

Page 1

**(Upper Austrian Nature and Landscape Conservation Act Amendment 2019)**

1. In the table of contents, the following items shall be inserted after the entry relating to Article 39:

“Article 39a Recognition of party status and right to lodge complaints for environmental organisations  
Article 39b Participation of recognised environmental organisations in administrative proceedings and right of action”

Page 5–6

**“Article 39a****Recognition of party status and right to lodge complaints for environmental organisations**

- (1) Recognised environmental organisations pursuant to this provincial law shall be associations or foundations recognised pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act – UVP-G 2000, Federal Law Gazette No 697/1993, as amended in the federal law Federal Law Gazette I No 80/2018, that are granted party status in Upper Austria.
- (2) The Provincial Government shall provide a recognised environmental organisation with the information needed to access an electronic platform upon request. This electronic platform is only open to the authorities and recognised environmental organisations and serves the publication of the applications for proceedings, expert opinions, and official notices so as to enable the exercise of participation rights and the rights to lodge complaints pursuant to Article 39b.
- (3)

**Article 39b****Participation of recognised environmental organisations in administrative proceedings and right of action****(1) For**

1. projects pursuant to Article 24 para. 3 first sentence or
2. projects pursuant to Article 25 para. 5 affecting nature conservation areas that are also European protection areas or sites of Community importance pursuant to Art. 4 para. 2 sub-para. 3 of the Habitats Directive,

the initial application and the subsequent expert opinion on the project obtained by the authorities shall be published on the electronic platform pursuant to Article 39a para. 2. Recognised environmental organisations shall be permitted to inspect the administrative act from the date of the publication of the initial application.

**(2)** Recognised environmental organisations shall have the right to submit a well argued opinion on the project until the expiry of a period of four weeks from the date of the publication of the expert opinion obtained by the authorities pursuant to para. 1, or in the event that oral proceedings are conducted, until no later than during these proceedings.

**(3)** Well argued opinions shall be taken into account in the decision on an application for a project pursuant to para. 1.

**(4)** Recognised environmental organisations shall have the right to file a complaint with the Provincial Administrative Court against official notices pursuant to

1. Article 14

- having effects on the protection objective of a European protection area or a site of Community importance pursuant to Art. 4 para. 2 sub-para. 3 of the Habitats Directive or
- if protected flora and fauna listed in Annex IV to the Habitats Directive or covered by Art. 1 of the Birds Directive are affected,

2. Article 24 para. 3,

3. Article 25 para. 5

- affecting nature conservation areas that are also European protection areas or sites of

- Community importance pursuant to Art. 4 para. 2 sub-para. 3 of the Habitats Directive, or
- if protected flora and fauna listed in Annex IV to the Habitats Directive or covered by Art. 1 of the Birds Directive are affected, and

4. Article 29 para. 1 in conjunction with Article 30 if protected flora and fauna listed in Annex IV to the Habitats Directive or covered by Art. 1 of the Birds Directive are affected,

namely alleging the violation of provisions of this provincial law enacted in implementation of the Habitats Directive and Birds Directive.

(5) Official notices pursuant to para. 4 shall be published on the electronic platform pursuant to Article 39a para. 2. After expiry of a period of two weeks following the day the official notice was published, it shall be deemed delivered vis-à-vis the recognised environmental organisations. They shall be permitted to inspect the administrative act starting on the day of publication.

(6) Complaints of recognised environmental organisations shall be submitted to the authorities in writing within four weeks from the date of delivery (para. 5).

(7) The complaint of a recognised environmental organisation against official notices pursuant to para. 4 number 2 or 3 first indent shall be rejected as inadmissible if the environmental organisation was authorised to access the electronic platform pursuant to Article 39a para. 2 before the expert opinion obtained by the authorities was published and the environmental organisation did not submit a well argued opinion within the period specified in para. 2 or if the complaint does not at least demonstrate why the fact that the environmental organisation failed to raise the objections during the administrative proceedings is not or only to a minor degree its fault.”

Page 8–10

## Article II

### Amendment of the Upper Austrian National Park Act

The Upper Austrian National Park Act (Oö. NPG), Provincial Law Gazette No 20/1997, as amended in the law Provincial Law Gazette

No 40/2018, shall be amended as follows:

After Article 24, the following Article 24a shall be inserted:

#### “Article 24a

#### Participation in administrative proceedings and right of action

(1) Recognised environmental organisations pursuant to this provincial law shall be associations or foundations recognised pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act – UVP-G 2000, Federal Law Gazette No 697/1993, as amended in the federal law Federal Law Gazette I No 80/2018, that are granted party status in Upper Austria.

(2) For projects pursuant to Article 8 para. 1 and Article 9 para. 1, the initial application and the subsequent expert opinion on the project obtained by the authorities shall be published on an electronic platform that is accessible to recognised environmental organisations (Article 39a para. 2 Oö NschG 2001). They shall be permitted to inspect the administrative act from the date of the publication of the initial application.

(3) Recognised environmental organisations shall have the right to submit a well argued opinion on the project until the expiry of a period of four weeks from the date of the publication of the expert opinion obtained by the authorities pursuant to para. 2, or in the event that oral proceedings are conducted, until no later than during these proceedings.

(4) Well argued opinions shall be taken into account in the decision on the applications pursuant to Article 8 para. 1 or Article 9 para. 1.

(5) Recognised environmental organisations shall have the right to file complaints with the Provincial Administrative Court against official notices pursuant to Article 8 para. 1 or Article 9 para. 1 to allege violations of the provisions of this provincial law enacted in implementation of the Habitats Directive and Birds Directive.

(6) Official notices pursuant to Article 8 para. 1 or Article 9 para. 1 shall be published on the electronic platform specified in para. 2. After expiry of a period of two weeks following the day the official notice

was published, it shall be deemed delivered vis-à-vis the recognised environmental organisations. They shall be permitted to inspect the administrative act starting on the day of publication.

(7) Complaints of recognised environmental organisations shall be submitted to the authorities in writing within four weeks from the date of delivery (para. 6).

(8) The complaint of a recognised environmental organisation against official notices pursuant to Article 8 para. 1 or Article 9 para. 1 shall be rejected as inadmissible if the environmental organisation was authorised to access the electronic platform pursuant to Article 39a para. 2 before the expert opinion obtained by the authorities was published and the environmental organisation did not submit a well argued opinion within the period specified in para. 3 or if the complaint does not at least demonstrate why the fact that the environmental organisation failed to raise the objections during the administrative proceedings is not or only to a minor degree its fault.”

### **Article III**

#### **Amendment of the Upper Austrian Environmental Liability Act**

The Upper Austrian Environmental Liability Act (Oö. UHG), Provincial Law Gazette No 95/2009, as amended in the law Provincial Law Gazette No 90/2013, shall be amended as follows:

1. In Article 4 number 1 lit. a first indent, the citation “as amended in the Upper Austrian Nature and Landscape Conservation Act Amendment 2019, Provincial Law Gazette No 54/2019” and a comma shall be inserted after the wording “favourable findings pursuant to Article 9 para. 1 number 2 or Article 10 para. 2 number 2 Oö. NSchG 2001”.
2. In Article 4 number 1 lit. a first indent, the wording “or that have not been prohibited pursuant to Article 6 Oö. NSchG 2001 or Article 4 Oö. Gt-VG 2006” shall be deleted.
3. In Article 4 number 1 lit. a second indent, the citation “Federal Law Gazette I No 2/2008” shall be replaced with the citation “Federal Law Gazette I No 80/2018”, and the citation “Federal Law Gazette I No 54/2008” with the citation “Federal Law Gazette I No 44/2018”.
4. In Article 5 para. 5 and in Article 6 para. 4, the citation “Federal Law Gazette I No 123/2006” shall be replaced with the citation “Federal Law Gazette I No 44/2018”.
5. In Article 10 para. 2, the wording “the Commission of the European Community” shall be replaced with the wording “the European Commission”.
6. Article 11 para. 1 and 2 read:

“(1) Natural persons or legal entities that as a result of actual environmental damage

1. could suffer the injury of their rights or
2. are significantly restricted in the use of the natural resource (Article 4 number 12) or in the use of the function of the affected natural resource (Article 4 number 12), or
3. have sufficient interest in proceedings pursuant to Article 6 and Article 7 para. 2

can request that the district administrative authority with jurisdiction over the area where the environmental damage occurred take action pursuant to Article 6 or Article 7 para. 2 in a written complaint.

Recognised environmental organisations pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act 2000 – UVP-G 2000, Federal Law Gazette No 697/1993, as amended in the federal law Federal Law Gazette I No 80/201, that have been granted party status in Upper Austria shall be deemed to have sufficient interest for the purposes of number 3.

(2) The rights pursuant to para. 1 shall be

1. the protection of human life and health, and
2. in terms of land: the ownership or other rights in rem to an affected property, but not the possibility of a mere decrease in the market value.”

7. Articles 12 and 13 read:

#### **“Article 12 Party status**

The operator shall have party status in proceedings pursuant to Article 6 and Article 7 para. 2 to safeguard subjective rights.

#### **Article 13 Participation status**

In proceedings pursuant to Article 6 and Article 7 para. 2,

1. persons and organisations that have lodged an environmental complaint pursuant to Article 11 para. 1, and

2. the persons and organisations specified in Article 11 para. 1 that have declared in writing within two weeks after publication pursuant to Article 7 para. 3 that they wish to participate in the proceedings

shall have the right to submit a well argued opinion and to file a complaint with the Provincial Administrative Court under the mutatis mutandis application of Article 39b Oö. NSchG 2001.”

#### **Article IV**

(3) Article 39b para. 1 to 3 Oö. NSchG 2001 and Article 24a para. 2 to 4 Oö. NPG, each as amended in this provincial law, shall not apply to proceedings that are already pending at the time that this provincial law enters into force as set forth in para. 1.

(9) Participation status pursuant to Article 11 para. 1 number 2 and 3 in conjunction with Article 13 Oö. UHG as amended in this provincial law shall apply in proceedings pursuant to Article 6 and Article 7 para. 2 Oö. UHG that are initiated after the time that this provincial law enters into force as set forth in para. 1.