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in Environmental Matters

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Item 7 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation of the Convention:
Compliance mechanism**

Report of the Compliance Committee*

Compliance by Austria with its obligations under the Convention

Summary

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision V/9 of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

* The present document is being issued without formal editing

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

2. The Party concerned provided its first progress report on the implementation of decision V/9b on 22 December 2014.

3. At the Committee's request, on 2 January 2015 the secretariat forwarded the first progress report of the Party concerned to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63, inviting them to provide their comments on that report by 23 January 2015. The communicant of communication ACCC/C/2011/63 provided comments on 19 January 2015 and the communicant of communication ACCC/C/2010/48 provided comments on 23 January 2015.

4. 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. The secretariat's letter informed the Party concerned that it should 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.

5. The Party concerned provided its second progress report on the implementation of decision V/9b on 22 December 2015.

6. At the Committee's request, on 29 December 2015 the secretariat forwarded the second progress report of the Party concerned 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.

7. At the fifty-second meeting of the Committee (Geneva, 8–11 March 2016), the Party concerned and the communicant of communication ACCC/C/2010/48 participated by audio conference in the Committee's review of the implementation of decision V/9b in open session.

8. On 8 and 21 April 2016, the Party concerned provided additional information.

9. By letter of 25 October 2016, the secretariat sent the Committee's second progress review on the implementation of the decision V/9b to the Party concerned. The secretariat's letter informed the Party concerned that it should provide its third progress report to the Committee by 31 December 2016 on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9b.

10. The Party concerned provided its third progress report on the implementation of decision V/9b on 21 December 2016.

11. At the Committee's request, on 21 December 2016 the secretariat forwarded the third progress report of the Party concerned 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 2017. The communicant of communication ACCC/C/2010/48

provided its comments on 19 January 2017. No comments were received from the communicant of communication ACCC/C/2011/63.

12. At the fifty-sixth meeting of the Committee (Geneva, 28 February – 3 March 2017), the Party concerned participated by audio conference in the Committee's review of the implementation of decision V/9b. Despite being invited, none of the communicants attended the session.

13. At the Committee's request, on 16 March 2017 the secretariat forwarded a request to the Party concerned for information on matters discussed during the open session at the fifty-sixth meeting of the Committee.

14. The Party concerned provided its reply to the request for further information on 30 March 2017. At the Committee's request, the secretariat forwarded this further information to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63, inviting them to provide their comments by 16 April 2017. No comments were received from the communicants.

15. The Party concerned provided further information on relevant legislative developments on 22 May, 21 June and 7 July 2017.

16. The Committee finalized its report on decision V/9b to the sixth session of the Meeting of the Parties through its electronic decision-making procedure on 12 July 2017 and instructed the secretariat to send the report to the Party concerned and the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63.

III. Considerations and evaluation by the Committee

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

(a) 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;¹

(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

(iii) Criteria for standing of non-governmental organizations (NGOs) 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 NGOs to have standing with respect to environmental impact

¹ Ibid., para. 3 (a) (i).

² Ibid., para. 3 (a) (ii).

assessment, integrated pollution prevention and control, waste management or environmental liability laws;³

(b) 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;⁴

(c) 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.⁵

18. The Committee welcomes the three progress reports received from the Party concerned as well as the further information provided on 8 and 21 April 2016 and 30 March, 22 May, 21 June and 7 July 2017.

19. The Committee also welcomes the comments and information provided by the communicant of communication ACCC/C/2011/63 on 19 January 2015 and the communicant of communication ACCC/C/2010/48 on 23 January 2015, 20 January and 9 April 2016 and 19 January 2017.

Paragraph 3 (a) (i) and (ii) of decision V/9b: Review procedures for refusals of access to information requests

20. With respect to the recommendations set out in paragraphs 3 (a) (i) and (ii) of decision V/9b, the Party concerned reported in its second progress report⁶ that in August 2015 it had adopted an amendment to the federal Environmental Information Act⁷ and it provided the Committee with the text thereof.⁸ The Party concerned reported that section 8, paragraph 1, of the amended Environmental Information Act provides that if the environmental information requested is not provided, or not provided to the requested extent, a decree shall be issued on this fact without undue delay, and at the latest two months after receipt of the request for information.⁹ It is the Committee's understanding that the applicant can then use this decree for the purposes of review procedures relating to information requests under article 9, paragraph 1 of the Convention. Having considered the text of the amendment, the Committee finds that this amendment adequately implements the recommendation of paragraph 3 (a) (i) and (ii) of decision V/9b on the federal level.

21. In its third progress report, the Party concerned informed the Committee that several of its provinces had introduced similar amendments¹⁰ and provided the Committee with the text of the relevant amendments to the laws of the provinces of Carinthia, Salzburg, Burgenland, Upper Austria and Vorarlberg.¹¹ The Party concerned also provided the Committee with the draft amendment of the province of Vienna¹² and later informed the Committee that this amendment had entered into force on 23 December 2016.¹³ On 30 March

³ Ibid., para. 3 (a) (iii).

⁴ Ibid., para. 3 (b).

⁵ Ibid., para. 6.

⁶ Second progress report of the Party concerned, 22 December 2015, p. 1.

⁷ Federal Law No. 95/2015, published in the Federal Law Gazette on 3 August 2015.

⁸ Annex to the second progress report of the Party concerned, 22 December 2015.

⁹ Second progress report of the Party concerned, 22 December 2015, p. 1 and annex, p. 1.

¹⁰ Third progress report by the Party concerned, 21 December 2016, p. 1.

¹¹ Annexes 1-4 and 6 to the third progress report by the Party concerned, 21 December 2016.

¹² Annex 5 to the third progress report by the Party concerned, 21 December 2016.

¹³ Reply by the Party concerned to Committee's request for further information, 30 March 2017, p. 1.

2017, the Party concerned provided the text of the amendment for the province of Tyrol¹⁴ and informed the Committee that it had entered into force on 1 February 2017.¹⁵ On 22 May 2017, the Party concerned informed the Committee that the province of Lower Austria had adopted a similar amendment on 18 May 2017, and that this was to be published in the Official Gazette by the end of June. It also provided the text of the amendment.¹⁶ On 21 June 2017, the Party concerned informed the Committee that the province of Styria had adopted a similar amendment as well,¹⁷ and it subsequently provided the text of the amendment.¹⁸ Having examined each of these amendments, the Committee considers that the phrasing of the federal law referred to in the previous paragraph appears to have been reproduced on the provincial level without adding further restrictions or exemptions. In the absence of any information to the contrary, the Committee therefore considers that these amendments meet the requirements of paragraphs 3 (a) (i) and (ii), of decision V/9b with respect to the provinces of the Party concerned.

22. In light of the foregoing, the Committee welcomes the significant changes introduced by the Party concerned at the federal and provincial level, and finds that the Party concerned has met the requirements of paragraphs 3 (a) (i) and (ii), of decision V/9b.

Paragraph 3 (a) (iii) and paragraph 6 of decision V/9b: Standing under article 9, paragraph 3, of the Convention

23. With respect to the recommendations in paragraph 3 (a) (iii) and paragraph 6 of decision V/9b, the Committee notes with concern that the various “discussion processes” described by the Party concerned have not yet reached the stage of draft laws or other measures, nor has any significant progress been made when compared to the situation prior to the fifth session to the Meeting of the Parties. The Committee moreover expresses its concern that no concrete timeline for legislative procedures having been defined despite five years having passed since the adoption of the Committee’s findings.

24. With regard to the possibility that standing could be provided through a change in the jurisprudence of the courts, the Committee notes the submissions by the communicant that in two recent rulings the Constitutional Court of the Party concerned had denied legal standing to environmental NGOs stating that article 9, paragraph 3, of the Convention was not directly applicable.¹⁹

25. In its statement to the fifty-second meeting of the Compliance Committee (Geneva, 8-11 March 2016), the Party concerned referred to an ongoing discussion process concerning a draft amendment to the federal Waste Management Act.²⁰ However, in its reply of 30 March 2017 to the Committee’s question on this point, the Party concerned stated that discussions were still ongoing and the government had not tabled a relevant legislative proposal yet.

26. The Committee welcomes the information submitted by the Party concerned regarding a draft amendment to the legislation of the province of Vienna on nature protection, national parks, hunting and fisheries that would provide a right to appeal for recognized environmental NGOs. At the same time, however, the Committee notes with concern the

¹⁴ Ibid., annex 1.

¹⁵ Ibid., p. 1.

¹⁶ Update from the Party concerned, 22 May 2017, p. 1 and annex 1.

¹⁷ Update from the Party concerned, 21 June 2017.

¹⁸ Annex to update from the Party concerned, 7 July 2017.

¹⁹ Comments by the communicant of communication ACCC/C/2010/48 on the third progress report by the Party concerned, 19 January 2017, p. 2, citing rulings VfGH V 87/2014-11 and V 134/2015-7 of the Constitutional Court. Both rulings were adopted on 14 December 2016.

²⁰ Additional information from the Party concerned, 21 April 2016, p. 2.

information provided by the communicant of communication ACCC/C/2010/48 that the legislative process for the draft amendment is currently stalled and moreover, that the amendment would only apply to certain permitting decisions, rather than acts and omissions as would be required to fulfil paragraphs 3 (a) (iii) and 6 of decision V/9b.²¹

27. The Committee also notes the information provided by the communicant of communication ACCC/C/2010/48 that in October 2016 the Ministry for Environment presented an administrative law reform package which reportedly reviewed a large part of the environmental law of the Party concerned, but likewise did not contain proposals relevant to paragraphs 3 (a) (iii) and 6 of decision V/9b.²²

28. The Committee further notes the statement of 9 May 2017 by the Environmental Committee of the National Council at federal level which stated that the Working Group of the Federal Government and the Federal Provinces on the examination of the need for implementation and the elaboration of legal steps of implementation with respect to the Aarhus Convention shall be extended with the goal of submitting a draft for the legislative amendment in the fields concerned by the infringement proceedings of the European Commission.²³ While the Committee welcomes the ongoing work of the Working Group, it expresses its disappointment at the Working Group's slow progress. The Committee also regrets that the Working Group's goal is to prepare a draft for legislative implementation only "in the fields concerned by the [European Commission's] infringement proceedings", thereby ignoring the potentially wider ambit of decision V/9b, which predates the infringement proceedings by the European Commission.

29. In light of the foregoing, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (a) (iii) and paragraph 6 of decision V/9b.

Paragraph 3 (b) of decision V/9b: Capacity-building programme and training

30. With respect to the recommendations in paragraph 3 (b) of decision V/9b, the Committee appreciates the list provided by the Party concerned in its third progress report of Aarhus-related conferences and seminars held during the intersessional period.²⁴ The Committee welcomes the evidence provided that the Convention is increasingly being chosen as a topic for conferences and seminars organized by academia and NGOs and that a number of these events appear to have received direct financing and support from the Party concerned. However, the Party concerned has provided the Committee with no information that would indicate that these various events were part of a capacity-building programme and training that the Party concerned had developed for federal and provincial authorities, judges, prosecutors and lawyers on the implementation of the Aarhus Convention. The Committee emphasises that in order to fulfil the requirements of paragraph 3 (b) of the decision, the Party concerned would need to show that it had developed a capacity-building programme and provided trainings (or arranged for such trainings to be provided) specifically for federal and provincial authorities responsible for Aarhus Convention-related issues, and for judges, prosecutors and lawyers. In addition, the Party concerned would need to show that the trainings provided were in fact attended by such persons.

31. In this regard, the Committee welcomes the information provided by the Party concerned on the "KOMM-Recht" project conducted between June 2015 and June 2017 by an environmental NGO with the support of the Party concerned, and in particular the

²¹ Comments of the communicant of communication ACCC/C/2010/48 on the third progress report by the Party concerned, 19 January 2017, p. 3.

²² Ibid.

²³ Annex 2 to the update from the Party concerned, 22 May 2017.

²⁴ Third progress report by the Party concerned, 21 December 2016, p. 4-6.

workshops organized in that context. Having reviewed the attendance list of the workshops provided by the Party concerned,²⁵ the Committee considers that the workshops were successful in reaching a number of members of the executive branch at various levels of government as well as a small number of public prosecutors at the provincial level. The Committee notes, however, that only one lawyer attended the workshops and no judges took part. Therefore, while welcoming the activities undertaken to date, the Committee finds that the Party concerned has not yet provided for sufficient capacity-building and training for judges, prosecutors or lawyers as required by paragraph 3 (b) of decision V/9b.

32. In light of the foregoing, while welcoming the activities undertaken to date, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (b) of decision V/9b with respect to judges, prosecutors and lawyers.

IV. Conclusions

33. The Committee finds that the Party concerned has fulfilled the requirements of paragraphs 3 (a) (i) and (ii) of decision V/9b.

34. The Committee finds that the Party concerned has not yet met the requirements of paragraphs 3 (a) (iii) and 6 of decision V/9b, and expresses its concern at the slow progress by the Party concerned to address the recommendations set out in those paragraphs, in particular given the time that has passed since those recommendations were adopted by the Committee with the agreement of the Party concerned.

35. While welcoming the activities undertaken to date to meet the requirements of paragraph 3 (b) of decision V/9b, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (b) of decision V/9b with respect to judges, prosecutors and lawyers.

36. The Committee recommends to the Meeting of the Parties that it reaffirm its decision V/9b and request that the Party concerned:

(a) As a matter of urgency, take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that criteria for NGOs to have 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 sectoral environmental laws, in addition to any existing criteria for standing of NGOs in its laws on environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability;²⁶

(b) Also ensure that, when addressing subparagraph (a) above, 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 law, including administrative penal laws and criminal laws, relating to the environment.²⁷

(c) Provide the Committee as soon as possible and no later than 1 October 2018 with a detailed plan of action on how it will implement subparagraph (a) and (b) above;

²⁵ The Party concerned provided the attendance lists as annexes to the further information it submitted on 30 May 2017. As the attendance lists consist of the participants' personal data, in accordance with the Committee's practice and as requested by the Party concerned, they have not been posted on the Committee's website.

²⁶ Decision V/9b, para. 3 (a) (iii).

²⁷ *Ibid.*, para. 6.

(d) Develop a capacity-building programme and provided training on the implementation of the Convention for judges, prosecutors and lawyers;²⁸

(e) Provide detailed progress reports to the Committee by 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(f) Provide such additional information as the Committee may request in between the above reporting dates in order to assist the Committee to review the progress by the Party concerned in implementing the above recommendations;

(g) Participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

²⁸ See decision V/9b, para. 3 (b).