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Part I

73. Federal Law: Aarhus Participation Act 2018 (“Aarhus-Beteiligungsgesetz 2018”)
(No: GP XXVI RV 270 AB 279 p. 45. BR: 10031 AB 10037 p. 885.)
[CELEX No: 32008L0098]

73. Federal Law amending the Waste Management Act 2002, the Air Pollution Control Act and the Water Act 1959) (Aarhus Participation Act 2018)

The National Council has resolved:

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Article 1

Amendment to the Waste Management Act 2002

The (Austrian) Waste Management Act 2002 (“Abfallwirtschaftsgesetz 2002”, abbr. “AWG 2002”), Federal Law Gazette I No 102/2002, last amended by federal act Federal Law Gazette I No 44/2018, shall be amended as follows:

1. *In the table of contents the following item shall be inserted after the entry relating to § 40:*
“40a. Information in the case of other treatment plants”
2. *In the table of contents the entry relating to § 42 shall read:*
“§ 42. Party status and subsequent right of verification”
3. *In the table of contents the following item shall be inserted after the entry relating to § 78b:*
“§ 78c. Transitional Provision Aarhus Participation Act”
4. *In the introductory part of § 37 para. 3 the wording “or Seveso establishments” shall be inserted after the wording “IPPC treatment plants”.*
5. *In § 37 para. 4 number 4 the wording “that could have a negative impact on man or the environment” shall be replaced by the wording “in respect of the methods to be applied and the safety measures”.*
6. *The following sentence shall be added to § 37 para. 5:*
“For measures as set out in paragraph 1, paragraph 3 or paragraph 4 the applicant may apply for a permit pursuant to paragraph 1 with public participation pursuant to § 42 para. 1.”
7. *In § 40 para. 1b second sentence the wording “on the authority’s website” shall be inserted after the word “form”; the following sentences shall be added to paragraph 1b: “After the expiry of a period of two weeks following this announcement the official notice shall be deemed delivered also vis-à-vis those environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 (“Umweltverträglichkeitsprüfungsgesetz 2000”, abbr. “UVP-G 2000”) that did not or not timely participate in the procedure (§§ 42 and 44a, in connection with § 44b of the General Administrative Procedure Act) and that therefore have not obtained party status. As from the day of announcement on the internet, environmental organisations which demonstrate that they have a right to lodge complaints shall be granted inspection of the administrative act. This provision*

shall be applied to applications and official notices as set out in § 37 para. 1 concerning the permit for or significant modifications to Seveso establishments accordingly.”

8. After § 40 the following § 40a, including headline, shall be inserted:

“Information in the case of Other Treatment Plants

§ 40a. (1) In the case of official notices pursuant to § 37 para. 1 which are not subject to the obligation of public participation as set out in § 40

1. the name of the applicant, location, name of the project, and a brief description of the project as well as
2. the date of announcement and information on legal protection

shall be published on the authority’s website and on the website edm.gv.at and shall be available there for download for six weeks. As of the expiry of a period of two weeks following announcement on the authority’s website the official notice shall be deemed delivered vis-à-vis environmental organisations entitled to take action pursuant to § 42 para. 3. As from the day of announcement on the authority’s website, an environmental organisation which has been recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 and which demonstrates that it has a right of action shall be granted inspection of the administrative act.

(2) Paragraph 1 shall not apply to official notices pursuant to § 37 para. 1 concerning excavated soil landfills.”

9. The following wording shall be added to the headline of § 42:

“and subsequent right of appeal”

10. § 42 paragraph 1 number 13 shall read as follows:

“13. environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000, in their respective area of recognition, in procedures concerning IPPC treatment plants or Seveso establishments, if and to the extent they raised written complaints during the period for public inspection pursuant to § 40; the environmental organisations are entitled to claim the observance of environmental provisions in the procedure and to resort to remedies,”

11. In § 42 the following paragraph 1a shall be inserted after paragraph 1:

“(1a) If, in the complaint of an environmental organisation recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000, objections to or reasons relating to the official notice concerning the approval of an IPPC treatment plant or a Seveso establishment are raised for the first time, these shall be permissible only if the complaint gives reasons why it has not been possible to raise them already during the objection period in the application procedure and if the complainant demonstrates that the fact that he failed to raise the objections during the objection period is not or only to a minor degree his fault. In cases where this cannot be demonstrated for any of the reasons of complaint, the complaint shall be rejected as being inadmissible; where, however, reasons are concerned only partly, the relevant issues of the complaint shall not be addressed.”

12. The following paragraph 3 shall be added to § 42:

“(3) environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall, in their respective geographical area of recognition, have the right to resort to a remedy because of illegality due to violation of environmental protection provisions set under Union law.”

13. The following § 78c and its heading shall be inserted after § 78b:

“Transitional Provisions Aarhus Participation Act

§ 78c. (1) In the case of official notices pursuant to § 37 para. 1, with the exception of those concerning excavated soil landfills that have not undergone the procedure of public participation as set out in § 40 and which have become *res iudicata*

1. within a period of one year before the announcement of federal act Federal Law Gazette I No 73/2018, or
2. which, though having been adopted, have not yet become *res iudicata* before the end of the day of the announcement of the above-mentioned federal law,

§ 40a paragraph 1 shall apply accordingly.

(2) Environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall, in their respective geographical area of recognition, have the right to resort to a remedy because of illegality due to violation of environmental protection provisions set under Union law. Complaints filed against official notices pursuant to paragraph 1 number 1 shall not have any suspensive effect.
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effect. However, upon application of the complaining environmental organisation the authority shall, by official notice, grant the suspensive effect if, after consideration of the affected public interests and interests of other parties, the exercise of the right granted through the contested notice would lead to disproportionate disadvantage for the environment. The complaint filed against an official notice by which the suspensive effect has been granted has no suspensive effect.

(3) A procedure pending after the day following the announcement of federal act Federal Law Gazette I No 73/2018 due to the complaint filed by an environmental organisation recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall be continued even if the official notice to which the lodging of the complaint relates has become *res iudicata* more than one year before the day of the announcement of federal act Federal Law Gazette I No 73/2018.”

14. The following paragraph 37 shall be added to § 91:

“(37) The table of contents, § 37 paragraphs 3 through 5, § 40 para. 1b, § 40a including headline, the headline of § 42, § 42 paragraphs 1, 1a and 3, and § 78c including headline as amended in federal act Federal Law Gazette I No 73/2018 shall enter into force on the first day following announcement.”

Article 2

Amendment to the Air Pollution Control Act

The (Austrian) Federal Law on the Control of Air Pollution caused by Air Pollutants (Air Pollution Control Act, “Immissionsschutzgesetz - Luft”), Federal Law Gazette I No 115/1997, last amended by federal act Federal Law Gazette I No 58/2017 and federal act Federal Law Gazette I No 164/2017, is amended as follows:

1. In Article I § 9a para. 1 the wording “A draft of the programme shall at the latest” shall be replaced by the wording “A draft of the programme as well as the studies and fundamentals underlying its establishment shall at the latest”.

2. The following paragraph 1a shall be added after Article I § 9a para. 1:

“(1a) Within a period of eight weeks following the announcement of the programme pursuant to paragraph 8, natural persons directly concerned by the exceedance of a limit value pursuant to paragraph 1 as well as environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000, Federal Law Gazette No 597/1993 as amended, within their relevant geographical scope of recognition, may file a reasoned application for examination of the programme with respect to the appropriateness of the measures it sets out in their entirety, to ensure compliance with the limit values pursuant to paragraph 1 as soon as possible, with the Provincial Governor. The Provincial Governor shall decide on this application by way of official notice.”

3. Article I § 9a para. 6 shall read:

“(6) The programme shall be evaluated and, if necessary, revised every three years following its announcement in particular as regards its effectiveness to achieve the objectives of this Federal Act. The evaluation report as well as, if applicable, the draft of the revised programme and the studies and fundamentals underlying its establishment and, if provided by the draft, measures pursuant to Section 4 to be imposed by ordinance pursuant to § 10, and also the draft for this ordinance, shall be published on the Province’s website no later than one year after the start of the evaluation. Any person may comment on the draft of the revised programme within a period of six weeks. Federal ministers affected in their sphere of competence as well as legally established representations of interest shall be informed about the publication of the draft and the opportunity to comment on it. Paragraph 1a shall apply *mutatis mutandis* subject to the proviso that the application has to be filed within a period of eight weeks following the announcement of the revised programme. The revised programme shall be published on the Province’s website 18 months following the start of the evaluation at the latest.”

4. In Article I § 9a para. 7 the wording “and to evaluate as well as to decide by way of official notices pursuant to paragraphs 1a and 11” shall be inserted before the full stop.

5. Article I § 9a para. 9 is deleted.

6. The following paragraphs 11 through 13 shall be added to Article I § 9a:

“(11) Natural persons directly concerned by the exceedance of a limit value pursuant to paragraph 1 as well as environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000, in their respective geographical scope of recognition

may file a reasoned application for the establishment of a programme pursuant to paragraph 1 or, if a programme has already been established, an application for its revision pursuant to paragraph 6 or for an order of measures provided for on the basis of Section 4 pursuant to § 10, with the Provincial Governor. If the requirements for the establishment or revision of the programme pursuant to paragraph 1 or paragraph 6 are met, the Provincial Governor shall start the establishment or revision without further delay. Measures pursuant to Section 4 shall be ordered by ordinance pursuant to § 10 or the Provincial Governor shall determine by way of official notice that the measures applied for are in particular with consideration of the principles for the achievement of the objectives of this Federal Act (§ 1 para. 1) pursuant to § 9b not necessary. If the requirements for the establishment or revision of the programme pursuant to paragraph 1 or paragraph 6 are not met, the Provincial Governor shall decide by way of an official notice stating that the legal requirements are not met.

(12) Natural persons directly concerned by the exceedance of a limit value pursuant to paragraph 1 as well as environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 in their respective geographical scope of recognition shall be entitled to file a complaint against official notices pursuant to paragraph 1a or paragraph 11, with the Provincial Administrative Court.

(13) When filing an application pursuant to paragraph 1a or paragraph 11 or when lodging a complaint pursuant to paragraph 12, natural persons shall demonstrate that they are directly concerned. A person is directly concerned if its health may be endangered as a result of the exceedance of a limit value. Environmental organisations shall append information and data supporting their recognition pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000. The application or the complaint shall establish in a clearly and well-argued fashion why the requirements for the establishment or the revision of a programme are met or why, in their entirety, the measures provided for in the programme appear to be inappropriate to ensure compliance with the limit values pursuant to paragraph 1 as soon as possible.”

7. In Article I § 14 para. 2 the last sentence is deleted.

8. The following paragraph 2a shall be inserted after Article I § 14 para. 2:

“(2a) Speed limits shall not apply to

1. emergency vehicles pursuant to § 2 para. 1 number 25 of the Austrian Highway Code 1960 and vehicles of the public security services in case of rides undertaken in the performance of their duties;

2. vehicles with pure electric drive or hydrogen/fuel cell technology, which are labelled pursuant to § 49 para. 4 number 5 of the Austrian Motor Vehicles Act 1967, Federal Law Gazette No 267 and operated on motorways or expressways, provided that this is being adequately drawn attention to by information signs pursuant to the provisions of paragraph 6.

9. In Article I § 30 para. 1 the last but one sentence is deleted; in the last sentence the wording “to the amount of 90 euros” shall be replaced by the wording “to an amount of up to 90 euros”.

10. The following paragraph 9 shall be added to Article VII:

“(9) Article I § 9a paragraphs 1, 1a, 6, 7, 11, 12, and 13, § 14 paragraphs 2 and 2a as well as § 30 paragraph 1 as amended in xxxx, Federal Law Gazette I No 73/2018, shall enter into force as of the end of the day of announcement. At the same time Article I § 9a para. 9 shall cease to be effective.”

Article 3

Amendment to the Water Act 1959

The (Austrian) Water Act 1959 (“Wasserrechtsgesetz 1959”), Federal Law Gazette No 215/1959, last amended by federal act Federal Law Gazette I No 44/2018, shall be amended as follows:

1. In § 21 para. 1 last sentence the word “twelve” shall be replaced by the number “25”.

2. The following sentence shall be added to § 102 para. 2:

“Also environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall, in their respective geographical scope of recognition, be parties involved to prevent a possible infringement of the obligation set out in § 104a, in particular where significant adverse effects on the ecological, chemical and/or quantitative status and/or the environmental potential of the water bodies concerned for the purposes of § 104 para. 1 lit. b are to be expected.”

3. § 102 para. 3 shall read as follows:

“(3) Parties involved shall have the right to show their interest in the course of the procedure; on this occasion the environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall also have the opportunity to submit all statements, information, analyses or opinions they consider to be of relevance for the planned project in writing or to present them during a verbal hearing or investigation with the applicant. These shall be appropriately taken into account in the authority’s decision. However, the parties involved shall not have the right to raise objections.

4. The following paragraph 5 shall be added to § 102:

“(5) An environmental organisation recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall, in its geographical scope of recognition, be entitled to file a complaint to the Administrative Court against official notices that were adopted on the basis of this Federal Act or of other federal acts pursuant to which provisions of water law are applied, to allege a possible infringement of the obligation set out in § 104a.”

5. In § 104 para. 1, lit. b through i shall receive the indications “c)” through “j)”; after lit. a, the following lit. b shall be inserted:

“b) if and to which extent the project is expected to have impacts, in particular significant adverse effects, on the status of water bodies for the purposes of paragraph 5;”

6. The following paragraph 5 shall be added to § 104:

“(5) A project shall be deemed to be a project with significantly adverse effects on the status of water bodies if it has to be expected that the project will cause effects that counter the requirements of Article 4 of Directive 2000/60/EC or of § 30a and the following and § 104a Water Act 1959 to maintain the relevant status of water bodies or to achieve the target status and

1. with respect to a biological quality element of the ecological target status of a surface water body (§ 30a) show significantly more severe disturbances, or
2. lead to a similar disturbance of the chemical target status of a water body or of the quantitative target status of a groundwater body.”

7. In § 107 para. 1 the following sentence shall be inserted before the last sentence:

“If, in the case of projects under water law that may have a significantly adverse impact on the status of water bodies, the procedure is not continued by the setting of a date for a verbal hearing, the data required pursuant to § 41 para. 2 of the General Administrative Procedure Act shall be made available for inspection for six weeks on an electronic platform which is accessible for environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000.”

8. The following paragraph 3 shall be added to § 107:

“(3) Official notices of approval concerning projects under water law with impacts on the water status as set out in § 104a shall be made available for six weeks on an electronic platform which is accessible to environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000. After the expiry of a period of two weeks following provision on the electronic platform the official notice vis-à-vis an environmental organisation entitled to lodge a complaint (§ 102 para. 5) shall be considered delivered. As from the day of the provision on the electronic platform, environmental organisations recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall, in their geographical scope of recognition, be granted access to the relevant information relating to the compliance with the environmental goals that are available in the administrative proceedings.”

9. The following paragraph 15 shall be added to § 145:

“(15) Any party status granted to an environmental organisation recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 in a procedure not effectively concluded by the end of the day of the announcement of federal act Federal Law Gazette I No 73/2018 shall be maintained. For projects for which a notice of permit was adopted before the end of the day on which federal act Federal Law Gazette I No 73/2018 was announced but had not yet become res iudicata, the period for appeal for an environmental organisation recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall start four weeks after the day following the announcement of the said Federal Law to avoid any violation of § 104a. Official notices which have become res iudicata within one year before the day of the announcement of federal act Federal Law Gazette I 73/2018 and which are generally accessible in the collection of documents of the Water Register (“Wasserbuch”) may, within a period of six weeks after the day following the announcement of the said federal act,

be challenged by an environmental organisation recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000. Where such official notices are not generally accessible in the collection of documents of the Water Register they can be requested by a recognised environmental organisation pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 within six weeks after the day following the announcement of federal act Federal Law Gazette I No 73/2018; in this case the period for appeal to allege a possible infringement of the obligation set out in § 104a shall be four weeks after the delivery of the official notice. Any procedure with the Administrative Court pending on the day following the announcement of federal act Federal Law Gazette I No 73/2018 due to the lodging of a complaint by an environmental organisation recognised pursuant to § 19 para. 7 of the Environmental Impact Assessment Act 2000 shall be continued even in cases where the official notice to which the lodging of the complaint relates has become *res iudicata* more than one year before the day of the announcement of federal act Federal Law Gazette I No 73/2018.”

9a. The following paragraph 16 shall be added to § 145 para. 15:

“(16) Complaints pursuant to the third or fourth sentence of paragraph 15 shall not have suspensive effect. However, the authority shall, upon application by the complaining environmental organisation, have to grant the suspensive effect by official notice if, after consideration of the public interests and the interests of any other parties affected, performance of the permission granted by the official notice contested would disproportionately affect the environment, in particular the status of water bodies. The complaint against an official notice by means of which the suspensive effect has been granted has no suspensive effect.”

Van der Bellen

Kurz

