Party concerned's plan of action to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 and the registered observer, inviting their comments by 7 November 2022.

8. On 24 October 2022, the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 each submitted their comments on the plan of action.

9. On 3 December 2022, the secretariat wrote to the Party concerned to inform it that, having reviewed its plan of action, the Committee had concluded that the plan of action did not appear to be appropriate. The Committee therefore invited the Party concerned to attend an open session at its seventy-seventh meeting (Geneva, 13-16 December 2022), to discuss its plan of action.

10. On 7 December 2022, the secretariat wrote to the Party concerned, providing it with a summary of the Committee's concerns on its plan of action.

11. At its seventy-seventh meeting, the Committee held an open session to discuss the Party concerned's plan of action with the participation of the Party concerned and observers. During the session, the Committee asked the Party concerned to submit, as a matter of urgency, the review of its legislation due on 1 July 2022 in accordance with paragraph 2 (c) of decision VII/8b.

12. On 19 July 2023, the communicant of communication ACCC/C/2011/63 provided an update.

13. On 6 October 2023, the Party concerned submitted its first progress report on decision VII/8b, five days after the deadline of 1 October 2023.

14. On 10 October 2023, the secretariat forwarded the Party concerned's first progress report to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 and the registered observer, inviting their comments by 7 November 2023.

15. On 31 October 2023, the communicant of communication ACCC/C/2010/48 provided its comments on the Party concerned's first progress report.

16. On 18 July 2024, the communicant of communication ACCC/C/2011/63 provided an update.

17. The Committee prepared its first progress review on decision VII/8b, taking into account the information received, and adopted it through its electronic decision-making procedure on 6 August 2024. The Committee thereafter requested the secretariat to forward the first progress review to the Party concerned, the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 and the registered observer.

III. Considerations and evaluation by the Committee

18. In order to fulfil the requirements of paragraph 2 (a) – (d) of decision VII/8b, Austria will need to:

- (a) As a matter of urgency, take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that criteria for non-governmental organizations (NGO) 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 NGO standing in its laws on environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability;
- (b) When addressing subparagraph (a) above, ensure that, when addressing subparagraph (a) above, 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 law, including administrative penal laws and criminal laws, relating to the environment;
- (c) 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;
- (d) Develop a capacity-building programme and provide training on the implementation of the Convention for judges, prosecutors and lawyers.

General observations

Difference between the recommendations in paragraph 2 (a) – (c) of decision VII/8b

19. Having examined the Party concerned's first progress report, the Committee considers it important to highlight for the Party concerned the difference between each of the recommendations in paragraphs 2 (a) – (c) of decision VII/8b.

Difference between paragraph 2 (a) and (b) of decision VII/8b

20. The Committee reminds the Party concerned of the underlying points of non-compliance, and thus the difference in focus, of the recommendations in paragraph 2 (a) and (b) of decision VII/8b.

21. The recommendation in paragraph 2 (a) of decision VII/8b stems from the Committee's 2011 findings on communication ACCC/C/2010/48 (Austria) in which the Committee found that:

“the Party concerned, in not ensuring standing of environmental NGOs to challenge acts or omissions of a public authority or private person in many of its sectoral laws, is not in compliance with article 9, paragraph 3, of the Convention”.¹

22. The above finding resulted in the recommendation originally made by the Committee in paragraph 81 (a) (iii) of the findings on communication ACCC/C/2010/48² and now reiterated in paragraph 2 (a) of decision VII/8b.

23. In contrast, the recommendation in paragraph 2 (b) of decision VII/8b stems from the Committee’s 2013 findings on communication ACCC/C/2011/63 (Austria) in which the Committee found that:

“because members of the public, including environmental NGOs, have in certain cases no means of access to administrative or judicial procedures to challenge acts and omissions of public authorities and private persons which contravene provisions of national laws, including administrative penal laws and criminal laws, relating to the environment, such as contraventions of laws relating to trade in wildlife, nature conservation and animal protection, the Party concerned fails to comply with article 9, paragraph 3, in conjunction with paragraph 4, of the Convention”.³

24. The above finding resulted in the recommendation originally made by the Committee in paragraph 66 of the findings on communication ACCC/C/2013/63⁴ and now reiterated in paragraph 2 (b) of decision VII/8b.

25. To summarize the distinct focus of the recommendations in paragraph 2 (a) and (b) of decision VII/8b in brief:

- (a) To fulfil paragraph 2 (a) of decision VII/8b, the Party concerned will need to demonstrate that criteria for NGOs to have standing to challenge acts or omissions by private persons or public authorities that contravene national law relating to the environment have been revised and specifically laid down in its sectoral environmental laws. This includes sectoral environmental laws at both the federal and provincial levels.
- (b) To fulfil paragraph 2 (b) of decision VII/8b, the Party concerned will need to demonstrate that it has ensured that both NGOs and other members of the public 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 administrative penal laws and criminal laws relating to the environment. This includes administrative penal laws and criminal laws relating to the environment at both the federal and provincial levels.

Difference between paragraph 2 (b) and (c) of decision VII/8b

26. In its first progress report, the Party concerned reports on paragraphs 2 (b) and (c) jointly. However, as paragraph 25 (b) above and paragraphs 78 - 86 below make clear, the character of these two recommendations is fundamentally distinct.

Engagement in the Committee’s follow-up

27. The Committee welcomes the Party concerned’s engagement in the Committee’s follow-up on decision VII/8b, including the submission of its plan of action and first progress report, albeit after the deadlines set by the Meeting of the Parties in paragraph 2 (e) and (f) of decision VII/8b.

28. The Committee also welcomes the information and comments provided by the communicants of communication ACCC/C/2010/48 and ACCC/C/2011/63.

¹ ECE/MP.PP/C.1/2012/4, para. 80.

² ECE/MP.PP/C.1/2012/4.

³ ECE/MP.PP/C.1/2014/3, para.

⁴ ECE/MP.PP/C.1/2012/4.

29. The Committee however regrets the incomplete nature of the information provided by the Party concerned in its first progress report, including the failure by the Party concerned to provide the Committee with the text, together with an English translation thereof, of the various legislative amendments it refers to in its first progress report. Without the text of the amendments, and an English translation thereof, it is not possible for the Committee to assess properly the relevance of those amendments to the recommendations in paragraphs 2 (a) and (b) of decision VII/8b.

Paragraph 2 (a) of decision VII/8b

30. As explained in paragraph 25 above, in order to fulfil paragraph 2 (a) of decision VII/8b, the Party concerned will need, as a matter of urgency, to demonstrate that criteria for NGOs to have standing to challenge acts or omissions by private persons or public authorities that contravene national law relating to the environment have been revised and specifically laid down in its sectoral environmental laws at both the federal and provincial levels.

31. There are two key aspects to the recommendation in paragraph 2 (a) of decision VII/8b, namely:

- (a) The criteria for environmental NGOs to have standing under article 9 (3) in the Party concerned;
- (b) The sectoral laws, at federal and provincials levels, to which those criteria apply.

32. The Committee examines each of these aspects below.

(a) *The criteria for environmental NGOs to have standing under article 9 (3) in the Party concerned*

33. In its first progress report, the Party concerned states that article 19 (6) of the Federal Act on Environmental Impact Assessment (EIA Act) sets out the criteria for an environmental organization to be recognized in Austria.⁵ It states that “all sectoral environmental laws” refer back to the criteria in article 19 (6) and “it is therefore applicable in all relevant areas of environmental law”.⁶ The Party concerned reports that, as at 1 October 2023, there are 61 recognised environmental organisations in Austria. It states that the Ministry keeps and updates via its website the information on the status of the recognition of environmental organisations (*Liste anerkannter Umweltorganisationen*).

34. Based on its first progress report, the Committee understands that the Party concerned has taken no steps since decision VII/8b was adopted at the seventh session of the Meeting of the Parties to address the concerns regarding the criteria in article 19 (6) and (9) of the EIA Act repeatedly expressed by the Committee during the last intersessional period, including in its report on decision VI/8b to the Meeting of the Parties.⁷

35. The Committee makes clear its disappointment at the apparent failure by the Party concerned to have taken any action to date to address the Committee’s concerns. Given this situation, the Committee considers it appropriate to draw the Party concerned’s attention to the following paragraphs of the Committee’s report on decision VI/8b to the Meeting of the Parties:

50. ...to the extent that section 19 of the Environmental Assessment Act (EIA Act) determines the standing criteria that NGOs must meet to qualify to challenge acts and omissions within the meaning of article 9 (3) of the Convention, the amendments to section 19 of the EIA Act fall squarely within the ambit of the Committee’s review of decision VI/8b.

51. On this point, the Committee makes clear that for the purposes of its review of decision VI/8b, it examines only the new requirements introduced through the 2018 amendment to section 19 of the EIA Act. While this would not preclude the

⁵ Party’s first progress report, 6 October 2023, p. 1.

⁶ Party’s first progress report, 6 October 2023, p. 2.

⁷ ECE/MP.PP/2021/47, paras. 50-74.

Committee from examining the other criteria in section 19 of the EIA Act in a future case if brought before it, in reviewing the progress made by the Party concerned to implement decision VI/8b, the Committee's focus is on the measures taken by the Party concerned since the adoption of that decision.

...

54. It is the Committee's understanding that the most significant of these amendments are:

(a) The insertion in article 19 (6) of the EIA Act of the following: "The association shall have at least one hundred members. A federation shall comprise at least five member associations that meet the criteria of paragraph 6 numbers 1 to 3 and that, together, reach the minimum number required for five recognised environmental organisations. The authority shall be provided with credible evidence of the number."

(b) The insertion in article 19 (9) of the EIA Act of the following: "Upon request by the Federal Minister for Sustainability and Tourism, but at any rate every three years from admission, the environmental organisation shall submit suitable documents proving that the criteria defined in paragraph (6) are still met. Such review shall also be carried out at the request of an EIA authority."

The Committee accordingly focuses its examination on the amendments to article 19 (6) and (9) of the EIA Act set out above.⁸

...

67. In its comments on the Party concerned's second progress report, the communicant of communication ACCC/C/2010/48 submitted that the amendment of article 19 of the EIA Act is not in line with the Convention as it determines the minimum requirement of 100 members to be an absolute prerequisite and does not allow for any other proof, such as support from the public or professional expertise. It claimed moreover that, in practice, the amendments to the EIA Act concerning the new recognition requirements place "a significant burden" on environmental NGOs. The communicant submitted that, for many NGOs, the collection and proof and creation of relevant documentation is resource intensive and can involve up to 10 workdays. It stated that, because the Federal Ministry does not accept affidavits by executive boards of associations, notarial certifications or confirmations by statutory auditors are necessary, thereby creating additional costs for associations. The communicant of communication ACCC/C/2011/63 "fully endorses" the above comments by the communicant of communication ACCC/C/2010/48.

...

69. The communicant of communication ACCC/C/2010/48 moreover submits that the Party concerned has not presented any reasons why it should be required that NGOs provide proof that they fulfil the recognition criteria both every three years and at any time upon request by the Federal Ministry. It holds that, if at all, one of these two review options should be more than sufficient.

...

71. In this regard, the Committee also expresses its disappointment that the Party concerned has not conducted a survey or other research regarding the potential burden placed on environmental organisations by the additional recognition criteria imposed by the amendment of the EIA Act, as requested by the Committee in its second progress review. The Committee emphasizes that whether the amended recognition procedure imposes too high a burden on environmental organisations, to the effect that it in practice forecloses a significant number of these organisations from access

⁸ ECE/MP.PP/2021/47, paras. 50, 51 and 54, footnotes omitted.

to justice, is essential information for the Committee in order to assess whether the Party concerned has fulfilled the requirements of paragraph 3 (a) of decision VI/8b.

72. With respect to the Party concerned's suggestion that any question concerning potential additional burdens or costs incurred by the amended recognition requirements could be answered more adequately "by the communicant on behalf of environmental organisations or by the organisations themselves", the Committee stresses that it is for the Party concerned to demonstrate that the additional new requirements for the recognition of environmental NGOs imposed by it are not overly burdensome.

73. The Committee takes note of the information provided by the Party concerned that it is currently preparing a draft law to amend the EIA Act, including the possible reconsideration of the minimum of one hundred members for an environmental organisation to be recognised. Based on the information available to it, the Committee is, however, not convinced that to remove this criterion alone would fulfil the requirements of article 9 (3) of the Convention. The Committee therefore considers that the ongoing discussion to amend the EIA Act is a timely opportunity to reconsider the need for the other newly added requirements set out in paragraph 54 above also.

74. Based on the foregoing, and as already indicated in its first and second progress review, the Committee considers that the amendment to section 19 of the EIA Act is a step in the wrong direction in terms of compliance with article 9 (3) of the Convention.⁹

36. Having drawn the Party concerned's attention to the above paragraphs of its report on decision VI/8b to the Meeting of the Parties, the Committee highlights the following three points for the Party concerned's urgent action:

(i) The 'at least one hundred members' requirement – article 19 (6) EIA Act

37. In its final progress report on decision VI/8b, the Party concerned had noted that the requirement that environmental NGOs have a minimum of one hundred members in order to qualify for recognition was an element for discussion in the then-ongoing process to amend the EIA Act.¹⁰ The Committee therefore expresses its disappointment that the EIA Act has indeed been amended since the adoption of decision VII/8b but the Party concerned did not take that opportunity to address the Committee's concerns as set out in its progress reviews and report on decision VI/8b to the seventh session of the Meeting of the Parties.

38. In its comments on the Party concerned's plan of action on decision VII/8b, the communicant of communication ACCC/C/2011/63 has reiterated its concerns that the one hundred member requirement effectively bars environmental organizations in smaller and especially rural communities from access to justice.¹¹

39. In its comments on the Party concerned's first progress report, the communicant of communication ACCC/C/2010/48 has called for there to be alternative indicators to the one hundred member requirement, so that smaller organizations can still attain procedural rights.¹² In its comments on the Party concerned's plan of action, the communicant of communication ACCC/C/2010/48 has noted that, following a 2022 judgment by the Supreme Administrative Court upholding article 19 (6) of the EIA Act, there were no further legal avenues left through which NGOs could challenge section 19 (6) and it would therefore require action by the legislature to address this issue.¹³

40. In its findings on communication ACCC/C/2013/81 (Sweden), the Committee has already examined a requirement for NGOs to have a minimum of one hundred members in order to have standing under article 9 (3). In those findings it held that:

⁹ ECE/MP.PP/2021/47, paras. 50, 51 and 54, footnotes omitted.

¹⁰ Party's final progress report on the implementation of decision VI/8b, 1 October 2020, p. 6.

¹¹ Comments on plan of action by communicant of communication ACCC/C/2011/63, 19 July 2022, para. 5.2.

¹² Comments on first progress report by communicant of communication ACCC/C/2010/48, 31 October 2023, p. 1.

¹³ Comments on plan of action by communicant of communication ACCC/C/2010/48, 24 October 2022, p. 4.

The Committee has not been given any evidence that suggests that the criteria laid down in the national law with respect to environmental associations are outside the margin of discretion allowed to Parties when implementing article 9, paragraph 3. In this regard, the Committee notes that associations with less than 100 members are entitled to standing so long as they can show they have the “support from the public” and have been active at least three years.¹⁴

41. In the light of its findings on communication ACCC/C/2013/81 (Sweden), the Committee is concerned that a legal framework that provides no possibility for an association with less than 100 members to be granted standing under any circumstances is too narrow and outside the margin of discretion allowed to Parties when implementing article 9 (3) of the Convention.

42. The Committee therefore invites the Party concerned, as a matter of urgency, to amend article 19 (6) of the EIA Act to introduce a criterion through which associations with less than one hundred members can still attain recognition, for example by demonstrating that they have the “support from the public”.

(ii) Requirement to re-apply every three years, and upon request – article 19 (9) EIA Act

43. The Committee understands that, pursuant to article 19 (9) of the EIA Act, environmental NGOs are required to re-submit the documentation necessary to prove they fulfil the recognition criteria every three years, as well as at any time if requested to do so by the Federal Minister for Sustainability and Tourism or an EIA authority.

44. The communicant of communication ACCC/C/2010/48 has claimed that this places “a significant burden” on environmental NGOs. It has asserted that, for many NGOs, the creation and collection of the required documentation will involve up to 10 workdays. It has also stated that, because the Federal Ministry does not accept affidavits by executive boards of associations, notarial certifications or confirmations by statutory auditors are necessary, thereby creating additional costs for associations. The communicant of communication ACCC/C/2011/63 has stated that it “fully endorses” the above comments.¹⁵

45. The communicant of communication ACCC/C/2010/48 submits that the Party concerned has not presented any reasons why it should be required that NGOs provide proof that they fulfil the recognition criteria both every three years and at any time upon request by the Federal Ministry. It holds that, if at all, one of these two review options should be more than sufficient.¹⁶

46. In this regard, the Committee recalls its findings on communication ACCC/C/2015/137 (Germany), in which it held that:

when examining the requirements set by a Party in its national law for an association, organization or group to constitute a “non-governmental organization promoting environmental protection” and “to be deemed to have an interest in the environmental decision-making” under article 2 (5) and thus to have standing under article 9 (2) comply with the Convention, the Committee pays particular attention to whether those requirements in national law:

- (a) Are clearly defined;
- (b) Are consistent with the objectives of the Convention, including the objective of giving the public concerned wide access to justice; and thus that they are not unreasonably exclusionary;
- (c) Do not cause excessive burden on environmental NGOs.¹⁷

47. In those findings, the Committee also held:

¹⁴ ECE/MP.PP/C.1/2017/4, para. 85.

¹⁵ ECE/MP.PP/2021/47, para. 67.

¹⁶ ECE/MP.PP/2021/47, para. 69.

¹⁷ ECE/MP.PP/C.1/2021/25, para. 100.

The burden of proof falls on the Party concerned to demonstrate that any requirements in national law are consistent with the above criteria.¹⁸

48. In line with the above findings, the Committee makes clear that the burden of proof falls on Austria to demonstrate to the Committee that the requirements added to article 19 of the EIA Act in 2018 are not causing an excessive burden on environmental NGOs. This includes the requirement in article 19 (9) that environmental NGOs re-submit the documentation necessary for recognition every three years, as well as at the request of the Federal Minister of Sustainability and Tourism or an EIA authority.

49. The Committee recalls that, in its second progress review on decision VI/8b, it invited the Party concerned:

To ask each environmental organisation that has applied for recognition under article 19 of the EIA Act up until the date of the final progress report, the number of work days it required to prepare its application for recognition and the costs it incurred to do so, and to submit the results of that survey together with the final progress report.¹⁹

50. In its report on decision VI/8b to the Meeting of the Parties, the Committee stressed that it was for the Party concerned to demonstrate that the additional requirements for the recognition of environmental NGOs it had introduced were not overly burdensome.²⁰ In its report, the Committee expressed its disappointment that, despite the Committee's invitation for it to do so, the Party concerned had not conducted a survey or other research to assess the potential burden placed on environmental NGOs by the additional recognition criteria introduced through the 2018 amendment of the EIA Act.²¹

51. Based on its first progress report, it appears that the Party concerned has still not done so.

52. The Committee therefore requests the Party concerned, in advance of its final progress report on decision VII/8b due on 1 October 2024, to carry out a survey or other research to assess the burden placed on environmental NGOs by the additional recognition criteria introduced in 2018 through article 19 (6) and (9) of the EIA Act, and to provide the results of its survey to the Committee together with its final progress report. Together with other Austrian NGOs, the Party concerned should invite the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 and the registered observer, Justice and Environment, to participate in the survey.

53. Should the results of the Party concerned's survey indicate that the criteria introduced through the 2018 amendment do indeed impose an excessive burden, the Committee invites the Party concerned, together with its final progress report, to submit the text of the measures it has by then taken, or proposes to take, to amend article 19 of the EIA Act to ensure that the burdensome requirements are removed.

(iii) Recognition of "foundations"

54. Article 19 (6) states that an "environmental organisation is an association or a foundation" that meets the requirements set out in that paragraph.

55. Given that article 19 (6) sets out explicit requirements for "associations" and "federations" but makes no further reference to "foundations", the Committee invites the Party concerned, in its final progress report due on 1 October 2024, to specify how many of the environmental organisations currently recognized under article 19 (6) in Austria are "foundations".

Concluding remarks regarding the criteria for recognition

¹⁸ ECE/MP.PP/C.1/2021/25, para. 101.

¹⁹ Committee's second progress review on decision VI/8b, para. 54 (e).

²⁰ ECE/MP.PP/2021/47, para. 72.

²¹ ECE/MP.PP/2021/47, para. 72.

56. In the light of the considerations in paragraphs 33 - 55 above, the Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 2 (a) of decision VII/8b with respect to the criteria for recognition of environmental NGOs in article 19 of the EIA Act.

57. The Committee reminds the Party concerned that, in paragraph 2 (a) of decision VII/8b, the Meeting of the Parties has requested the Party concerned “as a matter of urgency” to “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” (emphasis added).

58. The Committee therefore urges the Party concerned in its final progress report due on 1 October 2024 to provide the Committee with the text of the measures it has by then taken, or proposes to take, to revise the criteria in article 19 of the EIA Act in order to address the considerations in paragraphs 33 - 55 above.

(b) The sectoral laws to which the criteria for environmental NGOs to have standing under article 9 (3) apply

59. In its first progress report, the Party concerned reports that, since the adoption of decision VII/8b, it has made, or is in the process of making, legislative amendments to the following federal laws to implement the Convention:

- (a) Amendments to the EIA Act (UVP-G 2000), BGBl. I Nr. 26/2023;
- (b) Amendment to the Waste Management Act 2002 (AWG 2002), which is expected to enter into force in the fourth quarter of 2023;
- (c) Proposed amendments to the Act on the strategic environmental assessment concerning high-level transport infrastructure (SP-V-G);
- (d) Proposed revision of Transport Acts (road, cable cars, shipping and air traffic);
- (e) Proposed revision of Energy Acts.²²

60. The Party concerned also reports that, since the adoption of decision VII/8b, six of its nine provinces have made, or are in the process of making, legislative amendments to implement the Convention, namely:

- (a) Carinthia:
 - (i) Amendment of the Carinthian IPPC-Plants Act 2002, LGBl. Nr. 58/2021;
 - (ii) Proposed second Carinthian Aarhus Adaptation Law.
- (b) Lower Austria:
 - (i) Amendment of the Lower Austrian Nature Conservation Act of 2000 and the Hunting Act of 1974, LGBl. Nr. 41/2023;
- (c) Salzburg:
 - (i) 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;
- (d) Styria:

²² Party's first progress report, 6 October 2023, p. 3.

- (i) Amendment of the Styrian Building Law of 1995, LGBL. Nr. 73/2023;
 - (ii) 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, LGBI. Nr. 70/2022;
 - (iii) Act amending the law on spatial planning in Styria of 2010, LGBI. Nr. 15/2022;
- (e) Tyrol:
- (i) Amendment of the Tyrolean Hunting Act 2004, LGBI. Nr. 40/2022;
- (f) Upper Austria:
- (i) Proposed amendment of the Upper Austrian Building Law of 1994 and Spatial Planning Law of 1994;
 - (ii) Upper Austrian Aarhus Adaptation Act 2022, LGBI. Nr. 64/2022, amending the Upper Austrian Nature and Landscape Conservation Act 2001 and the Hunting Act 1964;²³

61. The Committee welcomes the various legislative amendments, at both federal and provincial levels, that the Party concerned has made since the seventh session of the Meeting of the Parties to further its implementation of the Convention.

62. However, the Committee expresses its disappointment that the Party concerned has failed to provide the Committee with the texts of the amendments and proposed amendments listed in paragraphs 59 - 60 above, or English translations thereof. Moreover, for those amendments which it has indicated are “planned” or are in draft form, the Party concerned has failed to provide the Committee with a clear timeline for their adoption.

63. From the brief descriptions of the amendments provided by the Party concerned in its first progress report, it appears to the Committee that, while the amendments may each potentially concern matters related to the Convention, they do not all necessarily address matters within the scope of decision VII/8b.

64. Without the texts of the amendments and proposed amendments and the timeline for the adoption of the latter, the Committee is not in a position to assess the relevance of the above-mentioned amendments to the implementation of the recommendations in decision VII/8b.

65. The Committee therefore requests the Party concerned to provide, together with its final progress report due on 1 October 2024, the provisions of its amended laws at federal and provincial levels which it considers to be relevant to meeting the requirements of paragraph 2 (a) of decision VII/8b, together with English translations thereof. Bearing in mind the concern expressed in paragraph 63 above, the Committee requests the Party concerned to carefully review the relevance of each such amendment to the recommendations in decision VII/8b and to only put before the Committee those amendments which directly address those recommendations.

66. In submitting the texts of the relevant legislative amendments, the Party concerned should also submit the text of any related provisions, if those would be necessary in order for the Committee to understand the nature of the act or omission regarding which access to justice has been provided.

67. If any of the amendments are still in the course of the legislative process at the time of the Party concerned’s final progress report, the Committee requests that the Party concerned provide, together with the proposed legislative texts, an anticipated timeframe for the entry into force of those amendments. In this regard, the Committee underlines that, in its report on decision VII/8b to the eighth session of the Meeting of the Parties, the Committee will only be able to take into account those amendments that have already been

²³ Party’s first progress report, 6 October 2023, pp. 3-5.

adopted by 1 October 2024, the deadline for the Party concerned's final progress report on decision VII/8b.

68. Based on the foregoing, while welcoming the various legislative amendments listed in paragraphs 59 - 60 above, in the light of the considerations in paragraphs 62 - 64 above as well as those set out in paragraphs 78 - 86 below, the Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraph 2 (a) of decision VII/8b with respect to the sectoral environmental laws to which the criteria for environmental NGOs to have standing under article 9 (3) apply.

Paragraph 2 (b) of decision VII/8b

69. As explained in paragraph 25 above, in order to fulfil paragraph 2 (b) of decision VII/8b, Austria will need to demonstrate that it ensures both NGOs and other members of the public 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 administrative penal laws and criminal laws, at both federal and provincial level, relating to the environment.

70. In its first progress report, the Party concerned purports to report on its implementation of paragraphs 2 (b) and 2 (c) of decision VII/8b, jointly. In this regard, the Party concerned lists a number of amendments to its national law, both at the federal and at the provincial levels.

71. From the limited information provided in the Party concerned's first progress report, it appears to the Committee that none of the laws mentioned in the first progress report are in fact administrative penal laws or criminal laws relating to the environment.

72. The Committee takes note of the updates provided by the communicant of communication ACCC/C/2011/63 regarding a case before the regional administrative court and Supreme Administrative Court for Upper Austria. The communicant submits that the case demonstrates that the Party concerned is still in non-compliance with article 9 (3) and (4) of the Convention regarding access for members of the public to challenge acts or omissions by public authorities regarding wildlife, endangered species and illegal trade therein.²⁴

73. The Committee requests the Party concerned to provide in its final progress report due on 1 October 2024, a list of the laws it has by then amended, or is in the process of amending, to ensure that both NGOs and other members of the public 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 administrative penal laws and criminal laws relating to the environment. The list should be structured so it is clear which of the listed laws apply at the federal level and which apply to each province.

74. In addition to the above list, the Committee requests the Party concerned to provide, together with its final progress report, the relevant provisions of the amended laws at federal and provincial levels, together with English translations thereof.

75. In submitting the texts of the relevant legislative provisions to the Committee, the Party concerned should also submit the text of any related provisions, if those would be necessary for the Committee to understand the nature of the act or omission regarding which access to justice has been provided.

76. If any of the amendments are still in the course of the legislative process at the time of the Party concerned's final progress report, the Committee requests that the Party concerned provide, together with their draft texts, an anticipated timeframe for the entry into force of those amendments. In this regard, the Committee underlines that, in its report on decision VII/8b to the eighth session of the Meeting of the Parties, the Committee will only

²⁴ Updates from the communicant of communication ACCC/C/2011/63, 19 July 2023 and 18 July 2024.

be able to take into account those amendments that have already been adopted by 1 October 2024, the deadline for the Party concerned's final progress report on decision VII/8b.

77. In the light of the considerations in paragraphs 69 - 72 above, as well as those set out in paragraphs 78 - 86 below, the Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraph 2 (b) of decision VII/8b.

Paragraph 2 (c) of decision VII/8b

78. In order to fulfil paragraph 2 (c) of decision VII/8b, the Party concerned will need to:

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 [now paragraph 2 (a) and (b) of decision VII/8b] and provide the review to the Committee as soon as possible and by no later than 1 July 2022.²⁵

79. Despite the deadline of 1 July 2022 set by the Meeting of the Parties and notwithstanding the Committee's repeated requests, including during its open session at its seventy-seventh meeting (see para. 11 above), the Party concerned has not yet submitted the review requested by the Meeting of the Parties.

80. With respect to paragraph 2 (c) of decision VII/8b, the Party concerned in its first progress report states that:

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

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.²⁶

81. The Committee appreciates the fact that it is indeed a "complex" process to identify all laws, at federal and provincial levels, relating to the environment and that this "takes time", as the Party concerned submits in its first progress report.

82. The Committee points out, however, that more than five years have now passed since the Committee first requested the Party concerned, in February 2019, to conduct a comprehensive review of all its laws "relating to the environment", and to provide the Committee with that review.²⁷

83. Until the Party concerned submits the requested review of its law, at federal and provincial levels, "relating to the environment", it will not be possible for the Committee to assess whether the legislative amendments cited by the Party concerned in its progress reviews are sufficient to meet the requirements of paragraph 2 (a) and (b) of decision VII/8b.

84. Given that the Committee has clearly, and repeatedly, explained this point in its progress reviews to the Party concerned, as well as in its report to the Meeting of the Parties, on decision VI/8b,²⁸ it is regrettable that the Party concerned has still not implemented the recommendation set by the Meeting of the Parties in paragraph 2 (c) of decision VII/8b.

²⁵ ECE/MP.PP/2021/2/Add.1, emphasis added.

²⁶ Party's first progress report, 6 October 2023, p. 5.

²⁷ Committee's first progress review on decision VI/8b, 20 October 2022, para. 32.

²⁸ See e.g. ECE/MP.PP/2021/47, paras. 102-109.

85. The Committee makes clear that, in line with paragraph 25 above, the review should cover both (a) sectoral environmental laws and (b) administrative penal laws and criminal laws relating to the environment. In each case, the review should be structured so that it is clear which laws apply at the federal level and which apply for each province. It should also make clear which laws, at federal and provincial levels, have been amended (and how) and which laws, at federal and provincial levels, still require amendment.

86. Based on the foregoing, since the Party concerned has to date failed to provide the Committee with the requested review of its laws, including sectoral laws and criminal and administrative penal laws, at federal and provincial levels, “relating to the environment”, the Committee concludes that the Party concerned has not yet fulfilled the requirements of paragraph 2 (c) of decision VII/8b. Underlining again the deadline of 1 July 2022 set for the Party concerned by the Meeting of the Parties, the Committee requests the Party concerned to complete its review and provide it to the Committee as a matter of urgency.

Paragraph 2 (d) of decision VII/8b

87. In order to meet the requirements of paragraph 2 (d) of decision VII/8b, the Party concerned will need to demonstrate that it has “developed a capacity-building programme and provided training on the implementation of the Convention for judges, prosecutors and lawyers”.

88. In its first progress report, the Party concerned refers to a number of seminars and trainings held in the course of 2022 and 2023, including a seminar of the Austrian Academy for Administrative Courts, a training of the province of Carinthia, the participation of Austrian judges and prosecutors in a European Union-funded project lead by the Austrian Criminal Intelligence Service and international trainings provided, for example, by the European Law Academy.

89. The Committee recalls that, in its report on decision VI/8b to the seventh session of the Meeting of the Parties, it explained that:

in order to fulfil the requirements of paragraph 3 (d) of decision VI/8b [now paragraph 2 (d) of decision VII/8b], the Party concerned would need to provide information to the Committee to demonstrate that it has developed a capacity building programme, and provided training (or arranged for such training to be provided) for its judges, prosecutors and lawyers, and that the information to be provided to the Committee should include: (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered, (b) the organisers 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.²⁹

90. The Committee also notes that, in its summary of concerns on the Party concerned’s plan of action on decision VII/8b, it referred the Party concerned to page 4 of the Committee’s Information Note for Parties on preparing their plan of action, which sets out the list of information to be provided to the Committee regarding any training proposed by the Parties in their plans of action. This includes, inter alia, the “number”, “geographical distribution of trainees (e.g., nationwide or a specific region)” and “subjects the training will cover, and how attendance at the training be promoted or encouraged.”³⁰

91. While the Committee welcomes the various capacity-building exercises reported by the Party concerned in its first progress report, it is regrettable that the Party concerned has failed to provide the Committee with the information explicitly requested in the Committee’s report to the Meeting of the Parties on decision VI/8b³¹ as well as in its concerns on the Party

²⁹ ECE/MP.PP/2021/47, para. 115.

³⁰ Email to the Party concerned providing summary of Committee’s concerns on plan of action, 7 December 2022, p. 1.

³¹ ECE/MP.PP/2021/47, para. 115.

concerned's plan of action on decision VII/8b.³² Save for the seminar held at the Austrian Academy for Administrative Courts on 22 June 2023, the Party concerned has failed to provide any specific information on the content of the trainings mentioned in its first progress report, such as the detailed programme or the profession and experience of the trainers and speakers. It has also failed to report upon the number of judges, prosecutors or lawyers who have attended these trainings and in which court and region each such judge, prosecutor or lawyer is based.

92. Without such information, the Committee is not in a position to conclude on whether the Party concerned has met the requirements of paragraph 2 (d) of decision VII/8b. This is highly regrettable, particularly considering that the Committee has repeatedly provided advice and assistance to the Party concerned about the specific information required for the Committee to review the Party concerned's progress to implement paragraph 2 (d) of decision VII/8b.

93. In light of the foregoing, while welcoming the capacity-building programmes and trainings developed and provided by the Party concerned to date, the Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraph 2 (d) of decision VII/8b.

IV. Conclusions

94. The Committee welcomes the Party concerned's engagement in the Committee's follow-up on decision VII/8b, including the submission of its plan of action and first progress report, albeit after the deadlines set by the Meeting of the Parties in paragraph 2 (e) and (f) of decision VII/8b.

95. The Committee regrets, however, the incomplete nature of the information provided by the Party concerned in its first progress report, including the failure by the Party concerned to provide the Committee with the text, together with an English translation thereof, of the various legislative amendments it refers to in its first progress report. Without the text of the amendments, and an English translation thereof, it is not possible for the Committee to assess properly the relevance of those amendments to the recommendations in paragraphs 2 (a) and (b) of decision VII/8b.

96. The Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraph 2 (a) of decision VII/8b with respect to either the criteria for environmental NGOs to have standing under article 9 (3) or the sectoral environmental laws to which the criteria for environmental NGOs to have standing apply.

97. The Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraph 2 (b) of decision VII/8b with respect to access for environmental NGOs and other members of the public to 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 administrative penal laws and criminal laws, at both federal and provincial level, relating to the environment.

98. Since the Party concerned has to date failed to provide the Committee with the requested review of its laws, including sectoral laws and criminal and administrative penal laws, at federal and provincial levels, "relating to the environment", the Committee concludes that the Party concerned has not yet fulfilled the requirements of paragraph 2 (c) of decision VII/8b. Underlining the deadline of 1 July 2022 set for the Party concerned by the Meeting of the Parties, the Committee requests the Party concerned to complete its review and provide it to the Committee as a matter of urgency.

³² Email to the Party concerned providing summary of Committee's concerns on plan of action, 7 December 2022, p. 1.

99. While welcoming the capacity-building programmes and trainings developed and provided to date, the Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements in paragraph 2 (d) of decision VII/8b either.

100. The Committee reminds the Party concerned that all measures necessary to implement decision VII/8b must be completed, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VII/8b.
