

**Decision VI/8b on compliance by Austria with its obligations under the Aarhus Convention,  
second progress report on behalf of Austria**

By decision VI/8b the Meeting of the Parties (MoP) reaffirmed its decision V/9b on compliance by Austria with its obligations under the Convention. In accordance with paragraph 3 (e) of decision VI/8b Austria is requested to provide the Committee by 1 October 2019 with the second progress report on the measures that have been taken and results achieved to implement the recommendations set out in paragraphs 3 (a) - (d) of decision VI/8b.

The Aarhus Convention Compliance Committee (ACCC) submitted its first progress review of the implementation of decision VI/8b on compliance by Austria ahead of the 63<sup>rd</sup> ACCC meeting in March 2019. Austria attended the Committee's open session via audioconference when reviewing decision VI/8b and submitted a written statement thereafter.

With regard to paragraphs 3 (a), (b) and (e) of decision VI/8b Austria has previously – with the first progress report last year – informed about national discussion processes on the implementation of the so called “third pillar” of the Aarhus Convention and especially on ongoing legislative procedures.

At federal level, Austria has adopted the so called “*Aarhus-Beteiligungsgesetz 2018*” (Aarhus Participation Act) a law which aim is to improve access to justice in environmental matters for environmental organisations and individuals in the areas of waste, water and air quality. The Aarhus Participation Act was published in the Federal Law Gazette on 22 November 2018 and entered into force the day after its publication.<sup>1</sup> The Act covers the most predominant and comprehensive areas of environmental law with the aim to ensure effective implementation of environmental law. Environmental organisations and, where relevant directly affected individuals, are granted legal review before the national administrative courts in the event of a breach of environmental law. The law amends the corresponding environmental laws at federal level, the Waste Management Act (*Abfallwirtschaftsgesetz 2000*), the Water Right Act (*Wasserrechtsgesetz 1959*) and the Air Pollution Control Act (*Immissionsschutzgesetz-Luft*). On air quality, provisions

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<sup>1</sup> see BGBl. I Nr. 73/2018 <https://www.ris.bka.gv.at/eli/bgbl/i/2018/73>

on access to justice are also part of a recast of the National Air Emissions Act (Emissionsgesetz-Luft 2018).<sup>2</sup>

At provincial level, several Provinces (Bundesländer) have already passed laws amending their corresponding legislation concerning nature protection and the protection of species as well as their laws on hunting and fishing:

The Province of Lower Austria has passed the „*Landesgesetz, mit dem das NÖ Naturschutzgesetz 2000 und das NÖ Jagdgesetz 1974 geändert werden*“<sup>3</sup>, which covers the areas of nature protection and hunting and which entered into force on 22 March 2019.

The Province of Upper Austria has passed the „*Landesgesetz, mit dem das Oö. Natur- und Landschaftsschutzgesetz 2001, das Oö. Nationalparkgesetz und das Oö. Umwelthaftungsgesetz geändert werden (Oö. Natur- und Landschaftsschutzrechtsnovelle 2019)*“, which covers the areas of nature and landscape protection and national parks and which entered into force on 1 August 2019.<sup>4</sup> Draft legislative proposals amending the fishing and hunting law („*Oö. Fischereigesetz 2019*“ and amendment to the „*Oö. Jagdgesetz*“) will be adopted by the Provincial Parliament (*Landtag*) by the end of this year.

The Province of Vorarlberg has passed the „*Gesetz über Beteiligung im Naturschutz-, Jagd- und Fischereirecht (Aarhus-Beteiligungsgesetz) – Sammelnovelle*“<sup>5</sup>, which covers the areas of nature protection, hunting and fishing and which entered into force on 4 September 2019.

With regard to the Province of Styria the law amending the „*Gesetz über Einrichtungen zum Schutz der Umwelt (StESUG)*“, which refers to the areas of nature protection, hunting and fishing, was adopted by the Provincial Parliament on 17 September 2019.

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<sup>2</sup> see BGBl. I Nr. 75/2018 <https://www.ris.bka.gv.at/eli/bgbl/I/2018/75>

<sup>3</sup> see LGBl. Nr. 26/2019 <https://www.ris.bka.gv.at/eli/lgb/NI/2019/26/20190321>

<sup>4</sup> see LGBl. Nr. 54/2019 <https://www.ris.bka.gv.at/eli/lgb/OB/2019/54/20190718>

<sup>5</sup> see LGBl. Nr. 67/2019 <https://ris.bka.gv.at/eli/lgb/VO/2019/67/20190903?ResultFunctionToken=b4388bcf-1c26-4d32-9497-ded5afd9ee0e&Position=1&Abfrage=LgblAuth&Titel=&Lgblnummer=&SucheNachGesetzen=False&SucheNachKundmachungen=False&SucheNachVerordnungen=False&SucheNachSonstiges=False&VonDatum=01.01.2015&BisDatum=12.09.2019&BundeslandFilter=Vorarlberg&Bundesland=Vorarlberg&BundeslandDefault=Vorarlberg&ImRisSeitVonDatum=01.01.2015&ImRisSeitBisDatum=12.09.2019&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=Aarhus+beteiligungsgesetz>

The remaining Provinces have sent out for public consultation draft laws amending their corresponding legislation during this summer:

Concerning the Province of Burgenland the *“Entwurf eines Gesetzes über die Anpassung der Burgenländischen Rechtsordnung an die Aarhus-Konvention (Burgenländisches Aarhus-Beteiligungsgesetz)”*, which adapts the relevant provincial law to the Aarhus Convention, has been submitted and will be adopted by the Provincial Parliament in October 2019.

For the Province of Kärnten the *“Entwurf eines Gesetzes, mit dem das Kärntner Fischereigesetz, das Kärntner Gentechnik-Vorsorgegesetz, das Kärntner IPPC-Anlagengesetz, das Kärntner Jagdgesetz 2000, das Kärntner Landes-Pflanzenschutzmittelgesetz und das Kärntner Naturschutzgesetz 2002 geändert werden (Kärntner Aarhus- und Umwelthaftungs-Anpassungsgesetz)”*, which covers the area of nature protection and hunting and adapts the relevant provincial law to the Aarhus Convention, will be adopted by the Provincial Parliament in autumn this year.

With regard to the Province of Salzburg the *“Entwurf eines Gesetzes, mit dem das Salzburger Naturschutzgesetz 1999, das Salzburger Nationalparkgesetz 2014, das Jagdgesetz 1993 und das Fischereigesetz 2002 geändert werden (Sbg. Aarhus-Beteiligungsgesetz 2019)”*, which covers the areas of nature protection, national parks, hunting and fishing, has been sent out for public consultation until September 2019. It is expected that the Provincial Parliament will adopt the law in November 2019.

The Province of the Tyrol has sent out the *„Entwurf eines Gesetzes, mit dem das Tiroler Naturschutzgesetz 2005, das Tiroler Jagdgesetz 2004 und das Tiroler Fischereigesetz 2002 geändert werden (Tiroler Aarhus-Beteiligungsgesetz 2019)”*, which covers the areas of nature protection, hunting and fishing, for public consultation until the beginning of September 2019.

In view of the above, it is envisaged that almost all Provinces will have finalized the implementation concerning their legislation by the end of this year.

With regard to paragraph 3 (d) of decision VI/8b on developing a capacity-building programme and training for judges, prosecutors and lawyers Austria has already provided information in the

progress report 2018 referring to the project *KOMM-Recht Reloaded* as well as a special seminar on the Aarhus Convention organised for judges. The Federal Ministry for Sustainability and Tourism is sharing information and experience on the implementation of the Aarhus Convention with other relevant Ministries and the Provinces on a regular basis. However, it follows from the principle of the separation of powers according to the Austria Constitution that the administration has no means to impose capacity building or training for judges since the executive powers are separated from the judiciary. At European level, the European Commission services, DG Environment, has organised an ad hoc meeting of national judges on Article 267 TFEU in relation to access to justice in environmental matters in January 2019. Austria has attended this meeting which was held in relation to the compliance case ACCC/C/2008/32.<sup>6</sup>

During the open session on 14 March 2019 the Chair of the ACCC requested Austria to provide recent information on the application of Article 19 of the EIA Act as amended in 2018<sup>7</sup>:

The amendment of the EIA Act was adopted by the Austrian Parliament in late autumn 2018 and entered into force at the beginning of December 2018. In the final phase of the parliamentary deliberations the amendment of Article 19 concerning additional requirements for environmental organisations to be recognized was introduced and adopted. The political parties represented in the Austrian Parliament (National Council) proposing the amendment did consider that environmental organisations are granted considerable rights on access to justice with regard to the Aarhus Participation Act and therefore only active environmental organisations with a certain number of members should have legal standing. The Parliament based its amendment on the judgement of the European Court of Justice in case no. C-263/08 *Djurgarden* where the Court ruled out that a limitation of 2000 members of environmental organisations was not admissible. Thus, a requirement of 100 members was considered as feasible by the Austrian legislators (cf. Article 19 (6) of the EIA Act). A federation of environmental organisations will obtain recognition as well if it comprises of at least five member associations which reach together the minimum number required for five recognised environmental organisations.

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<sup>6</sup> see the report of this meeting in the annex

<sup>7</sup> Federal Act on Environmental Impact Assessment (Environmental Impact Assessment Act 2000 - EIA Act 2000) as amended by Federal Law Gazette I No. 80/201; see an English courtesy translation of the Articles in question annexed to the statement

For the time being, examination procedures have been started on the recognition of existing environmental organisations in Austria. According to the amendment, environmental organisations - which have already been recognised by 1 December 2018 for more than three years - shall submit documents for renewal of their recognition by 1 December 2019 at the latest. The recognition has to be renewed every three years. Furthermore, Article 46 (28) pt. 5 of the EIA Act states that even if the review of a recognised environmental organisation shows that the criteria are no longer met, locus standi or the entitlement to complain shall be retained for pending procedures - in those procedures in which the environmental organisation has already obtained locus standi or the entitlement to lodge a complaint.

The Ministry for Sustainability and Tourism has already received several applications for review of the recognition and so far no renewal of the recognition was denied. Until September 2019 the recognition of eight existing environmental organisations was renewed. The Ministry did not envisage any obstacles on the renewals of the recognition so far and it is not expected that there will be any concerns or problems arising with regard to the further recognition of already existing environmental organisations. The recognition process does not require that the organisations hand in lists of members, but the respective number according to Article 19 (6) of the EIA Act has to be made credible, for example by certification of a notary or an independent auditor.

Furthermore, the Chair of the ACCC asked Austria during the open session to refer in the second progress report to further environmental legislation at federal level such as chemicals:

The chemicals legislation in Austria is based on EU-wide harmonised legislation (esp. REACH Regulation and CLP "Classification, Labelling and Packaging" Regulation). The Austrian Chemicals Act ("*Chemikaliengesetz 1996*"<sup>8</sup>) implements the EU chemicals legislation especially with a focus on the placing on the market of "products" (i.e. substances and mixtures of products). The competent authority for the registration, authorisation of chemicals and the determination of restriction measures as well as for their harmonised classification and labelling is solely the European Commission in cooperation with the European Chemicals Agency (ECHA). Therefore, the involvement and participation of the public is addressed by the Aarhus Regulation (EC) No. 1367/2006 at European level. However, in Austria, for many years, a REACH platform –

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<sup>8</sup> Bundesgesetz über den Schutz des Menschen und der Umwelt vor Chemikalien (Chemikaliengesetz 1996 – ChemG 1996), BGBl. I Nr. 53/1997, last amended by BGBl. I Nr. 44/2018

*“Österreichische REACH-Plattform” (ÖRP)* – has been established by the Federal Ministry for Sustainability and Tourism. The platform meets on a regular basis twice a year and its aim is to provide information on recent developments in the field of EU chemicals regulations to the interested public and to stakeholders including environmental organisations. Also, in cooperation with the Austrian Environment Agency and the Austrian Economic Chamber a REACH Helpdesk<sup>9</sup> has been created where every person can address questions on chemicals legislation. As part of that cooperation, a series of workshops are organised every year by the Environment Agency on specific matters of chemical laws.

In conclusion, Austria underlines the commitment to improve compliance with the Aarhus Convention and will inform the Aarhus Convention Compliance Committee on the outcome of the legislative procedures at provincial level as described above.

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<sup>9</sup> see <https://www.reachhelpdesk.at>