
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 V/9b
on compliance by Austria with its
obligations under the Convention**

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I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), 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 V/9b on compliance by Austria with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up action with decision V/9b

2. By letter of 28 November 2014, the Committee sent a reminder to the Party concerned of the request by the Meeting of the Parties to provide its first detailed progress report to the Committee by 31 December 2014 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9b.

3. The Party concerned provided its first progress report on the implementation of decision V/9b on 22 December 2014.

4. At the Committee's request, on 2 January 2015 the secretariat forwarded the Party concerned's first progress report to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63, inviting them to provide their comments on that report by 23 January 2015. The communicant of communication ACCC/C/2011/63 provided comments on 19 January 2015 and the communicant of communication ACCC/C/2010/48 provided comments on 23 January 2015.

Party concerned's first progress report

5. In its first progress report, the Party concerned reported that a discussion process had been started. In 2009, a study on possible options to improve access to justice in the Party's environmental legislation had been conducted. Also, meetings and workshops involving different stakeholders including environmental NGOs had taken place to discuss the implementation of the Convention. In June 2014, an expert hearing was held at the Environment Committee of the National Assembly on access to justice. The Minister of the Environment at the federal level had announced the intention to seek possibilities to improve access to justice for environmental NGOs in areas under the competence of the Ministry of Environment. In addition, in June 2014 the Conference of Government members of the Provinces responsible for environmental issues decided to set up a working group between the Ministry of the Environment and the nine Provinces in order to explore ways to further implement the third pillar of the Convention and to ensure a common approach. The group had to date met twice.

6. With regard to the adoption of legislative measures, the Party concerned reported that at the federal level an amendment of the Environmental Information Act (Umweltinformationsgesetz UIG) was under preparation in order to respond to the Committee's concerns regarding timeliness of review procedures for access to information. Corresponding amendments were also being considered at the provincial level. In addition, in the areas of water and waste management, changes to the relevant environmental laws with regard to remedies especially for environmental NGOs were under consideration and at the level of the Provinces consideration was also being given to changes to the laws in the area of nature protection. The Party concerned stated that in the course of 2015 it should be clear which steps would be taken to further implement the third pillar of the Convention with respect to the relevant environmental laws.

Comments from communicant of communication ACCC/C/2010/48

7. In its comment on the Party concerned's progress, the communicant of communication ACCC/C/2010/48 (Oekobuero) acknowledged that there had been progress in the political discussions regarding access to justice in the Party concerned and the topic had moved to a higher political level. The communicant appreciated the new Minister of the Environment's declaration that he aimed to implement the Meeting of the Parties' recommendations. The communicant also appreciated that it had been given an opportunity to comment on the Party concerned's first draft progress report before it was submitted. However, the communicant stressed that no relevant legislative measures had yet been taken to address either decision V/9b or the Committee's findings on communication ACCC/C/2010/48. While the first drafts of proposed legislation was expected in the coming months, that timeframe was not assured. In addition, while the Party concerned's progress report referred to planned legislative measures regarding water, waste, nature protection and environmental information, other sectors like air quality, land use planning, noise, road and rail permitting, SEA, industrial permitting or criminal law were not being considered at all. In practice, NGOs were still banned from any environment-related procedures outside environmental impact assessment and integrated pollution prevention and control procedures.

8. Against this background and bearing in mind that three years had passed since the findings on communication ACCC/C/2010/48 were adopted, the communicant requested the Committee to thoroughly monitor whether the announced legislative measures were taken and to strengthen the reporting requirements with more specific questions and deadlines. It also asked the Committee to send a delegation to the Party concerned to raise awareness of the obligations under the Convention, in particular by decision-makers outside the Ministry of Environment, such as the Ministry of Economics, Ministry of Justice and representatives of the provinces and other stakeholders, especially those opposed to enhancing access rights.

Comments from communicant of communication ACCC/C/2011/63

9. In its comments on the Party concerned's progress, the communicant of communication ACCC/C/2011/63 (Vier Pfoten – Stiftung für Tierschutz gemeinnützige Privatstiftung) highlighted that the measures envisaged to be taken by the Party concerned would not apply to cases concerning wildlife, endangered species or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It also stressed that since the draft findings on communication ACCC/C/2010/48 were adopted, the Party concerned had released over 2,600 Publications of Federal Laws (Bundesgesetzblätter) implementing at least that many laws and amendments. Moreover since the draft findings were agreed in November 2011, the Environmental Impact Assessment Act had been amended five times; the Waste Management Act four times; the Code of Criminal Procedures fourteen times; the Administrative Penal Act three times and the Animal Welfare Act two times. However, the Party concerned had failed to take up these opportunities to implement the Committee's findings and recommendations. The communicant submitted that the Party concerned had made just one legislative change to comply with those findings, an amendment to the Environmental Information Act (section 8(2)). However, that amendment did not comply with the recommendation set out in paragraph 3(a)(i) of decision V/9b since in order to file an application to challenge an information request refusal, the requester still had to specifically request an "official notification" of that refusal, a process which could take up to six months. Moreover, members of the public were still barred from access to justice in environmental proceedings, especially concerning wildlife, endangered species of CITES.

10. At its forty-eighth meeting (Geneva, 24-27 March 2015), the Committee reviewed the implementation of decision V/9b in open session, taking into account the comments

received from the communicants and from the observers present. Following the discussion in open session, the Committee commenced the preparation of its first progress review on the implementation of decision V/9b in closed session. The Committee adopted its first progress review at its fiftieth meeting (Geneva, 6-9 October 2015) and instructed the secretariat to thereafter send it to the Party concerned and 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 the decision V/9b, the Party concerned would need to provide the Committee with evidence that:

(a) It has taken the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(i) The procedure for having a refusal of a request for information reviewed is simplified for the requester. This could preferably be done by requiring any written refusal of a request for information to have the legal status of an “official notification” and that any such refusal is to be made as soon as possible, and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request;

(ii) The available review procedures for persons who consider that their request for information under article 4 has been ignored, wrongfully refused or inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, are timely and expeditious;

(iii) Criteria for NGO standing to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention be 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) It has developed a capacity-building programme and provided training on the implementation of the Convention for federal and provincial authorities responsible for issues related to the Convention, and for judges, prosecutors and lawyers;

(c) 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.

12. The Committee welcomes the first progress report of the Party concerned, which was submitted on time, and the information contained therein.

13. The Committee also welcomes the steps taken by the Party concerned to date in that direction, although it expresses its serious concern that the Party concerned has neither adopted any necessary legislation or made available to the public any legislative proposal despite the fact that more than three years have passed from the adoption of the Committee’s recommendations were adopted in communication ACCC/C/2009/48.

14. With respect to the recommendations set out in paragraphs 3(a)(i) and (ii) of decision V/9b, the Committee welcomes the information provided by the Party concerned

that an amendment of the Environmental Information Act (Umweltinformationsgesetz UIG) was under preparation in order to respond to the Committee's concerns regarding the timeliness of review procedures for access to information. The Committee, however, expresses its concern at the slow progress by the Party concerned on this recommendation, giving that the Committee's findings and recommendations on this point, which recommendations were adopted with the Party's agreement, were adopted more than three years ago.

15. The Committee invites the Party concerned, together with its second progress report due on 31 October 2015 or otherwise by 31 December 2015, to provide the text of the proposed amendment to the Environmental Information Act, together with an English translation thereof. If the amendment is not by then adopted, the Committee invites the Party concerned to provide a timeline for its adoption also.

16. Regarding the recommendation set out in paragraph 3(a)(iii) of decision V/9b, the Committee welcomes the information provided by the Party concerned that changes to laws in the areas of water and waste management were under consideration with regard to remedies, inter alia, for environmental NGOs and, at the level of the Provinces, consideration was also being given to changes to the laws in the area of nature protection. The Committee, however, clarifies that the recommendation set out in paragraph 3(a)(iii) of decision V/9b applies not only to the areas of water, waste management and nature protection, but to the Party concerned's law relating to the environment across all sectors including, but not limited to, air quality, land use planning, noise, road and rail permitting, SEA, industrial permitting and environmental criminal law.

17. The Committee notes that the Party concerned stated that in the course of 2015 it should be clear which legislative steps would be taken to further implement the third pillar of the Convention. The Committee thus invites the Party concerned, together with its second progress report due on 31 October 2015 or otherwise by 31 December 2015, to provide the Committee with the drafts of any legislative or other measures aimed at implementing paragraph 3(a) of decision V/9b available at that time, together with English translations thereof, or with summaries of the substantive contents of such drafts. The Committee also invites the Party concerned to submit with its second report or otherwise by 31 December 2015 a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed legislative measures.

18. In relation to the recommendation set out in paragraph 3(b) of decision V/9b, the Committee welcomes the information provided by the Party concerned regarding the meetings and workshops with different stakeholders held to discuss the implementation of the Convention, the expert hearing in June 2014 and the working group between the Austrian Environment Ministry and the nine Provinces. It appears, however, that the primary objective of these initiatives was not capacity-building or training but rather to consider how to better implement the third pillar of the Convention. The Committee thus invites the Party concerned, together with its second progress report or otherwise by 31 December 2015, to provide a plan of action, including timeline, for the capacity-building programme and training recommended in paragraph 3(b) of decision V/9b for federal and provincial authorities responsible for Aarhus-related issues, and for judges, prosecutors and lawyers.

19. With respect to the recommendation set out in paragraph 6 of decision V/9b, the Committee notes that the Party concerned does not report on any current legislative proposals being prepared to address this recommendation. The Committee thus invites the Party concerned, together with its second progress report or otherwise by 31 December 2015, to provide the drafts of any legislative or other measures aimed at implementing paragraph 3(c) of decision V/9b available at that time, together with English translations thereof, or with summaries of the substantive contents of such drafts. The Committee also

invites the Party concerned to submit with its second report or otherwise by 31 December 2015 a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed legislative measures.

IV. Conclusions

20. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9b, but welcomes the initial steps taken by the Party concerned to date in that direction. The Committee, however, expresses its concern at the slow progress by the Party concerned to address the recommendations set out in paragraph 3(a) and (b) in particular, giving that those recommendations were adopted with the Party's agreement more than three years ago.

21. The Committee invites the Party concerned to provide, together with its second progress report or otherwise by 31 December 2015:

(a) With respect to the recommendations set out in paragraphs 3(a)(i) and (ii) of decision V/9b, the text of the proposed amendment to the Environmental Information Act, together with an English translation thereof. If the amendment is not by then adopted, the Committee recommends that the Party concerned also provides a timeline for its adoption;

(b) Regarding the recommendation set out in paragraph 3(a)(iii) of decision V/9b, the drafts of any legislative or other measures aimed at implementing the requirements of that paragraph available at that time, together with English translations thereof, or with summaries of the substantive contents of such drafts. The Committee also invites the Party concerned to submit with its second report or otherwise by 31 December 2015 a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed legislative measures;

(c) In relation to the recommendation set out in paragraph 3(b) of decision V/9b, a plan of action, including timeline, for the capacity-building programme and training recommended in that paragraph for federal and provincial authorities responsible for Aarhus-related issues, and for judges, prosecutors and lawyers;

(d) With respect to the recommendation set out in paragraph 6 of decision V/9b, the drafts of any legislative or other measures aimed at implementing the requirements of that paragraph available at that time, together with English translations thereof, or with summaries of the substantive contents of such drafts. The Committee also invites the Party concerned to submit with its second report or otherwise by 31 December 2015 a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed legislative measures.

22. The Committee reminds the Party concerned that the Meeting of the Parties have undertaken to review decision V/9b at its sixth session.

23. The Meeting of the Parties at its sixth session may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention in accordance with paragraph 37 of Decision I/7. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to the Party concerned regarding the implementation of the Convention;
 - (b) Make recommendations to the Party concerned;
 - (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
 - (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
 - (e) Issue declarations of non-compliance;
 - (f) Issue cautions;
 - (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
 - (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.
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