

Statements on behalf of OEKOBÜERO; ACCC meeting March 2020

11 March 2020, Decision VI/8b (Austria)

In fact, there has not been much change since ÖKOBÜRO commented on the Committee's 2nd progress report in October 2019, but we can report on two recent developments:

Formal recognition of NGOs:

By December 2019, organizations which had already been recognized for more than three years before the entry into force of the amendment to the EIA Act, had to provide prove to the Federal Ministry that they meet the criteria to be recognized, including the minimum of 100 members.

In total, 50 organisations had to submit documents proving that the criteria defined in Article 19 paragraph 6 EIA Act are met. Out of these 50 organisations, 9 did not take the effort to collect all the relevant evidence and thus lost the status as a recognized environmental organization.¹ (3 of these organisations were active on federal level, 6 only in certain provinces.) For another 3² of the 50 organisations, the procedure to be recognized is still pending, thus it is likely that they could not provide sufficient prove until now and might also loose the status to be recognised. Therefore, it can be expected that almost a quarter of the formerly recognised organisations lost or will lose their status due to the amendment to the EIA Act. This is even more than originally expected.

We should note that we consider the system which was in place before the discussed amendment to the EIA Act appropriate. This includes the requirement that an organisation at the time of its recognition must have existed for a certain period of time. The newly introduced requirements, however, especially the minimum number of 100 members and the requirement to reapply for recognition every three years is unreasonable and causes a severe burden for environmental organisations.

¹ According to interviews with some of the organisations concerned, the new requirements caused too much effort, i.e. timely resources as well as financial resources to prove the number of members by notaries or external auditors. As they were not involved in a large number of procedures in the past, they refrained from this investment.

² Note: This is the conclusion we drew on the basis of the list of recognised environmental organisations available at the website of the Federal Ministry for Agriculture, Regions and Tourism (<https://www.bmlrt.gv.at/dam/jcr:1303227e-5bca-4165-9a48-3227f72591af/20%2002%2004%20LISTE%20anerkannter%20Umweltorganisationen%20f%C3%BCr%20Internet.pdf>, 11 March 2020). According to the Party's statement during the meeting on 11 March 2020, the actual number of pending procedures is 4.

Access to justice in procedures according to the Federal Forestry Act

In December 2019, there has been a ruling of the Supreme Administrative Court³ regarding the Federal Forestry Act, which shows again the different approach of judiciary and the legislator.

The Court noted that according to the Austrian legal system, the right to access to justice is linked to granting party status. Thus, the Court granted an environmental organization status of a party in the procedure according to the Federal Forestry Act⁴ and the EU Habitats Directive⁵. This result is very welcome, as only party status can ensure effective participation and access to justice for environmental organisations.

On the other hand, this ruling again shows the legal uncertainty caused by the lack of legislative implementation of the Aarhus Convention in Austria. We therefore once more call upon Austria to fully implement the Convention in all relevant legal areas, including full party status for environmental organisations.

³ VwGH 20. December 2019, Ro 2018/10/0010.

⁴ *Forstgesetz 1975*, BGBl 440/1975, last amended by BGBl I 56/2016.

⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ABl L 1992/206, 7–50.