

Mrs. Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 348, Palais des Nations
CH-1211 Geneva 10, Switzerland

Vienna, 23 September 2013

**Re: Comments on the response by the party concerned regarding compliance case
ACCC/C/2010/48 of 10. September 2013**

Dear Mrs. Smagadi,

we would response to the submission of the Austrian government from 10 September 2013 as follows.

1. We welcome the willingness and efforts of the Austrian Aarhus focal point to initiate processes regarding this compliance case. We appreciate the respectful and open communication between the focal point and us the communicant.
2. Whereas we agree the Ministry of Environment has taken various awareness raising measures to inform federal and provincial administration departments, it is a matter of fact that no relevant legislative acts have been adopted since the adoption of the findings in December 2011, neither are there any in the pipeline. This is disappointing since almost any Austrian environmental law has been procedurally amended in the last months in the course of adapting laws to the new administrative court system on the one hand, and to transpose the industrial emissions directive of the EU on the other hand.
3. Even though all relevant stakeholders are informed about the ACCC findings neither legislators nor administrative departments responsible to develop legislative proposals feel legally obliged to act. In discussions with stakeholders the authority and competence of the ACCC is questioned. The overall understanding seems to be that the decision is not final before it was not considered by the MoP (see also second paragraph of the 10. September submission). From our knowledge this opinion is not compatible with decision I/7.
4. The continued reluctance of Austria to implement the ACCC recommendations motivated us to submit complaints to the European Commission in the subject matter. In the meanwhile the EC has opened pilot cases both on Article par 3 (regarding water and nature) and the environmental information aspects of case 48.

5. The only relevant actual legislative change was the introduction of a request to review EIA-screening decisions in the last year. This was the outcome of an EU pilot case against Austria. We appreciate this change, but have reservations with regard to the effectiveness.
6. The Austrian response of 10 September 2013 redundantly claims legislative and judicial progress regarding Article 9 par 3 (e.g. page 3, 4-7). We do not agree to the scope and relevance of respective arguments.
7. It is correct (page 6, point 3.) that the IPPC-project list was extended. However, this is the result of the Industrial Emissions Directive. Furthermore this issue falls under Article 9/2 of the Convention, and not 9/3. The course of legislative amendments could have been used to transpose Article 9/3 in the Industrial Code, Incineration Plant Act or the Waste Management Act. This did not happen. Therefore anything that falls out of Art 6 is not subject to Access to Justice.
8. Regarding EIA we are not aware of any recent significant lowering of thresholds or an increased number of EIA-procedures. According to the Austrian EIA statistics of the Austrian environmental agency there were 29 procedures initiated in 2012, 40 in 2011, 38 in 2010 and 26 in 2009. Some thresholds such as for urban development was raised from 10 to 15 hectare.
9. As to adaptations of the Constitutional framework: On page 6 the party concerned correctly states that legislators had been "enabled" to grant standing to NGOs and other entities. However, they have not done so. In addition, granting of NGO standing rights was possible as well under the former legislation as demonstrated regarding EIA, IPPC or ELD procedures.
10. Finally we do see little if any relevance of Constitutional Court decision B606/11 of 1 March 2012 since the core of the case refers to the impairment of rights doctrine in a very technical matter. If, as the party concerned points out on page 7, environmental impacts would be seen as "NGO-interests", we would have no problem with Article 9/3 in Austria. However, this is not the case.
11. The Austrian response does not refer to the findings the Committee refers to in paragraphs 78 and 79 regarding environmental information requests. Here we can confirm that on legislative level nothing as happened as well.
12. We therefore request the Committee to make a clear and precise proposal including a timetable with clear deadlines to the MoP that makes Austria following the recommendations. We also request the Committee to raise concerns towards the MoP due to the continued resistance of Austria to implement Article 9/3 and Article 4 in conjunction with Article 9/1 and 4.

Best wishes,



Thomas Alge

Director OEKOBUERO