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23 June 2010

Ms. Lieselotte FELDMANN
Federal Ministry of Agriculture, Forests, Environment and Water Management
General Environmental Policy Dept./EU affairs environment
Stubenbastei 5
A-1010 VIENNA, Austria
Fax: +43 151 522 73 01

Dear Ms. Feldmann,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Austria with provisions of the Convention in connection with access to justice in environmental matters in general (Ref. ACCC/C/2010/48)

We refer to our letter of 8 April 2010 and to your subsequent request to the Committee on 26 May and 7 July 2010 to allow for an extension of the initial deadline of 8 September 2010 for the Party concerned to address the allegations of the communication.

At its twenty-eighth meeting (15-18 June 2010), the Committee noted that on 2 June 2010, the communicant had submitted further clarification through a revised version of its communication. The Committee, after considering the possibility of an extension, invites you to address the allegations of the communication and reply to the questions annexed to this letter within the set deadline of 8 September 2010. The Committee also confirmed that it would discuss the substance of the communication at its twenty-ninth meeting (21-24 September 2010). A formal invitation will be sent to the parties closer to the date of the discussion.

We look forward to hearing from you.

Yours sincerely,


Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee

CC.

Permanent Mission of Austria to the United Nations Office and Specialized Institutions in Geneva
Mr. Markus Piringer, OEKOBUERO, Austria
Mr. Thomas Alge, OEKOBUERO, Austria

Annex – Questions to the Party concerned

1. If a natural person wishes to file a lawsuit against a private party on account of pollution, is it correct as a general matter that the natural person must first participate in an administrative proceeding, as maintained in paragraph 11 of the communication?
2. Is such access to justice (locus standi) limited in an administrative proceeding to only “parties” who have a legal interest or a legal title, as maintained in paragraph 11 of the Communication?
3. For natural persons, does “legal interest” include only impairment of the natural person’s individual, personal rights, as determined by sectoral legislation?
4. Do natural persons who own property nearby or whose health is affected, have standing to file a lawsuit against a private entity (or participate in an administrative proceeding regarding such a private entity) for violation of each of the following laws:
 - Industry Act (GewO)?
 - Federal Waste Management Act (AWG)?
 - Certain aspects of the Federal Forestry Act (ForstG)?
 - Federal Water Management Act (AWG)?
 - The local building and construction permit procedures of some provinces?
 - Federal Environmental Liability Act (B-UHG)
 - Climate change legislation?
 - Nature conservation law?

Please reply separately for each law.

Apart from those who own property nearby or whose health is affected, does any broader class of natural persons have standing to file a lawsuit against a private entity alleged to be in violation of each of the preceding laws?

Please specify the answer for each law.

5. Do natural persons who own property nearby or whose health is affected have standing to file a lawsuit against a private entity (or participate in an administrative proceeding regarding such a private entity) for violation of each of the following standards:
 - Water quality standards?
 - Noise quality standards?
 - Air quality standards reflected in Austrian and European legislation?

Please reply separately for each type of quality standard.

Apart from those who own property nearby or whose health is affected, does any broader class of natural persons have standing to file a lawsuit against a private entity alleged to be in violation of each of the preceding standards?

Please specify the answer for each standard.

6. Is it the position of the Austria that article 9, paragraph 3, of the Aarhus Convention allows Austria to restrict the standing of natural persons to only those who own property or have impairment of health?
7. Do NGOs have legal standing in court cases against private parties under any laws relating to the environment (including but not limited to the Industry Act (GewO), Federal Waste Management Act (AWG), certain aspects of the Federal Forestry Act (ForstG), Federal Water Management Act (AWG), Federal Environmental Liability Act (B-UHG), local building and construction permit procedures of some provinces, climate change legislation, and the nature conservation law)?

Please specify for each law.

Is it possible for NGOs to bring public interest environmental cases that challenge acts or omissions of private persons under any other laws?

8. If there is a breach of law by a public authority and it is obliged to act, is there a legal possibility to enforce this law for (a) individual members of the public or (b) NGOs?

9. Under what Austrian laws, if any, are NGOs guaranteed the right to challenge acts or omissions of governmental bodies?

10. Is the public allowed to participate in the screening part of EIA processes? Are screening decisions subject to judicial review?

11. Is it true, as alleged in paragraph 58 of the communication, that the Highest Administrative and the Constitutional Courts do not have power to issue an injunction with regard to federal motorways, railways, tunnels and water permits? Or is it true that, according to paragraph 60 of the communication, the Highest Administrative Court had the theoretical power to give an injunction but refused to do so because the project was under construction? Are highest courts "open for injunctions in theory" or in practice? What law regulates this matter and what exactly does it say (kindly provide translation in English)?

12. Can you please clarify whether Article 42a of EIA Act allows a project proponent to proceed with a project for one more year after the Highest Court has canceled the EIA decision?

13. Do you agree with the communicant's allegation that no injunction has been granted in environmental cases? Can you contest this allegation and name some environmental cases at which injunction was granted?