

Law on Participation in Nature Conservation, Hunting, and Fishing Law (Aarhus Participation Act) – collective amendment

Page 7–9

Article 46b

Individual decisions, participation in administrative proceedings

(1) The municipality in which a project is located shall have party status in all proceedings pursuant to this law with the exception of those pursuant to section V., determination proceedings pursuant to Article 26a para. 5, notification proceedings pursuant to Article 36, and without prejudice to the deviation pursuant to Article 41 para. 3. It shall have the right to demand compliance with the provisions of this law to protect the interests of nature conservation and landscape development.

(2) The nature conservation ombudsman shall be involved in all proceedings pursuant to this law with the exception of those pursuant to section V., determination proceedings pursuant to Article 26a para. 5, and without prejudice to the deviations in Articles 15 para. 6 and 41 para. 3. He shall have the right to inspect the relevant records in the scope specified in Article 17 General Administrative Procedure Act (AVG), to participate in the oral proceedings, and to submit opinions. He shall also be permitted to submit an opinion on the results of the taking of evidence within a period of four weeks. In these opinions, he shall have the right to demand compliance with the provisions of this law to protect the interests of nature conservation and landscape development. The opinions shall be taken into account appropriately in the decision. Official notices issued in writing shall be delivered to him. Article 62 para. 3 General Administrative Procedure Act (AVG) shall apply accordingly to the delivery of written minutes of orally announced official notices.

(3) The participation rights pursuant to para. 2 second to seventh sentence shall also apply to recognised environmental organisations (para. 5) in official approval proceedings pursuant to Article 26a para. 3 if they exercise their party status pursuant to lit. d. To this end, the authorities shall make the following information available on their website for at least four weeks (access period):

- a) object of the project,
- b) the fact that the project is subject to official approval pursuant to Article 26a para. 3,
- c) information about the authority that is responsible for the decision, from which pertinent information about the project can be obtained, and to which any opinions can be submitted in writing,
- d) notice that recognised environmental organisations pursuant to para. 5 have the right to submit written opinions and to exercise party status during the access period, and that the right to participate in proceedings and to lodge complaints against the decision shall be forfeit if not exercised in good time,
- e) if scheduled, the place and time of the oral proceedings,
- f) information on the type of possible decisions.

(4) The access period (para. 3) and the source on the Internet shall be announced in the Official Gazette of the Province of Vorarlberg. The announcement shall contain the information specified in para. 3.

(5) Recognised environmental organisations for the purposes of this law shall be organisations recognised as environmental organisations pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act 2000 and that have been granted party status in Vorarlberg.

Article 46c

Individual decisions, right to lodge complaints and file appeals

(1) In the proceedings pursuant to Article 46b para. 1, the municipality in which the project is located shall have the right to file complaints against official approval with the Provincial Administrative Court (Art. 132 Federal Constitutional Law) and to file appeals with the Administrative Court against decisions of the Provincial Administrative Court (Art. 133 Federal Constitutional Law) to protect the interests of nature conservation and landscape development.

(2) In the following matters, the nature conservation ombudsman and recognised environmental organisations shall also have the right to file complaints (Art. 132 Federal Constitutional Law) with the

Provincial Administrative Court against decisions, and the nature conservation ombudsman shall also have the right to file an appeal against decisions of the Provincial Administrative Court (Art. 133 Federal Constitutional Law) with the Administrative Court, with the exception of the case in lit. j):

- a) construction of new or expansion of existing ski areas with cable car systems or tow lifts for the carriage of passengers if this involves the utilisation of more than 10 ha of space in total for new slope construction with terrain changes,
- b) construction of hydropower installations (dams, river barrages, discharges) with a bottleneck capacity greater than 10 MW,
- c) construction or modification of federal and regional roads and rail tracks, with the exception of changes involving the relocation of the road or track axis by less than 50 m,
- d) construction of or the significant modification of airfields, the latter in respect of the objectives of nature conservation and landscape development,
- e) reservoir flushing,
- f) projects requiring species protection exemptions (Article 15 para. 5 and 6),
- g) projects requiring approval under the scope of Regulation (EU) No 1143/2014, (Article 16 para. 2 in conjunction with Article 47a para. 1),
- h) release or sowing of non-native species or genetically modified organisms (Article 16 para. 1 and 3),
- i) projects affecting European protection areas and requiring official approval pursuant to Article 26a para. 3,
- j) negative notices of official findings pertaining to detrimental impacts from plans and projects pursuant to Article 26a para. 5 on European protection areas.

(3) The authorities shall publish decisions pursuant to para. 2, except for those pursuant to para. 2 lit. i, for a period of at least four weeks on their website immediately after they are issued. The Internet address where these can be found shall be announced in the Official Gazette of the Province of Vorarlberg. The decision shall be deemed delivered vis-à-vis the recognised environmental organisations (para. 5), and in the case of notices of official findings pursuant to Article 26a para. 5 vis-à-vis the nature conservation ombudsman, two weeks after its announcement. These parties shall be permitted to inspect the administrative act starting on the day of announcement on the Internet.

(4) If a complainant indicates reasons for objection for the first time in a complaint pursuant to para. 1 and 2 in cases in which participation in the administrative proceedings was already possible (Article 46b), these shall be admissible only if the complaint indicates why it was not possible to raise them during the administrative proceedings and the complainant demonstrates that the fact that he failed to raise the objections during the access period is not or only to a minor degree his fault.”

Page 10

“Article 60a

Transitional provision for the amendment of Provincial Law Gazette No 67/2019

The nature conservation ombudsman and recognised environmental organisations (Article 46b para. 5) shall have the right to file complaints with the Provincial Administrative Court (Art. 132 Federal Constitutional Law) against official notices pursuant to Article 46c para. 2 lit. f to i that became legally effective after 20 December 2017 or that had been issued at this time but have not yet taken legal effect to protect the interests of nature conservation and landscape development. The complaint shall be filed within six weeks after the amendment Provincial Law Gazette No 67/2019 enters into force and has no suspensive effect. Recognised environmental organisations shall be permitted to inspect the administrative act from the time that the amendment Provincial Law Gazette No 67/2019 enters into force until the end of the period for appeal.”

Page 12/13

“Article 66a

Individual decisions, right to lodge complaints

(1) A recognised environmental organisation pursuant to para. 3 shall have the right to file a complaint against permission granted pursuant to Article 27 para. 3 and 4, Article 36 para. 4 and 5, or Article 46 para. 1 and 4 with the Provincial Administrative Court (Art. 132 Federal Constitutional Law)

in order to realise the objectives of this law pertaining to game species protected by the Habitats Directive or the Birds Directive.

(2) The authorities shall publish decisions pursuant to para. 1 for a period of at least four weeks on their website immediately after they are issued. The Internet address where these can be found shall be announced in the Official Gazette of the Province of Vorarlberg. The decision shall be deemed delivered vis-à-vis the recognised environmental organisations (para. 3) two weeks after its announcement. The environmental organisations shall be permitted to inspect the administrative act starting on the day of announcement on the Internet.

(3) Recognised environmental organisations for the purposes of this law shall be organisations recognised as environmental organisations pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act 2000 and that have been granted party status in Vorarlberg.”

Page 13

“Article 70a

Transitional provision for the amendment of Provincial Law Gazette No 67/2019

A recognised environmental organisation (Article 66a para. 3) shall have the right to file a complaint with the Provincial Administrative Court (Art. 132 Federal Constitutional Law) against official notices pursuant to Article 27 para. 3 and 4, Article 36 para. 4 and 5, or Article 46 para. 1 and 4 that became effective after 20 December 2017 or that had been issued at this time but have not yet become effective in order to realise the objectives of this law pertaining to flora or fauna protected by the Habitats Directive or Birds Directive. The complaint shall be filed within six weeks after the amendment Provincial Law Gazette No 67/2019 enters into force and has no suspensive effect. Recognised environmental organisations shall be permitted to inspect the administrative act from the time that the amendment Provincial Law Gazette No 67/2019 enters into force until the end of the period for appeal.”

Article III

Page 14

Article 29b

Individual decisions, right to lodge complaints

(1) A recognised environmental organisation pursuant to para. 3 shall have the right to file a complaint against permission granted pursuant to Article 15 para. 4 or Article 16 para. 2 with the Provincial Administrative Court (Art. 132 Federal Constitutional Law) in order to realise the objectives of this law pertaining to flora or fauna protected by the Habitats Directive.

(2) The authorities shall publish decisions pursuant to para. 1 for a period of at least four weeks on their website immediately after they are issued. The Internet address where these can be found shall be announced in the Official Gazette of the Province of Vorarlberg. The decision shall be deemed delivered vis-à-vis the recognised environmental organisations (para. 3) two weeks after its announcement. The environmental organisations shall be permitted to inspect the administrative act starting on the day of announcement on the Internet.

(3) Recognised environmental organisations for the purposes of this law shall be organisations recognised as environmental organisations pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act 2000 and that have been granted party status in Vorarlberg.”

Page 15

“Article 32a

Transitional provision for the amendment of Provincial Law Gazette No 67/2019

A recognised environmental organisation (Article 29b para. 3) shall have the right to file a complaint with the Provincial Administrative Court (Art. 132 Federal Constitutional Law) against official notices pursuant to Article 15 para. 4 and Article 16 para. 2 that became effective after 20 December 2017 or that had been issued at this time but have not yet become effective in order to realise the objectives of this law pertaining to flora or fauna protected by the Habitats Directive. The complaint shall be filed within six weeks after the amendment Provincial Law Gazette No 67/2019 enters into force and has no suspensive effect. Recognised environmental organisations shall be permitted to inspect the administrative act from the time that the amendment Provincial Law Gazette No 67/2019 enters into force until the end of the period for appeal.”

Article IV

Page 16

Article 19b**Individual decisions, right to lodge complaints**

(1) A recognised environmental organisation pursuant to para. 3 shall have the right to file a complaint against permission granted pursuant to Article 3 para. 3 or Article 4 para. 2 with the Provincial Administrative Court (Art. 132 Federal Constitutional Law) in order to realise the objectives of this law pertaining to flora or fauna protected by the Habitats Directive.

(2) The authorities shall publish decisions pursuant to para. 1 for a period of at least four weeks on their website immediately after they are issued. The Internet address where these can be found shall be announced in the Official Gazette of the Province of Vorarlberg. The decision shall be deemed delivered vis-à-vis the recognised environmental organisations (para. 3) two weeks after its announcement. The environmental organisations shall be permitted to inspect the administrative act starting on the day of announcement on the Internet.

(3) Recognised environmental organisations for the purposes of this law shall be organisations recognised as environmental organisations pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act 2000 and that have been granted party status in Vorarlberg.”

[...]

“Article 21a**Transitional provision for the amendment of Provincial Law Gazette No 67/2019**

A recognised environmental organisation (Article 19b para. 3) shall have the right to file a complaint with the Provincial Administrative Court (Art. 132 Federal Constitutional Law) against official notices pursuant to Article 3 para. 3 and Article 4 para. 2 that became effective after 20 December 2017 or that had been issued at this time but have not yet become effective in order to realise the objectives of this law pertaining to flora or fauna protected by the Habitats Directive. The complaint shall be filed within six weeks after the amendment Provincial Law Gazette No 67/2019 enters into force and has no suspensive effect. Recognised environmental organisations shall be permitted to inspect the administrative act from the time that the amendment Provincial Law Gazette No 67/2019 enters into force until the end of the period for appeal.”