
Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**Second progress review of the implementation of decision V/9b
on compliance by Austria with its
obligations under the Convention**

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1	2
II. Summary of follow-up action with decision V/9b since the Committee's first progress review	2	2
III. Considerations and evaluation by the Committee	23	5
IV. Conclusions and recommendations	31	8

I. Introduction

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9b on compliance by Austria with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

II. Summary of follow-up action with decision V/9b since the Committee's first progress review

2. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of the decision V/9b to the Party concerned together with a reminder of the request by the Meeting of the Parties to provide its second progress report to the Committee by 31 October 2015, and at the latest by 31 December 2015, on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9b.

3. By letter of 25 November 2015, the Party concerned indicated that it would provide its second report by 31 December 2015. The Party concerned provided its second progress report on the implementation of decision V/9b on 22 December 2015.

4. At the Committee's request, on 29 December 2015 the secretariat forwarded the Party concerned's second progress report to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63, inviting them to provide their comments on the progress report by 20 January 2016. The communicant of communication ACCC/C/2010/48 provided its comments on 20 January 2016. No comments were received from the communicant of communication ACCC/C/2011/63.

5. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9b in open session taking into account the Party concerned's second progress report and written comments received from the communicant of communication ACCC/C/2010/48 as well as the statements by the Party concerned and the communicant of communication ACCC/C/2010/48 made by audio conference during the session. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9b in closed session.

6. On 7 April 2016, the secretariat invited the Party concerned and communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 to submit the comments made during the open session at the Committee's fifty-second meeting in writing, as well as any comments they wished to make, by 12 April 2016.

7. The Party concerned submitted its comments as well as additional information on 21 April 2016. No comments were received from the communicants.

8. The Committee continued the preparation of its second progress review at its virtual meeting on 13 May 2016, taking into account the further written comments provided by the Party concerned on 21 April 2016. The Committee adopted its second progress review through its electronic decision-making procedure on 14 October 2016 and requested the secretariat to forward it to the Party concerned and the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63.

Party concerned's second progress report

Paragraphs 3(a)(i) and (ii) of decision V/9b

9. In its second progress report submitted on 22 December 2015, the Party concerned reported that it had adopted an amendment to the Environmental Information Act (*Umweltinformationsgesetz*) at the federal level. The Act was published in the Federal Law Gazette in August 2015.¹ The Party concerned provided the amended Act and its English translation. The Party concerned stated that the amended Act fulfilled the recommendation in paragraph 3 (a)(i) of decision V/9b at the federal level. It submitted that the amended Environmental Information Act explicitly stated that if the requested environmental information was not provided at all or not provided to the requested extent, a decree should be issued on this fact without undue delay, and at the latest two months after receipt of the request for information (section 8, paragraph 1 of the Act). The Party concerned reported that at the provincial level, several Provinces (*Bundesländer*) had already started to amend their corresponding legislation accordingly.

10. In its additional information provided on 21 April 2016, the Party concerned reported that following the adoption of the amendment of the Environmental Information Act at the federal level, its provinces had started to amend their corresponding legislation accordingly. It reported that the Provinces of Kärnten and Salzburg had already published their legislative amendments in their law gazettes. The amendment to the Province of Kärnten's Act on Information and Statistics in Kärnten (*Änderung des Kärntner Informations- und Statistikgesetzes*, LGBl. Nr. 22/2016) had entered into force on 7 April 2016 and the amendment to the Province of Salzburg's Act on Environmental Protection and Information (*Änderung des Salzburger Umweltschutz- und Umweltinformationsgesetzes*, LGBl. Nr. 17/2016) had entered into force on 1 January 2016. Several other provinces, namely Wien, Oberösterreich and Burgenland, had started their legislative processes and their draft laws had been forwarded to their Provincial Parliaments. The Province of Vorarlberg would send out its draft law for consultation shortly. The Party concerned stated that relevant draft legislative amendments were also under preparation in its other provinces.

11. The Party concerned stated that, notwithstanding the above legislative developments at the provincial level, the amended federal Environmental Information Act was also applicable at the provincial level as it was a matter of indirect federal administration (*mittelbare Bundesverwaltung*) according to which the provincial authorities exercise the executive powers of the Federation. The federal Environmental Information Act covers the main areas of environmental protection such as waste, water, forestry and air quality while the Provinces are responsible for providing environmental information in the fields of nature protection, hunting and fisheries.

Paragraph 3 (a)(iii) and paragraph 6 of decision V/9b

12. Regarding the possibilities to improve access to justice in environmental matters for NGOs, in its second progress report the Party concerned reported that the fifth meeting of the working group between the Federal Ministry of Agriculture, Forestry, Environment and Water Management and the Provinces had taken place on 15 December 2015. In addition, a workshop had been held in February 2015 to discuss possible elements on how NGOs and affected neighbours could be better involved in various environmental procedures. The outcome of the workshop and the working group meetings was reported back to the Conference of Government Members of the Provinces responsible for environmental issues (*Landesumweltreferentenkonferenz*) which took positive note of the progress at its meeting

¹ Federal Law No. 95/2015, published in the Federal Law Gazette on 3 August 2015.

on 29 May 2015. The Party concerned reported that, since the Provinces had legal competences in environmental policy as well, a separate working group had been installed by the Provincial Administration Chief Executives (*Landesamtsdirektoren*) in April 2015 in order to deal with issues of implementation at the provincial level. Both working groups had determined that the creation of legal standing or review mechanisms for environmental NGOs was a key issue.

13. The Party concerned reported that, though the various discussion processes described above had not yet reached the stage of presenting draft laws or defining a concrete timeline for legislative procedures, it remained committed to them and it was envisaged that draft laws adjusting the corresponding environmental laws with regard to remedies especially for environmental NGOs would be tabled during the course of 2016.

14. In its additional information provided on 21 April 2016, the Party concerned reported that a draft amendment of the Waste Management Act (*Abfallwirtschaftsgesetz*) was currently under discussion by the government at the federal level. The Act needed to be amended in order to transpose the relevant European Union Directives and in this context, the possible inclusion of an additional Aarhus element was being discussed. No proposal initiating the legislative process within the Parliament had been tabled yet. At the provincial level, there were on-going discussions regarding their legislation on nature protection.

15. The Party concerned reiterated its commitment to continue the discussion processes that had been started to improve the implementation of the Aarhus Convention and indicated that it would keep the Compliance Committee informed of further developments.

Paragraph 3(b) of decision V/9b

16. The Party concerned reported that, in early 2016, a project to develop a capacity-building programme focussing on administrative authorities dealing with environmental procedures would begin and would be led by an Austrian environmental NGO. The Party concerned reported that the Aarhus Convention was increasingly being chosen as a topic for academic conferences and that administrative courts as well as the Supreme Court were dealing with legal affairs involving the Aarhus Convention more frequently than in the past.

Comments from the communicant of communication ACCC/C/2010/48

Paragraph 3 (a)(i) and (ii) of decision V/9b

17. In its comments on the Party concerned's second progress report, Oekobuero, the communicant of communication ACCC/C/2010/48, commended the implementation of decision V/9b through the federal Environmental Information Act, which entered into force in summer 2015. It noted, however, that its implementation in the legal frameworks of the nine provinces was yet to be seen though some provinces were currently working on legislative proposals. The communicant indicated that it would continue to monitor developments at the provincial level because full implementation at that level was just as critical as at the federal level.

18. In its statement during the open session on decision V/9b at the fifty-second meeting, the communicant submitted that it was important that the federal Environmental Information Act was implemented in all nine provinces and that each province developed similar amendments because the national environmental law was complicated, not least that it consisted of nine federal acts and ten provincial acts. It stated that sometimes it was not clear which law applied and therefore it was necessary to refer to both the federal and provincial acts. If only the legislation at the federal level complied with the Convention this would affect the overall compliance with the Convention throughout the country.

Paragraph 3 (a)(iii) and paragraph 6 of decision V/9b

19. The communicant stated that despite assurances from the Minister of Environmental Affairs in the Parliamentary Committee on the Environment as far back as June 2014² that a timely and comprehensive implementation in the matter of access to justice would occur, there was to date no practical proposal for doing so. It added that there was not even a detailed timetable setting out the exact next steps, goals, or target-dates.

20. The communicant considered that the task force between the provinces and the Ministry on the implementation of access to justice under the Convention was a good measure. However, it noted that four years after the adoption of the Compliance Committee's findings on communication ACCC/C/2010/48, it could hardly be seen as meaningful and timely progress or a substitute for practical proposals. The communicant suggested that there had been several opportunities to achieve real progress in the past. For example, in 2014-2015 the Convention could have been implemented into national law during the course of the amendment processes to the Trade Law (*Gewerbeordnung*), the Waste Management Act (*Abfallwirtschaftsgesetz*) and several Provinces' Nature Protection Acts (*Naturschutzgesetz*).

21. The communicant stated that one of the main drivers of the Convention's implementation in Austria remained the legal activity by environmental NGOs bringing cases to national and international courts. It submitted that the courts continued to refuse the Convention's direct application and, even where they had exceptionally shown a willingness to grant increased access rights, this could not replace legislative action, as was demanded of the Party concerned.

22. In its statement during the open session of the fifty-second meeting, the communicant noted with regret that while there had been much discussion there was still no legislation to implement decision V/9b in place. The communicant suggested that the Committee consider the possibility of bringing this matter to a higher political level by sending letters to the Chancellor and Vice Chancellor of the Party concerned.

III. Considerations and evaluation by the Committee

23. In order to fulfil the requirements of paragraphs 3 and 6 of decision V/9b, the Party concerned would need to provide the Committee with evidence that:

(a) With respect to paragraph 3(a) of decision V/9b, it has taken the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(i) The procedure for having a refusal of a request for information reviewed is simplified for the requester. This could preferably be done by requiring any written refusal of a request for information to have the legal status of an "official notification" and that any such refusal is to be made as soon as possible, and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request;

(ii) The available review procedures for persons who consider that their request for information under article 4 has been ignored, wrongfully refused or inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, are timely and expeditious;

² Information available at https://www.parlament.gv.at/PAKT/PR/JAHR_2014/PK0627/

(iii) Criteria for NGO standing to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention are revised and specifically laid down in sectorial environmental laws, in addition to any existing criteria for NGO standing in the environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability laws;

(b) With respect to paragraph 3(b) of decision V/9b, it has developed a capacity-building programme and provided training on the implementation of the Convention for federal and provincial authorities responsible for issues related to the Convention, and for judges, prosecutors and lawyers;

(c) With respect to paragraph 6 of decision V/9b, members of the public, including NGOs, have access to adequate and effective administrative or judicial procedures and remedies in order to challenge acts and omissions of private persons and public authorities that contravene national laws, including administrative penal laws and criminal laws, relating to the environment.

24. In its first progress review, which reviewed the Party concerned's first progress report and the comments received from the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 on that report, the Committee invited the Party concerned to provide, together with its second progress report or otherwise by 31 December 2015:

(a) With respect to paragraphs 3(a)(i) and (ii) of decision V/9b, the text of the proposed amendment to the Environmental Information Act, together with an English translation thereof. If the amendment is not by then adopted, the Committee recommended that the Party concerned also provided a timeline for its adoption;

(b) Regarding paragraph 3(a)(iii) of decision V/9b, the drafts of any legislative or other measures aimed at implementing the requirements of that paragraph available at that time, together with English translations thereof, or with summaries of the substantive contents of such drafts. The Committee also invited the Party concerned to submit with its second report or otherwise by 31 December 2015 a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed legislative measures;

(c) In relation to paragraph 3(b) of decision V/9b, a plan of action, including timeline, for the capacity-building programme and training recommended in that paragraph for federal and provincial authorities responsible for Aarhus-related issues, and for judges, prosecutors and lawyers;

(d) With respect to paragraph 6 of decision V/9b, the drafts of any legislative or other measures aimed at implementing the requirements of that paragraph available at that time, together with English translations thereof, or with summaries of the substantive contents of such drafts. The Committee also invited the Party concerned to submit with its second report or otherwise by 31 December 2015 a timeline for the various stages of its internal procedures leading up to the final adoption of the proposed legislative measures.

25. The Committee welcomes the second progress report of the Party concerned, which was submitted on time, and the information contained therein.

26. With respect to the recommendations set out in paragraphs 3(a)(i) and (ii) of decision V/9b, the Committee welcomes the information provided by the Party concerned

that an amendment to the federal Environmental Information Act has been adopted and published in the Federal Law Gazette in August 2015. The Committee understands that the amendment provides a simplification of the procedure for having a refusal of a request for information reviewed by providing that if the requested environmental information was not provided at all or not provided to the extent requested, a decree should be issued without undue delay and at the latest two months after receipt of the requested information. The Committee welcomes these significant developments at the federal level. The Committee, however, expresses its concern that the implementation of the Act in question within the laws of the nine provinces has still to be seen, though some provinces are currently working on proposals. In the light of the above, the Committee welcomes the significant developments at the federal level, but given that the implementation at the provincial level is not yet completed, finds that the Party concerned has not yet fully met the requirements of paragraphs 3(a)(i) and (ii) of decision V/9b.

27. With respect to the recommendations set out in paragraph 3(iii) and paragraph 6 of decision V/9b, the Committee notes that, at the time of the second progress report, the various discussion processes described by the Party concerned had not yet reached the stage of draft laws or other measures. Nor had a concrete timeline for legislative procedures been defined despite four years having passed since the adoption of the Committee's findings. The Committee thus finds that the Party concerned has not yet fulfilled the requirements of paragraph 3(iii) and paragraph 6 of decision V/9b.

28. With respect to the recommendations set out in paragraph 3(b) of decision V/9b, the Committee welcomes the information provided by the Party concerned regarding a project led by an Austrian environmental NGO to develop a capacity building programme focussing on administrative authorities dealing with environmental procedures. The Committee also welcomes indications that the Convention is increasingly being chosen as a topic for academic conferences and administrative courts and the Supreme Court is dealing with cases involving the Convention more frequently. However, the Committee notes that in its first progress review, the Committee invited the Party concerned to provide a plan of action, including timeline, for the capacity-building programme and training for federal and provincial authorities, judges, prosecutors and lawyers but no such plan of action had to date been provided.

29. With respect to the recommendations set out in paragraph 6 of decision V/9b, the Committee notes that the Party concerned had not to date provided information on any legislative or other measures aimed at implementing the requirements of that paragraph. The Committee thus finds that the Party concerned has not yet fulfilled the requirements of paragraph 6 of decision V/9b.

30. In the light of the above, the Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9b. While welcoming the steps taken by the Party concerned to date to address the recommendations set out in set out in paragraphs 3(i) and (ii) of decision V/9b, it expresses its concern at the slow progress by the Party concerned to address the recommendations in paragraphs 3(iii), 3(b) and 6 of decision V/9b, in particular given the time that has passed since those recommendations were adopted with the Party's agreement.

IV. Conclusions

31. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9b. While welcoming the steps taken by the Party concerned to date to address the recommendations set out in paragraphs 3(i) and (ii) of decision V/9b, it expresses its concern at the slow progress by the Party concerned to address the recommendations set out in paragraphs 3(iii), 3(b) and 6 of decision V/9b.

32. The Committee reminds the Party concerned that, in accordance with paragraph 7 of decision V/9b, the Party concerned's final progress report on the implementation of that decision is due on 31 October 2016.

33. In order for the Committee to be in a position to fully examine the implementation of decision V/9b, the Committee invites the Party concerned, in its final progress report or otherwise by 31 December 2016:

(a) With respect to the recommendations set out in paragraphs 3(a)(i) and (ii) of decision V/9b, to provide the texts of the relevant measures taken at the provincial level to implement those paragraphs, together with an English translation thereof;

(b) With respect to the recommendations set out in paragraph 3(iii) of decision V/9b, to provide the texts of all legislative or other measures aimed at implementing that paragraph, together with an English translation thereof;

(c) With respect to the recommendations set out in paragraph 3(b) of decision V/9b, to report on the capacity-building programme and training for federal and provincial authorities, judges, prosecutors and lawyers;

(d) With respect to the recommendations set out in paragraph 6 of decision V/9b, to provide the texts of all legislative or other measures aimed at implementing that paragraph, together with an English translation thereof.

34. The Committee informs the Party concerned that all measures necessary to implement decision V/9b must be completed by, and reported upon by no later than 31 December 2016, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9b.
