

ACCC first progress review of the implementation of decision VI/8b on compliance by Austria

Statement by Austria

With regard to the amendment of the **EIA Act**, especially its Article 19, we would like to state that the Act has been adopted by the Austrian Parliament in late autumn and has entered into force just at the beginning of December 2018. In the final phase of the parliamentary deliberations the amendment of Article 19 concerning additional requirements for environmental NGOs to be recognized was introduced and adopted. This the reason why the progress report prepared in early autumn and submitted by Austria at the beginning of October could not take these developments into account. Strictly speaking, the EIA Act was not part of the communications which lead to the Austrian compliance decisions but we are of course willing to explain the background and the meaning of this amendment.

The political parties represented in the Austrian Parliament (National Council) did consider that NGOs are granted considerable rights on access to justice with regard to the Aarhus Participation Act and therefore only the bigger and more important NGOs should have legal standing. The Parliament based its amendment on the ECJ judgement *Djurgården* where the Court ruled out that a limitation of 2000 members of NGO was not admissible. Thus, a limitation of 100 members was considered as feasible. For the time being, examination procedures have been started on the recognition of existing NGOs in Austria; according to the amendment the recognition has to be renewed every 3 years. The Ministry has already received applications and so far no renewal of the recognition was denied. We do not expect any problems with regard to the recognition of already existing NGOs. There is also no requirement for handing in lists of members, the respective number has to be made credible, for example by certification of a notary.

On the scope of the **Aarhus Participation Act** we would like to state that the Act covers the most predominant and comprehensive areas of environmental law which are waste, water and air quality. The laws on nature protection will follow but this lies in the competence of the Provinces.

So far, the Province of Lower Austria has already adopted an amendment to its nature protection and hunting law by the end of January 2019. According to our information, the amendment will be published in March. The provinces of Upper Austria and Styria have already published draft laws amending their corresponding legislation and it is expected that the laws will enter into force before summer or even earlier. The other Provinces have started with the preparations of draft laws and Austria will be prepared to give more information on that in its

second progress report due in October this year. In preparation of that, the Ministry will again invite representatives of the provinces to a further meeting of the dedicated working group on Aarhus implementation in spring.

On the question of suspensive effects of complaints of NGOs the general rule of section 64 of AVG is as well valid for complaints under the new act. Only in the transitional provisions of the Waste Act (section 78c) and the Water Rights Act (section 145 para 16) there are special provisions for decisions that already came into legal effect during the year before the law was enacted. In these cases suspensive effect may be granted under certain conditions.

On **capacity building** we as Ministry have been in contact with the competent Ministry of Justice and the Academy for Administrative Courts with regard to training and providing materials on the Aarhus Convention. However, it has to be said that the administration has no means to impose capacity building or training of judges since the executive powers are separated from the judiciary. We have no influence on any educational programme of judges this because of the independency of the judiciary. The only thing we can do is to encourage and provide the institutions such as universities who organise such programmes with materials and information. This we have done in the past already but the Ministry has no legal power at all to set up a formal programme or training for the judiciary in Austria.

We also informed judges on trainings and programmes provided by the EU during the last years and Austrian judges participated in these programmes.