

NIR Austria

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The following report is submitted on behalf of Austria in accordance with decisions I/8, II/10 and IV/4.

Origin of the report

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1. Process by which the report has been prepared

1. This report (the first implementation report, its later updates as well as its fifth update at present) was prepared on the basis of Decisions I/8, II/10, III/5 and IV/4 on reporting requirements and, where possible, in accordance with the recommendations of the Convention's Compliance Committee dating from February 2007 (ECE/MP.PP/WG.1/2007/L.4).

2. In the framework of public consultation, the Austrian Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK), which is responsible for the coordination of matters pertaining to the Convention, has invited all the other relevant Austrian Federal ministries (in particular the Federal Ministry of Education, Science and Research, the Federal Ministry for European and International Affairs, the Federal Ministry of Justice, the Federal Ministry of Social Affairs, Health, Care and Consumer Protection, the Federal Ministry of Finance, the Federal Ministry for Digital and Economic Affairs and the Federal Ministry for Agriculture, Regions and Tourism), the Federal Chancellery, the nine Federal provinces (contacted via the liaison office in Vienna), the Austrian Parliament,

the representations of interest (social partners), the Umweltbundesamt GmbH (hereinafter: Umweltbundesamt, the Austrian Federal Environment Agency), environmental non-governmental organizations (NGOs) as well as the Environmental Ombudsmen and the interested public to participate.

3. Regarding the actual update of the implementation report the consultation period on the content of the report (first consultation round) was approximately eight weeks. The draft version of the amended report - with the changes marked by track changes as recommended by the Compliance Committee - was open for consultation for about six weeks via internet and e-mail.

4. For the national consultation process on the fourth implementation report and the received statements, see the following information available on the website of the BMK: bmk.gv.at/themen/klima_umwelt/eu_international/aarhus/umsetzungsbericht.html. Concerning the update click on the same website to find the updated implementation report.

5. Public consultation on the first implementation report showed that some environmental organizations and one of the six political parties then represented in the Austrian Parliament viewed the implementation of the third pillar in Austria rather critically. Yet there has been broad agreement as regards the first two pillars of the Convention. The need for further action on the third pillar was expressed in relation to the findings and recommendations in case ACCC/C/2010/48 against Austria and the implementation of Decision VI/8b adopted at the 6th Meeting of the Parties (MoP) in 2017. The concerns of the participating stakeholders have been taken into account as far as possible in the relevant sections during the process of updating the implementation report.

2. Particular circumstances relevant for understanding the report

6. Austria ratified the Convention in 2005 and thus became a Party to the Convention (Federal Law Gazette III No. 88/2005 of June 10, 2005). For the purpose of a general understanding of this report, it must be stressed that the implementation and application of the Convention in Austria are generally based on European Union (EU) Directives which have already entered into force, especially concerning the first and second pillar. In this process, respective EU Directives have been transposed into national law at Federal as well as at provincial levels.

7. As in several other EU Member States which are Parties to the Convention, in Austria it is domestic implementation which is the first prerequisite for ratification. In Austria, the provisions of the Convention have been transposed into national law in the relevant laws and regulations. Conclusion of the Convention was unanimously approved by the two chambers of the Austrian Parliament (the National Council and Federal Council).

8. The Republic of Austria is a Federal State. This means that legislation and the execution of laws are distributed among the Federal Government and the nine Federal provinces according to the competencies they have been assigned. The Austrian Federal Constitution provides for a general regulation of legislative and executive competencies assigned to the Federal Government and the Federal provinces. This is why for some areas of the Convention provincial legislation is required in addition to Federal laws. Thus, legislative measures for the implementation of EU law and of the Convention are generally required at Federal and provincial levels and are therefore accordingly complex. With a few exceptions, the application and administration is organised locally, i.e. via the Federal provinces or the district administration and municipal authorities.

9. According to the Federal Constitution, environmental protection is a cross-sectional issue, which is distributed among the Federal Government and the Federal provinces with a view to the competencies assigned by law. On the basis of a constitutional act, Austria commits itself to sustainability, animal protection, comprehensive environmental protection, the safeguarding of water and food supply and research (Federal Law Gazette I No. 2013/111). Protection includes measures to keep air, water and the soil clean and to prevent noise.

10. In Austria, provisions on the protection of the environment are, in particular, to be found in the area of public-administration law, with action taken by the Federal Government/Federal provincial authorities being subject to legal regulations. Besides bans of massive damage to the environment and codes of conduct, permits issued by public authorities are prevailing in environmental administration law, which means that (mostly economic) activities are subject to control exerted or permits granted by administrative authorities.

11. Besides the Federal structure, the social partners also play a very important role in Austria. In Austria, the social partners, the Federal Chamber of Commerce (WKO), the Chamber of Agriculture (LKO), the Federal Chamber of Labour (BAK) and the national trade-union federation (ÖGB) as well as the Federation of Austrian Industry (IV), play a key role in representing the interests of the respective groups in society (stakeholders).

12. In Austria, we can witness not only a high degree of environmental awareness, but also high interest in the principles underlying the Convention. Public administration tries to increasingly take account of this by enhancing new forms of public participation, such as e.g.: e-government, e-participation or citizen-service facilities available online.

3. Legislative, regulatory and other measures implementing the general provisions in article 3, paragraphs 2, 3, 4, 7 and 8

Article 3, paragraph 2

13. Based on the political key concept of “good governance”, public participation, i.e. the integration of the public in policymaking, has established itself as a cornerstone of decision-making processes.

14. For Austria, the objective of an innovative, cooperative, efficient and high-quality public administration within the meaning of enhanced citizen orientation is the guiding theme. This objective as well as participation of citizens has been underlined in the current Austrian Government programme from 2020-2024. Efforts made over the last years to modernize administration have brought about many good examples proving how the general public can be successfully made an active partner in policymaking and how this process can be fostered.

The first voluntary national review of the implementation of the Sustainable Development Goals (SDGs Agenda 2030), submitted on 15 July 2020 in New York, provides a nationwide overview of the measures taken, success stories and initiatives supporting the implementation. Three key issues digitalisation, women, youth and “leaving no one behind” and climate action and their corresponding participatory approaches or dimensions were all explored. Over 40 organisations were actively involved from the outset in all phases of the review compilation process. 320 responses with a total volume of 520 pages were collected.

15. In order to provide another important impetus for good governance at federal level, standards for public participation have been developed at the instigation of the Federal Chancellery and the BMK in the framework of an interministerial working group, in which stakeholders, NGOs and external experts for public participation also took part. These standards have been adopted by the Austrian Government on July 2, 2008. The Austrian

government thereby recommended their application throughout the federal administration. On this basis, the citizens are to be better integrated into policymaking within the meaning of the political guiding principles, as they are called, for the promotion of sustainable development. The goal of the process for the development of public participation standards, which was launched in 2005, was to develop good practice recommendations in the form of standards, which are to be used as routine measures in administrative public participation procedures (“Code of Conduct”). The standards are primarily relevant for plans and programmes as well as for policies and legal instruments developed by administrative bodies. The standards are aimed at providing precise content as to the definition of public participation and specific action which is to be taken. The public participation standards are deemed as a service and hands-on support for administrators involved in public participation processes.

Due to new opportunities and challenges resulting from digital transformation, the Federal Ministry for Arts, Culture, Civil Service and Sport was commissioned to prepare a new practical guidebook "Participation in the digital age". This will be developed in a participatory process until 2021.

In 2009 additional practical guidelines for the application of the public participation standards were published. In 2011 further information on e-participation was integrated in these guidelines. The amended guidelines were adopted by the Austrian Government on July 26, 2011. In 2010 a public participation website, the platform of Digital Austria, went online, providing basic information on public participation for administrators.

As an example for promoting public participation the province of Vorarlberg has launched a public participation focus in its “Office for Future-Related Issues”. In 2010 a public participation handbook for municipalities and the regional administration was published. It provides information about public participation methods and examples of public participation processes which were carried out in Vorarlberg in the recent years. Other cities and provinces also provide handbooks on public participation, e.g. the City of Vienna with its handbook on public participation in urban development or the province of Lower Austria with a handbook for public participation in spatial planning.

Article 3, paragraph 3

16. The environmental education activities coordinated by the BMK include numerous education projects dealing with sustainable development as well as different subject areas (“FORUM Umweltbildung”). The FORUM offers educational support via various instruments

and works for a target group of educators in the formal (school and university) and non-formal (further education, adult education) educational sector.

17. Since 2002, the Austrian Eco-Label for Schools has been awarded by the BMK (previously the BMLFUW) jointly with the Federal Ministry of Education. It is to honour schools for their special commitment in the fields of environmental education, environmentally sound action and the promotion of a socially viable school environment. It is the aim of the initiative to prompt all school stakeholders to strive towards the sustainable development of the environment in which they live today and tomorrow.

18. Numerous other public and private institutions as well as NGOs round out these activities. Public participation also becomes a more important topic in lectures at universities and colleges of higher education.

Article 3, paragraph 4

19. According to the Federal Ministries Act, coordination at all levels of environmental protection falls within the purview of the BMK. This also includes the coordination of the Austrian position voiced in the EU Council of Environment Ministers. The process is coordinated by the relevant divisions of the BMK by way of written procedure or in the framework of coordination meetings. If NGOs (normally NGOs active in the field of environment) are directly concerned by a project, or if they should have a particular level of expertise in the respective field, they will be invited as well.

20. The BMK also invites the concerned Ministries, social partners, NGOs and the Federal provinces on a regular basis to take part in the coordination meetings held in the run-up to the formal Councils of EU Ministers (jour fixe on Environment). In the aftermath of Council meetings debriefings with NGOs on the outcomes are taking place.

21. Moreover, the BMK actively integrates NGOs active in the field of the environment and climate change into the political dialogue held on current legislative projects, especially at EU level: there are, for example, regular round tables involving the Federal Minister for the Environment and representatives of NGOs on current subjects, with the NGOs also setting the agenda. The BMK also grants, on a regular basis, funds to national NGOs and to an EU environment office managed by NGOs, which provides excellent information on EU legislation on a regular basis, and to the biggest EU-NGO network in Brussels.

At the level of the nine Austrian “Länder” (provinces) ombudsmen for the environment are established. Their main tasks are observing the compliance with environmental interests in the application of regional laws as well as advising and informing the public in environmental matters. They also cooperate with and support environmental NGOs. In Vorarlberg, the most western province of Austria, for example, the ombudsman for the environment is elected by local NGOs. In their comments on the recent update of the report environmental NGOs raised some concerns that the competences of the ombudsman in one province were recently narrowed.

22. In recent years, many stakeholder dialogues starting at the administrative level have been held in Austria at the Federal level for the development of programmes and policies in the environmental sector. Special mention should be made of the following initiatives: Integrated Energy and Climate Strategy, Longterm Strategy 2050, Biodiversity Strategy, Austrian Bioeconomy Strategy and Action Plan, Noise Abatement Platform, Circular Economy Strategy, Forest Dialogue, Rural Development Programme and Water initiatives (“Generation Blue”, Plattform “Wasseraktiv”). Also, in the field of torrent and avalanche control, ever-more intense efforts have been made to include the general public. Austria also promotes the Local Agenda 21 (LA 21) as a model approach for participatory and proactive democracy aimed at implementing sustainable development. Currently, more than 530 processes at local and at regional level can be found. To ensure high quality of processes, a set of criteria was elaborated and also adjusted to the objects of the Agenda 2030.

Article 3, paragraph 7

23. In order to assess the participation of the Austrian public in the context of international negotiations in the environment field the former BMLFUW entrusted ÖKOBÜRO (an Austrian environmental NGO) with the task to identify the current practise as well as best practise examples of public participation and to provide related recommendations. The project included interviews with both representatives of NGOs as well as with ministry representatives who took part in international negotiations in October 2009. A summary and commented German version of the PPIF-Guidelines was produced and based on the results of the interviews, recommendations were compiled. Finally, a PPIF-workshop took place in November 2009, where the results and recommendations were presented to the interested public and discussions took place.

The results of the project were also presented in the UNECE workshop on “experiences of promoting the application of the principles of the Aarhus Convention in international forums” that took place in June 2010 in Geneva as part of the fifth meeting of the Task Force on PPIF.

24. The project showed that while knowledge of the Aarhus Convention and awareness about its aims existed, knowledge about the Almaty guidelines was less widespread. But it also showed that international negotiators broadly acted in conformity with the guidelines, even if they did not know them. The exchange of information on a national level regarding international forums, however, varies depending on the type of international forum and the quality and confidentiality of the information. Due to these differences there is no formalised procedure for the exchange of information on a national level. In addition to the information provided on the BMK website and related websites, specific information is often provided upon request. In many cases a climate of personal acquaintance and mutual trust proves useful as a solid basis for the exchange of information. The coordination of Austrian positions in international matters is also part of the consultation mechanism stated under Article 3, paragraph 4. As regards several meetings of international bodies, environmental organizations are also part of the Austrian delegation at United Nations Climate Conferences. Especially in the framework of the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, environmental organizations are involved very deeply.

Article 3, paragraph 8

25. Austrian constitutional law contains the following non-discrimination provisions: according to Article 2 of the Basic Law on the General Rights of Nationals and Article 7 of the Federal Constitutional Law, all nationals (Austrian citizens) are equal before the law. In addition, Article 14 of the European Convention on Human Rights, which was ratified by Austria in 1958, provides for an accessory discrimination ban which bans discriminatory actions with regard to the rights granted by the European Convention on Human Rights. A certain level of protection against discrimination irrespective of nationality is granted by the Implementation of the International Convention on the Abolishment of all Forms of Racial Discrimination in the Federal Constitutional Law (Federal Law Gazette 1973/390).

26. Based on EU membership, EU citizens (nationals of European Union Member States) are equally guaranteed the fundamental rights enshrined in the European Convention on Human Rights and in the EU Charter on Fundamental Rights or are provided with protection

against discrimination on grounds of nationality, sex, race, or ethnic origin, religion or philosophy, disability, age or sexual orientation.

4. Obstacles encountered in the implementation of article 3

27. Concerning Article 3 (7) the implementation of the guidelines pose some challenges, as they include manifold international details and depend on the rules of procedure of the respective fora. Austria is a basically highly-networked state featuring a high environmental profile. It is, however, a major task which demands the cooperation of several Ministries and sectors and need regular information and awareness raising.

5. Further information on the practical application of the general provisions of article 3

28. In the area of e-government used in public administration, Austria has been a European pioneer for several years and has received several awards for its activities in the field. In addition to a broad range of information offered, the main focus is on the electronic handling of procedures (from the application all the way to settlement or delivery, one-stop-shop approach) which lives up to the needs of the users.

6. Website addresses relevant to the implementation of article 3

bmk.gv.at/themen/klima_umwelt.html

partizipation.at

oeffentlicherdienst.gv.at/verwaltungsinnovation/oeffentlichkeitsbeteiligung/DigiPart.html

bmdw.gv.at/Themen/Digitalisierung/Digitales-Oesterreich.html

umweltbildung.at

umweltberatung.at

bmk.gv.at/themen/innovation/publikationen/energieumwelttechnologie/biooekonomiestrategie.html

bmk.gv.at/themen/klima_umwelt/klimaschutz/nat_klimapolitik.html

generationblue.at

wasseraktiv.at

bmlrt.gv.at/forst/walddialog.html

bmk.gv.at/themen/klima_umwelt/nachhaltigkeit.html
umweltzeichen.at
oekobuero.at/de/themen/umweltverfahren/aarhus-konvention/
oekobuero.at/en/topics/environmental-proceedings/aarhus-convention/
vorarlberg.at/web/land-vorarlberg/contentdetailseite/-/asset_publisher/qA6AJ38txu0k/content/buero-fuer-zukunftsfragen-aufgaben-und-leistungen?article_id=539812
eu-umweltbuero.at/
wien.gv.at/umweltschutz/
wien.gv.at/stadtentwicklung/studien/b008273.html
sustainabledevelopment.un.org/content/documents/26511VNR_2020_Austria_Report_English.pdf

7. Legislative, regulatory and other measures implementing the provisions on access to environmental information in article 4

29. The amendment registered under Federal Law Gazette I No. 6/2005 of the Austrian Environmental Information Act, Federal Law Gazette No. 495/1993, which had been in force already prior to Austria's accession to the EU in 1995, brought Austria in line with the provisions of the EU Environmental Information Directive (2003/4/EC) and the Convention. The Federal provinces also have adapted their pertinent legislation accordingly. In the following, there will be only references to the Austrian Environmental Information Act in answering the individual questions, as provincial provisions are generally based on this piece of legislation.

Relevant definitions

30. The definitions are transposed into national law in Articles 2 and 3, of the Austrian Environmental Information Act, with the term of "environmental information" being broadly phrased, so that any kind of information on the state of the environment, factors, measures or activities (possibly) having an impact on the environment or conducive to the protection of the environment can be collected. This also refers to environmental information supplied to bodies obliged to provide information by other institutions. Another focus of the Austrian Environmental Information Act is making information accessible to the general public in an effective and easy way as well as providing environmental information in a citizen-friendly way. Every person (e.g. also minors, foreign nationals, legal persons

such as companies, non-profit legal persons (Vereine) and corporate bodies) is entitled to apply for environmental information without having to provide any evidence.

Article 4, paragraph 1

Article 4, paragraph 1 (a)

31. Free access to environmental information is ensured in Article 4 of the Austrian Environmental Information Act and constitutes its key provision. Thereby everyone is granted a subjective public right to environmental data without such right to access being subject to being individually affected, to a de facto or legal interest, to a position as a party in legal proceedings or any other involvement in proceedings. The claim to environmental information is deemed as *actio popularis*.

Article 4, paragraph 1 (b)

32. The duty of information to be fulfilled by the bodies obliged to provide information is regulated under Article 5 of the Austrian Environmental Information Act. The requested information is to be provided in the form requested individually by the information-seeker or, where appropriate, in another form, with electronic data transfer to be preferred wherever possible.

Article 4, paragraph 2

In accordance with Article 5 of the Austrian Environmental Information Act, the deadline for making environmental information accessible is one month, with the possibility of extending this deadline to at maximum two months whenever comprehensive and complex information is involved. In such cases the Austrian Environmental Information Act provides for the applicant to be informed, at the latest before the end of the one month period, of such extension and the reasons for it (Art 5 para 6).

Article 4, paragraphs 3 and 4

33. Article 6, paragraph 1, of the Austrian Environmental Information Act regulates the constraints to information and the reasons for denying information, according to which it is admissible to hold back environmental information, provided that:

- a) The request for information refers to the transfer of internal information;
- b) The information is requested in a way that is obviously abusive;
- c) The request for information is too general;
- d) The request for information refers to material which is in the process of being completed or involves written documents which have not yet been finalized or data which have not yet been edited.

34. Article 6, paragraph 2, of the Austrian Environmental Information Act states the reasons for denying information, according to which it shall not be permitted to give information, if the disclosure of environmental information would have a negative impact on certain objects of legal protection (e.g.: maintenance of public safety or comprehensive national defence, but also the protection of environmental areas, such as the habitation of rare animal species, which would be disclosed when providing the information, to the extent that perturbation of such species' habitats is feared). In addition, the confidentiality of personal data constitutes a reason for denying information to the extent that there is a protectable interest in non-disclosure within the meaning of Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data, on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) and of the Austrian Data Protection Act, Federal Law Gazette I No. 165/1999 in the version Federal Law Gazette I No. 24/2018. Moreover, the protection of business and company secrets constitute a reason for denying information.

35. Article 6, paragraph 4, of the Austrian Environmental Information Act stipulates that both the constraints to information and the reasons for denying information are to be interpreted narrowly and that, in the individual case, the public interest in disclosing the relevant environmental information must be considered. This is to ensure that the constraints to information and the reasons for denying information do not result in a limited obligation to information incumbent on the body obliged to provide information.

Article 4, paragraph 5

36. As in many cases it is not easy for citizens to find the body obliged to provide information which disposes of the environmental information requested by him/her, Article 5, paragraph 2, of the Austrian Environmental Information Act provides for a respective duty to forward/refer to the competent authorities holding the information so that a lack of knowledge of the structure of public authorities will not lead to any legal disadvantage for the applicant.

Article 4, paragraph 6

37. In accordance with Article 6, paragraph 1 no. 4, of the Austrian Environmental Information Act, the disclosure of environmental information can be denied if the request for information refers to material which is in the process of being completed or involves written documents which have not yet been finalized or data which have not yet been edited.

Article 4, paragraph 7

38. The deadlines for notification and the extension of deadlines are regulated in Article 5, paragraph 6 of the Austrian Environmental Information Act. In order to comply with Decision V/9b Austria has amended its Environmental Information Act which stipulates that - in case of a negative or partly negative response by the authority - a decree has to be issued (see more details under Art. 9 para 4). In case the authority does not issue such notification the competence for issuing such formal refusal notification is transferred to the Administrative Courts of the relevant province or to the Federal Administrative Court, if the authority does not resolve its omission within 3 months.

Article 4, paragraph 8

39. In accordance with Article 5, paragraph 5, of the Austrian Environmental Information Act, access to public registers or lists and the on-site access to the requested information shall be free of charge, while it shall be permissible to charge purchase prices or protective charges for publications.

8. Obstacles encountered in the implementation of article 4

The competent authorities did not provide any information on this issue. An NGO claimed that in case no information is provided by the competent authority the following procedure may occasionally be too long. This element was also part of a complaint by the Austrian NGO ÖKOBÜRO to the ACCC (see more details under Art. 9 para 4). On the implementation in practice especially at provincial level, concerns have been raised by an NGO that the reasons for denying information are not interpreted in a restrictive manner without taking into consideration case-specific interests.

9. Further information on the practical application of the provisions of article 4

40. Many inquiries and requests for information concerning the environment are constantly submitted to the BMK and to the Federal provinces per telephone, e-mail or in writing. Yet, only very few inquiries are expressly based on the Austrian Environmental Information Act. As the BMK tries to handle all inquiries as fast and as unbureaucratically as possible and the documentary handling procedures of inquiries concerning various subject matters are not separately collected under the heading of environmental information, it is not possible to supply detailed information on figures, contents and possible reasons for not providing the requested information.

41. The inquiries concern many different areas: waste legislation, legislation on the remediation of contaminated sites, soil protection legislation, nature conservation legislation, water legislation, water-supply companies, hydraulic engineering legislation, water management and institutions responsible for water bodies, power plants, transport, clean air legislation, urban development and urban planning, Mineral Resources Act, Emission Allowances Act, radiation protection law, industrial law and environmental noise.

42. The Federal Environment Agency (Umweltbundesamt) is also home to a liaison office aiming at providing everyone with smooth access to environmental information. The task of the office is to support the exchange of information between the bodies obliged to provide information and to propose measures which are suitable for facilitating access to environmental information and to ensure the high level of quality of environmental information.

43. In its capacity as a body obliged to provide information, the Federal Environment Agency answers about five information requests a day. Requests for information are submitted to the Agency by individuals or organisations by telephone or in writing. Each year, the Agency processes about ten official requests for environmental information under the Environmental Information Act or coordinates their responses across institutions. The Agency actively provides comprehensive information on various environmental topics on its website (umweltbundesamt.at); publications can also be accessed online by interested parties.

44. In 2019, there were about 50,000 accesses to the publication database. In 2019 the Federal Environment Agency website and the information available there was accessed by more than 1.4 million people.

10. Website addresses relevant to the implementation of article 4

bmk.gv.at/themen/klima_umwelt.html

bmk.gv.at/themen/klima_umwelt/betrieblich_umweltschutz/umweltkontrolle.html

bmk.gv.at/themen/klima_umwelt/eu_international/aarhus.html

bmlrt.gv.at/wasser/schutz-vor-hochwasser/hochwasserrisiko.html

topprodukte.at/

neu.ref.wien.gv.at/at.gv.wien.ref-live/web/reference-server/

umweltbundesamt.at/umweltinformation

umweltbundesamt.at/umweltinformation/koordinierungsstelle

umweltbundesamt.at/umweltinformation/opendata

umweltbundesamt.at/umweltthemen/luft/daten-luft/tgl-bericht

umweltbundesamt.at/wasser

usp.gv.at/Portal.Node/usp/public/content/umwelt_und_verkehr/39984.html

11. Legislative, regulatory and other measures implementing the provisions on the collection and dissemination of environmental information in article 5

Article 5, paragraph 1

Article 5, paragraph 1 (a)

45. In accordance with Article 9, paragraph 3, of the Austrian Environmental Information Act, the bodies obliged to provide information shall update the environmental information at suitable intervals.

Article 5, paragraph 1 (b)

46. The provision on the publication of environmental information (para. 9 of the Austrian Environmental Information Act) emphasizes the duty to actively supply environmental information on the part of administrative bodies. The bodies obliged to provide information shall edit the environmental information which is relevant for fulfilling their tasks and which they have at their disposal or which is being supplied to them in order to disseminate it to the public actively and systematically. This includes e.g. environment-related legal provisions; policies; plans and programmes; reports on the state of the environment and, in particular, reports on environmental control; permits having an impact on the environment; and risk assessments;

Article 5, paragraph 1 (c)

47. Article 9, paragraph 5, of the Austrian Environmental Information Act stipulates that, in the event of imminent danger to human health or the environment, the bodies obliged to provide information shall disseminate all information directly and without any delay. In addition, the owners of plants affected by major accident shall, from the outset and without being instructed to do so, disclose the following information (Article 14 of the Austrian Environmental Information Act) to the affected population: general information on the plant (location, plant description), possible hazards and consequences in the event of failure, existing safety precautions and appropriate action to be taken in the event of failure.

48. Also this information shall be provided appropriately and in a way that it is understandable by the general public. It is the responsibility of the individual companies to determine the appropriate form of information.

Article 5, paragraph 2

49. In order to fulfil their duty of information in accordance with Article 9, paragraph 6, of the Austrian Environmental Information Act, the bodies obliged to provide information shall take practical precautions facilitating access to information, in particular by:

- a) Publishing charts concerning organisation and the distribution of functions to the extent that such charts are available;
- b) Naming contact persons or information centres;
- c) Managing lists or registers concerning the environmental information they have at their disposal.

Article 5, paragraph 3

50. Electronic dissemination of environmental information is regarded as a priority instrument for active environmental information management, which is firmed up in the Articles 9, 10, 13 and 14 of the Austrian Environmental Information Act.

Article 5, paragraph 4

51. In accordance with Article 3 of the Austrian Environmental Control Act, the Federal Minister for the Environment shall submit a written report on the state of implementation of environmental control to the Austrian National Council every three years. On the basis of Article 6 of the Austrian Environmental Control Act and in its capacity as the environmental expert body of the Austrian Federal government, UBA shall be responsible for drawing up this environmental control report. The chapters of the current 12th Report on the State of the Environment in Austria (2019) are available for download at umweltbundesamt.at/studien-reports/umweltkontrollbericht/ukb2019.

Article 5, paragraph 5

52. The obligations incumbent on the bodies obliged to provide information to actively and systematically disseminate information are set forth in Article 9, paragraphs 1 and 2, of the Austrian Environmental Information Act. In particular, the following information shall be made available and disseminated:

- a) The wording of contracts, conventions and agreements under international law, as well as Community and other legal provisions on the environment or that touch upon environmental issues;
- b) Policies, plans and programmes referring to the environment.

Article 5, paragraph 6

53. In accordance with Article 13 of the Austrian Environmental Information Act, the owners of companies, obliged to measure and record emission data shall actively (i.e. without being asked to do so) disclose such environmental information. This means that the respective company shall publish the emission data he/she is obliged to measure for the period of the respectively last month (or the last year) in a way that is easily understood by the general public and in a place which is easily accessible.

Article 5, paragraph 7

54. The information stated in paragraph 7 is made available to the general public in the framework of the review procedures used and by way of settlement in Parliament (laws and regulations) on the respective websites (see answer concerning Art. 8).

Article 5, paragraph 8

55. The website of the environmental consultancy body, Umweltberatung provides information on precautionary environmental protection in various fields (e.g. chemicals, building and living, climate protection, energy etc.). In addition, citizens can turn to dedicated information centres in the federal provinces. The municipality of Vienna, for instance, has published the “Gut-gekauft-Bezirkspläne”, i.e. city district guides including a register of companies selling environmentally friendly products as well as advice on sustainable shopping.

56. In the framework of the initiative “Bewusst kaufen” (“conscious buying”), sustainable products are advertised by merchants, enabling consumers to make informed choices when shopping. Food stuff, electric equipment and hardware retailers, butchers and furniture traders are taking part in the campaign. Moreover, a growing number of self-employed merchants are supporting the campaign, which has been launched by the BMK, its partners and the Austrian retail industry.

Article 5, paragraph 9

57. Austria ratified the UNECE Protocol on Pollutant Release and Transfer Registers on 23 March 2010. The Protocol entered into force for Austria on 21 June 2010. Prior to the ratification the Austrian Environmental Information Act was amended (Federal Law Gazette I No. 128/2009) to create a legal basis for the national PRTR. Data are also provided for the European Pollutant Release and Transfer Register (Regulation (EC) 166/2006, Austrian ordinance Federal Law Gazette No. II 380/2007 as amended by Federal Law Gazette II No. 223/2020).

12. Obstacles encountered in the implementation of article 5

58. The competent authorities did not provide any information on this issue.

13. Further information on the practical application of the provisions of article 5

59. In the framework of the Austrian e-government strategy, a working group on environmental information was set up, dealing with the approach to joint implementation of the requirements placed by the Austrian Environmental Information Act in the framework of the cooperation between the Federal Government, the Federal provinces and the municipalities. With a view to the requirements pertaining to access to and dissemination of environmental information arising from the Austrian Environmental Information Act, the Federal provinces and the municipalities in Austria are required to find a new and comprehensive position. This is to make an important contribution to more transparency and more attention to the citizen in the field of environmental administration; Austria is on the way to a European Shared Environmental Information System.

14. Website addresses relevant to the implementation of article 5

umweltbundesamt.at/umweltthemen/industrie/daten-industrie/prtr

usp.gv.at/Portal.Node/usp/public/content/umwelt_und_verkehr/umweltinformation/Seite.1660000.html

help.gv.at/Content.No.de/166/Seite.1660000.html

prtr.eea.europa.eu/#/home

umweltgesamtrechnung.at

ecology.at/einkaufsfuehrer_wien.htm

bewusstkaufen.at

15. Legislative, regulatory and other measures implementing the provisions on public participation in decisions on specific activities in article 6

60. In order to comply with the citizen-participation provisions of the Convention, the Environmental Impact Assessment (EIA) and Integrated Pollution Prevention and Control (IPPC) Directives were adapted at the European level by Directive 2003/35/EC which amends with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC. The same Directive was also used to implement the Convention for the plans and programmes (listed in Annex I to Directive 2003/35/EC) not yet covered

by Directive 2001/42/EC on Strategic Environmental Assessment (SEA Directive), adopted only two years earlier. The SEA Directive had already implemented the Convention with regard to the plans and programmes covered by it.

A need for implementation evolved in particular from the interaction of Article 2, paragraph 5, Article 6 and Article 9, paragraph 2 of the Convention, requiring the involvement of certain environmental non-governmental organizations in approval procedures.

61. Austria transposed the EIA Directive 85/337/EEC (amended by Directives 97/11/EC, 2003/35/EC, 2014/52/EC, codified by Directive 2011/92/EU), the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Aarhus Convention at the project level into national law in the Federal Act on Environmental Impact Assessment (EIA Act 2000, Federal Law Gazette I No. 697/1993, last amended by Federal Law Gazette No. 80/2018).

62. Annex I to the Aarhus Convention, to which the provisions set forth under Article 6 refer, includes projects which are covered by the EIA and IPPC Directives. Further adaptations to the Convention were made at a Federal level in the area of commercial equipment law by way of the 2005 Amendment to Industrial Law (Federal Law Gazette I No. 85/2005) with regard to the 1994 Trade and Industry Act, the Air Pollution Act for Boiler Facilities and the Mineral Resources Act, the 2004 Amendment to the EIA Act 2000 (Federal Law Gazette I No. 153/2004), the Amendment to the Waste Management Act (Federal Law Gazette I No. 155/2004), the Agricultural Amendment Act concerning the Federal Act on Forest and Pastures Usage Rights (Federal Law Gazette I No. 87/2005) and the Immission Control Act in the framework of the 2005 Act adapting the Laws on Environmental Protection (Federal Law Gazette I No. 34/2006). The Industrial Emissions Directive (2010/75/EU), chapter II, replaced the IPPC Directive and had to be transposed by January 2013. Compared to the IPPC Directive no major changes have been introduced with regard to Article 6 of the Aarhus Convention, although some new categories of activities are covered. The respective amendments of the relevant national laws (Trade and Industry Act, Waste Management Act, Emission Protection Act for Steam Boilers) were passed by Parliament in 2013. The respective amendment of the Mineral Resources Act was adopted in 2015 (Federal Law Gazette I No. 80/2015).

Article 6, paragraph 1

Article 6, paragraph 1 (a) and (b)

63. The projects subject to EIA are listed in Annex 1 to the EIA Act 2000, which covers not only the projects of Annex I but also those of Annex II to the EIA Directive 2011/92/EU (and thus also those of Annex I to the Convention).

Article 6, paragraphs 2, 3, 4 and 5

64. The Austrian EIA procedure provides for the repeated information and involvement of the general public. In EIA procedures, the first step towards public participation is taken early, by publicly announcing the project for at least six weeks in accordance with Article 9 of the EIA Act 2000, with every interested citizen or organization having the opportunity to submit comments. A circular published on the website of the BMK points to the fact that project applicants are supposed to do respective public relations work already in the preparations for the application. In addition, there is the option of oral proceedings in accordance with Article 16 of the EIA Act 2000, which is to be announced accordingly (also via the Internet).

Article 6, paragraphs 6 and 7

65. The information given in Article 6, paragraph 6, of the Convention is subject of the Environmental Impact Statement in accordance with Article 6 of the EIA Act 2000, which is to be published for at least six weeks in accordance with Article 9. Within this period, anyone is entitled to submit comments to the responsible authority with regard to the project or to the Environmental Impact Statement.

Article 6, paragraphs 8 and 9

66. In accordance with Article 17, subparagraph 4, of the EIA Act 2000, the statements received shall be taken into account. The decision, including the measures and the review of the received statements, shall be published without any delay, in accordance with Article 17, paragraph 7, of the EIA Act 2000.

Article 6, paragraph 10

67. Modifications of projects are subject to an EIA procedure in accordance with Article 3(a) and of Annex 1 of the EIA Act 2000.

Article 6, paragraph 11

68. The Genetic Engineering Act (Federal Law Gazette I No. 510/1994, last amended by Federal Law Gazette I No. 13/2006) transposes into national law, inter alia, the EU Deliberate Release Directive 2001/18/EC and aims at the prevention of harmful impact of genetically modified organisms (GMO) on the environment.

69. According to Decision II/1 the Genetic Engineering Act includes provisions on the announcement to and the hearing of the general public in the case of GMO release (paras. 43 and 44) and on the information of the general public on permits granted for bringing the respective substances into circulation (para. 58(a)).

16. Obstacles encountered in the implementation of article 6

The competent authorities did not provide any information on this issue. Some NGOs as well as the Environmental Ombudsmen claimed, inter alia, that public participation takes place at a rather late stage of the EIA procedure and costs in relation to presenting a counter expertise to the competent authority in the context of the EIA procedure were rather high. An NGO referred to the judgement of the European Court of Justice in case C-243/15 which holds that also habitats and species protection procedures fall under Art 6 paragraph 1 (a) of the Convention.

17. Further information on the practical application of the provisions of article 6

70. On its website, the BMK has published a list of all environmental organizations approved in Austria according to the EIA Act 2000 and also gives information on the application procedure required for obtaining approval (bmk.gv.at/themen/klima_umwelt/betrieblich_umweltschutz/uvp/anerkennung_org.html).

71. The Federal Environment Agency consolidates the key information on ongoing and completed EIA procedures in an EIA database and makes it accessible online. Accordingly, a description of the respective project, information on the legal foundations as well on the project status and information on the documents available in the EIA documentation are accessible to the general public. Every three years, the BMK also submits a report to the Parliament on the implementation of the EIA Act 2000, recently in 2018.

18. Website addresses relevant to the implementation of article 6

bmk.gv.at/themen/klima_umwelt/betrieblich_umweltschutz.html

bmk.gv.at/themen/klima_umwelt/betrieblich_umweltschutz/uvp.html

umweltbundesamt.at/umweltthemen/uvpsup/uvpoesterreich1/uvp-dokumentation

19. Practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment pursuant to article 7

72. As regards the EIA, including public participation, also Article 2, paragraph 7, of the Espoo Convention includes a provision encouraging the application of EIA principles also in policies, plans and programmes. The SEA Directive 2001/42/EC implements advanced relevant public participation provisions of the Aarhus Convention for a wide range of plans and programmes. As mentioned under Article 6, the relevant provisions of the Aarhus Convention have been implemented by way of Directive 2003/35/EC for several other plans and programmes (excluding policies) which were not covered by the SEA Directive. Also the SEA Protocol to the Espoo Convention provides for public participation for certain plans and programmes as well as for the consideration and integration of the SEA principles to the extent appropriate in the preparation of proposals for policies and legislation (Article 13).

73. Based on the distribution of competences in accordance with the Federal Constitution, in Austria not only the Federal Government, but also the Federal provinces, which have transposed both directives in several relevant Federal and provincial acts, are responsible for the transposition of the SEA Directive 2001/42/EC and the Public Participation Directive 2005/35/EC (and thus also of the relevant provisions of the Convention). The Federal Government and some Federal provinces (e.g. Carinthia, Lower Austria, Salzburg, Styria, Tyrol,

Vorarlberg) have, as an additional measure, published and updated SEA Guidelines to support the authorities and the general public in applying SEA principles in a way that is in line with the EU and with the Convention.

74. Moreover, several federal acts have been amended with regard to adaptation to the provisions of the Aarhus Convention for the following areas: waste (2002 Austrian Waste Management Act as amended by Federal Law Gazette I No. 115/2009, Radiation Protection Act as amended by Federal Law Gazette I No. 133/2015), noise (Federal Act on the Assessment and Management of Environmental Noise, Federal Law Gazette I No. 60/2005), air (Immission Control Act, as amended by Federal Law Gazette I 2007/70), transport (Federal Act on the Strategic Assessment of Transport, Federal Law Gazette I No. 96/2005), water (Federal Water Act, Federal Law Gazette 1959/215 as amended by Federal Law Gazette I No. 2006/123). At the provincial level, laws pertaining to the same and other environmental areas are covered as well as the pertinent regional planning legislation.

75. The definition of the term “general public” in Austria is rather generous. Basically, the general public which is to be consulted covers “everyone”. Some laws specify this general public by defining it, e.g. as “... natural and legal persons as well as their associations, organizations or groups, and, in particular, organizations promoting environmental protection ...” (e.g. Regional Planning Act of the Federal province of Vorarlberg, Provincial Legal Gazette No. 29/1996, para. 10(c), subpara. 2).

76. In addition, Austria has provided for SEAs involving voluntary public participation with regard to plans and programmes not covered by the SEA Directive, e.g. for the SEA development area “Vienna North-East” or the National Strategic Framework Plan in the framework of EU structural funds 2007-2013 (STRAT.AT) and at the level of Local Agenda 21. For some plans the public has been involved even beyond legal requirements, e.g. waste management plans for Vienna. Moreover, some laws provide for public participation platforms, such as provincial regional planning laws (irrespective of whether SEA is required or not).

20. Opportunities for public participation in the preparation of policies relating to the environment provided pursuant to article 7

77. It can be assumed that the existing Austrian practice and, in particular, the review procedure and the information available on the Internet comply with the relatively general requirements of the Convention as regards the preparation of “policies”. As already mentioned, the promotion of excellent cooperation and decision-making processes involving the State and civil society in matters of public interest accordingly play a key role in Austria.

78. To include the general public in decisions which are affecting them is an integral part of a modern concept of politics and administration. In this process, Austria has set the following three priorities: (a) strengthening policy making which is open and close to the citizen in order to improve the quality of democracy, (b) stimulating stakeholders’ responsibility vis-à-vis society, and (b) promoting local/regional sustainable processes.

79. Central activities are:

- a) The existing “public-participation standards” should also be regarded as a contribution to the implementation of the SDGs Agenda 2030 (see also under Art. 3 para 2).
- b) In 2002, ÖGUT, the Austrian Society for Environment and Technology, set up a “participation” strategy group at the instigation of the former BMLFUW, made up of members from ministries and authorities as well as NGOs, public participation practitioners and the scientific community.
- c) The “Public Participation Manual”, which was drawn up by the former BMLFUW, ÖGUT, the Austrian Institute for Ecology and Büro Arbter provides for advice for successful public participation, the required framework, the expected costs and successful Austrian case histories.
- d) Over the last years, a website on the subject of participation (www.partizpation.at) has become an information hub (“one-stop shop”) for public participation.
- e) In the future, more attention shall be paid to e-participation/e-democracy instruments. As mentioned earlier, it is the aim of the Austrian e-government strategy to enable citizens and businesses to handle all public administration procedures electronically, smoothly and swiftly without being required to have specialist knowledge about public responsibilities and technical details. A task

force on e-democracy was set up by the Federal Chancellery. The task force published a position paper on e-democracy and e-participation in Austria in 2008. It worked on an e-democracy strategy for Austria including e-participation principles and on a guideline on the evaluation of e-participation processes, e-participation tools and hints for administrators using web 2.0.

- f) The BMK carried out several public participation processes on the following recent environment related policies: National Air Pollution Control Programme, Federal Waste Management Plan, Waste Avoidance and Recycling Strategy, Initiative on Avoidance of Food Waste,, Progress Report to the Strategy for Adaption to Climate Change (see also under Art. 3 para 4).
- g) In order to overcome obstacles with public participation at the strategic planning level (policies, plans, programs) the former BMLFUW commissioned a study on the interfaces between public participation and political decision makers, summing up experiences and recommendations for good practice.

21. Obstacles encountered in the implementation of article 7

The competent authorities did not provide any information on this issue. Some NGOs as well as Environmental Ombudsmen claimed that public participation would take place too late, once the draft plan was already available. Some NGOs criticised the lack of early and effective participation within a reasonable period of time and that the representation of environmental interests in decision-making procedures is sometimes rather weak in practice. An NGO claimed that in some cases transparency is missing on how the statements received have been taken into account and which plans and programmes shall undergo a screening, whether they are subject to strategic environmental assessment, and on which grounds this is decided.

22. Further information on the practical application of the provisions of article 7

80. In early December 2007, Austria organized an international UNECE-Aarhus workshop in Sofia on issues relating to Articles 7 and 8 involving experts from the Aarhus and Espoo Conventions. In the workshop, case studies and contexts with regard to both the Espoo Convention and the SEA Protocol, as well as individual experiences, were presented, making a small but specific contribution to better implementation in the UNECE area.

23. Website addresses relevant to the implementation of article 7

nachhaltigkeit.at

partizipation.at

bmdw.gv.at/Themen/Digitalisierung/Digitales-Oesterreich.html

oerok.gv.at/eu-regionalpolitik

laerminfo.at

SEA websites including information on public participation in SEAs:

bmk.gv.at/themen/klima_umwelt/betrieblich_umweltschutz/sup.html

strategischeumweltpruefung.at

austriaca.at/6631-3

arbter.at/sup/sup_b.html

Examples of SEA guidelines used by some Federal provinces:

raumordnung-noe.at/index.php?id=28

vorarlberg.at/web/land-vorarlberg/contentdetailseite/-

[/asset_publisher/qA6AJ38txu0k/content/strategische-umweltpruefung?article_id=317523](http://asset_publisher/qA6AJ38txu0k/content/strategische-umweltpruefung?article_id=317523)

salzburg.gv.at/bauenwohnen/Seiten/raumplanung.aspx

landesentwicklung.steiermark.at

tirol.gv.at/landesentwicklung/raumordnung/

wien.gv.at/stadtentwicklung/partizipation/index.html

land-oberoesterreich.gv.at/23986.htm

24. Efforts made to promote effective public participation during the preparation of regulations and rules that may have a significant effect on the environment pursuant to article 8

81. In Austria, the social partners – i.e. the above mentioned organizations of business and industry, agriculture, employees as well as the national trade union federation, which are partly established by law – play an important role in the representation of interests of the respective groups of society with regard to generally binding legal regulations which have a significant impact on the environment.

82. The Acts on the Incorporation of the Federal Chamber of Commerce of Austria (para. 10), of the Chambers of Labour (para. 93, subpara. 2) as well as of the Chambers of Agriculture provide that draft laws (as well as implementation rules) shall be submitted to the chambers by the public bodies for the purpose of review before being brought before the legislative body.

83. Where applicable, these representations of interest conduct respective internal consultation procedures for the purpose of opinion-making and submit statements (expert opinions) to the public bodies. It is then the task of these public bodies to recognize the statements and consider them accordingly. In addition, pertinent working committees made up of members of the responsible public bodies and of the social partners do exist in many cases already prior to official review procedures, for example for the purpose of expert discussion of the predrafts of legal instruments. Environmental NGOs are sometimes also part of these internal consultations. Normally they are consulted on environment related laws in the official consultation process.

84. The definitions set forth under Article 2 of the Convention have been implemented to the following extent: for example, the terms of “public” and “public concerned” regarding the interests represented by the respective corporate body with a view to environmental policy are also included in the provisions on review rights. The “public authorities” are partly mentioned in the review rules (see, for example, para. 93 of the Austrian Chamber of Labour Act).

85. Within the individual stakeholder groups provided with review rights, there is no discrimination. According to the legal foundations, membership in the representations of interest/chambers is based on certain circumstances.

86. Moreover, mention has to be made of the fact that a series of plans and programmes covered by the SEA Directive (e.g. in the area of regional planning) are also enacted as ordinances in Austria, i.e. there is public participation in the preparation of executive regulations or there are general and legally binding provisions.

87. The Austrian public participation standards should also be applied to public participation in legislative processes. They recommend 6-12 weeks as an appropriate consultation period and recommend providing two weeks more when the consultation coincides with vacation periods. They also recommend coming up with a consultation report, where the

public can follow-up how the received statements have been taken into account by the responsible administration. By now, this recommendation is, however, not applied comprehensively.

25. Obstacles encountered in the implementation of article 8

The competent authorities did not provide any information on this issue. An NGO complained that in practice time limits for consultation are sometimes too short (less than 6 weeks). The same NGO strengthens that the involvement of civil society is improving under the current Federal Government, however, the representation of environmental interests in decision-making progresses could be enhanced since a specific ombudsman for the economic location (Standortanwalt) has been introduced in order to advocate commercial interests.

26. Further information on the practical application of the provisions of article 8

88. The responsible Federal and provincial bodies publish draft laws on their websites (see below). This information also includes a general e-mail address as well as other partners which can be contacted for the submission of statements. Moreover, adequate time limits are provided for. In this process, every received statement is considered. Draft laws and the related received statements are published on the website of the Austrian parliament.

89. Also some of the representations of interest maintain separate consultation websites, such as the Federal Chamber of Commerce.

90. In its capacity as coordinating body of Austrian environmental NGO organizations, ÖKOBÜRO publishes the statements submitted in the framework of national review procedures on its website.

27. Website addresses relevant to the implementation of article 8

Examples of websites providing the opportunity to comment on environmental draft laws are:

ris.bka.intra.gv.at/Begut/

bmk.gv.at/recht/begutachtungsverfahren.html

parlament.gv.at/PAKT/MESN/

wko.at/service/t/positionen-stellungnahmen-wko-2020.html

wien.arbeiterkammer.at/interessenvertretung/umweltundverkehr/index1.html

oekobuero.at/de/publikationen/

oekobuero.at/en/publications

28. Legislative, regulatory and other measures implementing the provisions on access to justice in article 9

Article 9, paragraph 1

91. Austria has transposed the provisions concerning Article 9, paragraph 1, of the Convention by the legal protection provisions set forth in the Federal Environment Information Act (para. 8) and by way of respective provincial legislation.

Decrees - in cases where the environmental information is not at all or not to the requested extent provided - can be appealed at the Administrative Courts at federal and regional level (see also Art. 4 para 7).

92. Bodies obliged to provide information, which are not authorised to enact formal notifications, shall forward applications for the enactment of formal notifications to the body responsible for expert supervision/to the district administration authority or to refer the applicant to such bodies. Moreover, the Administrative Courts can be called in by persons affected by the provision of environmental information (e.g. company owners) provided that such persons feel that their rights have been violated on grounds of the respective information. Basically, the General Administrative Procedure Act shall apply for the decree enactment procedure.

Article 9, paragraph 2

93. The wide range of affected parties covered by Article 19 of the EIA Act 2000 ensures that all persons, citizens' groups and environmental organisations possibly affected are entitled to make use of legal remedies – provided that they comply with the legal requirements – and thus have the possibility to have the decision reviewed by the Federal Administrative Court (Bundesverwaltungsgericht) or the Supreme Administrative Court (Verwaltungsgerichtshof) and/or the Constitutional Court (Verfassungsgerichtshof) with a view to contents as well as to procedures. In Austrian legislation, the following criteria are laid down for the recognition of environmental organisations: they must be organised in the form of a non-profit legal person (association or foundation) which has environmental protection as its main objective, and they must have been legally incorporated as working for environmental protection for at least three years and must have a minimum number of one hundred members. A federation of environmental organisations will obtain recognition if it comprises of at least five member associations which reach together the minimum number required for five recognized environmental organisations.

94. By the Federal Administrative Jurisdiction Act in 2012 both Federal and Regional Administrative Courts have been established representing a two-stage administrative jurisdiction. Therefore, also the EIA Act 2000 had to be amended in 2013. Besides provisions echoing the abolishment of the Environmental Senate by 2014 and the transferal of its competences and functions to the Federal Administrative Court, new provisions regulate the legal means for appeals, e.g. by securing the right for legal persons (like ombudsmen) and environmental NGOs to the Federal Administrative Court as well as by initiating a revision procedure at the Supreme Administrative Court. The right for environmental organizations to initiate a review procedure (Überprüfungsantrag) regarding negative screening decisions (where no need for an EIA has been determined for a project) was introduced by the amendment to the EIA Act in 2012. This right has become the legal means of appeal to the Federal Administrative Court in 2014. For reasons of clarification, it has to be mentioned that this is to be seen as a legal remedy for legal persons without resulting in a full locus standi. In those cases before the amendment was in place the Supreme Administrative Court stated through its ruling (from July 2016) that locus standi is given to NGOs within the permit procedure to challenge whether an EIA has to be carried out or not.

95. In 2016 the EIA Act 2000 has been amended following the judgement of the European Court of Justice in a preliminary ruling based on a request by the Supreme Administrative Court (case "Karoline Gruber", C-570/13). The Court ruled that – according to Article 11 of the EIA Directive – the right to appeal a decision declaring that a particular project does not require an environmental impact assessment has to include also individuals (e.g.

neighbours) who are part of the public concerned. By the amendment (Federal Law Gazette I No. 4/2016) a right to appeal before the Federal Administrative Court for neighbours has been established to guarantee access to justice in so called “negative EIA screening decisions”.

96. Further on Article 11 of the EIA Directive the European Court of Justice has ruled in its judgement (C-137/14, infringement procedure against Germany) on the legal institute of “foreclosure” (Präklusion). Article 40 paragraph 1 has been changed by an amendment of the EIA Act 2000 in 2017 to follow this judgement. New objections or reasons may be stated for the first time in a complaint, if the complaint gives reasons why it has not been possible to advance them already during the objection period in the application procedure and if the complainant demonstrates that the fact that he or she failed to advance them during the objection period is not or only to a minor degree his/her fault. Article 16 paragraph 3 has been changed by an amendment of the EIA Act 2000 in 2018 which foresees that new facts and evidence are to be provided by parties in the hearing at the latest. However, if the competent authority becomes aware of new facts relevant to the decision, it has to carry out further investigations. In any case, it must be ensured that the parties had sufficient opportunities to assert their legal interests.

Article 9, paragraph 3

97. Austria is of the opinion that the set-up and interpretation of this provision gives a certain leeway to the Parties to the Convention with regard to its implementation, ranging from systems dominated by civil law or administrative law approaches stressing subjective rights up to the complaint procedures involving, for example, an ombudsperson. Moreover, Parties to the Convention have a discretion to define which provisions of national law are relevant in relation to Article 9, paragraph 3. The Austrian legal system provides for the following instruments for enforcing environmental matters in the implementation of this provision:

- a) Concerning environmental private law, the Austrian Civil Code (ABGB) provides for a set of general and specific rules. In general, anybody who is or fears to be endangered by pollution is entitled to file a lawsuit against the polluter and to seek an injunction. This right to preventive action against pollution detrimental to health has been expressly acknowledged by courts as an integral, innate right of every natural person (Article 16 ABGB), neither requiring participation in administrative proceedings nor ownership of private property in the proximity of the polluter. In addition, private entities in violation of environmental laws may be

sued by competitors and special interest groups, since producing goods in violation of such laws is regarded by courts to be unfair business practice.

- b) Article 364 et seq. of ABGB, the Austrian Civil Code, provide for a basis for a claim for the defence against inadmissible immissions coming from adjacent properties. Neighbours hold the subjective right to prohibit immissions exceeding a certain level. In this context, direct or indirect immissions having an effect from one property to another (e.g. waste water, smell, noise, light and radiation) are deemed as impairments. A special environmental context is established by the provisions on immission control (Article. 364 paragraphs 2 and 3 of the Austrian Civil Code) and the special provisions on approved plants (Article 364(a) of the Austrian Civil Code). In addition, there are also facts subject to special laws constituting claims for damages representing an explicit relation to the environment: Article 26 of the Austrian Water Act, Article 53 of the Austrian Forestry Act, Article 79(a) et seq. of the Austrian Genetic Engineering Act, and Article 11 of the Austrian Nuclear Liability Act.
- c) The most significant share of Austrian provisions on the protection of the environment exists in the area of administrative law, which is firstly dealt with by the responsible administrative bodies. The application and administration of the laws is organised locally, i.e. via the Federal provinces or the district administration and municipal authorities. Since 2014 Regional Administrative Courts (Verwaltungsgerichte der Länder) are serving as judicial review bodies in several matters (amendment to the Administrative Jurisdiction, Federal Law Gazette I No. 51/2012). After having exhausted these review procedures, complaints by certain parties can be lodged to the supreme courts, namely the Supreme Administrative Court (Verwaltungsgerichtshof) and/or the Constitutional Court (Verfassungsgerichtshof).
- d) NGOs/environmental organisations that fulfil certain criteria provided for in national legislation can also apply the rights given to parties in various administrative environment proceedings (most relevant e.g. EIA, IPPC, Waste Management Act and Industrial Code). The Aarhus Convention allows the establishment of criteria according to national legislation as long as they are reasonable and comply with the principles of the Convention.
- e) On national and local level communities (e.g. acting as host community for projects regarding the EIA Act) enjoy locus standi according to several laws (e.g. regional nature protection laws, EIA Act). Thus they can challenge decisions up to the Supreme Courts.
- f) In the Federal provinces, Environmental Advocacy Offices i.e. Ombudsmen for the environment were set up as regional bodies representing the cause of

environmental protection. It is the task of the Ombudsman for the environment to ensure the protection of the environment in certain administrative procedures (e.g. procedures concerning nature protection or procedures according to the Waste Management Act or the EIA Act 2000). In order to enforce such claims, the Ombudsman for the environment has the position of a party and is authorized to lodge complaints with the Administrative Courts and widely also with the Supreme Administrative Court with regard to compliance with legal provisions which are relevant for the environment;

- g) In the framework of the implementation of the EU Environmental Liability Directive 2004/35/EC, the Federal Environmental Liability Act (Federal Law Gazette I No. 55/2009; the provinces have in the following adapted their respective legal systems in accordance with the Federal Environmental Liability Act) provides for an environmental complaint, if the public authority fails to take action in the event of environmental damage (to water bodies and soils, provided that human health is affected). If they are affected, natural or legal persons as well as Ombudsmen for the environment and acknowledged environmental organizations are entitled to lodge a written complaint with the district administration authority. The authority shall then inform the claimant of the due course of action (also if and which prevention and rehabilitation measures have been instructed). It is possible to lodge a complaint with the Regional Administrative Courts (Verwaltungsgerichte der Länder).
- h) A specially established Ombudsperson Board (Volksanwaltschaft) investigates claimed or assumed severe administrative deficiencies and thus exerts public control for the benefit of the rule of law and democracy in a way that attracts media attention. Yet the Ombudsperson Board only executes supervising investigation (after the procedure has been completed) and does not represent any party in the procedure per se.
- i) As it was shown above, there is a tightly knitted net of measures in place in Austria which grants members of the public access to administrative or judicial procedures in order to challenge acts and omissions contravening provisions of national regulations relating to the environment. However, due to the fact that according to the Austrian Federal Constitutional Law (B-VG), environmental protection is a cross-sectoral issue and therefore part of many different legal acts on national and federal level, a study of the current situation of the implementation of Art. 9 paragraph 3 was commissioned by the former BMLFUW. This study of 2009 from Prof. Schulev-Steindl of the University of Natural Resources and Life Sciences in Vienna is published on the BMK website.

- j) By decision VI/8b the MoP reaffirmed its compliance decision V/9b and endorsed the findings of the Aarhus Convention Compliance Committee with regard to communication ACCC/C/2010/48 and ACCC/C/2010/63 in relation to Articles 4 (7), 9 (4) and Article 9 (3) of the Convention.

With regard to Art. 9 (3) Austria has adopted the Aarhus Participation Act at federal level (Aarhus-Beteiligungsgesetz 2018), Federal Law Gazette I No. 73/2018. The Act aims to improve access to justice in environmental matters for environmental organisations and individuals in the areas of waste, water and air quality. The Act covers the most predominant and comprehensive areas of environmental law with the aim to ensure effective implementation of environmental law. Environmental organisations and, where relevant directly affected individuals, are granted legal review before the national administrative courts in the event of a breach of environmental law. The law amends the corresponding environmental laws at federal level, the Waste Management Act (AWG), the Water Right Act (WRG) and the Air Pollution Control Act (Immissionsschutzgesetz-Luft). On air quality, provisions on access to justice are also part of a recast of the National Air Emissions Act (Emissionsgesetz-Luft 2018).

With regard to the findings of the Aarhus Convention Compliance Committee on communication ACCC/C/2010/63 the BMK has initiated an internal process for amending the Wildlife Trade Act (Artenhandelsgesetz). The planned amendment will include a broad range of necessary changes and will take into account the findings on that communication.

At the level of the provinces, provisions on access to justice haven been introduced in the different provincial acts on nature protection, including the protection of species, and in the laws on hunting and fishing:

- Burgenland Nature Conservation and Countryside Protection Law, Burgenland Hunting Act 2017 and Burgenland Fishing Act 1949 (Burgenländisches Naturschutz- und Landschaftspflegegesetz, Burgenländisches Jagdgesetz 2017, Fischereigesetz 1949)
- Carinthian Aarhus and Environmental Liability Amending Act (Kärntner Aarhus- und Umwelthaftungs-Anpassungsgesetz)
- Lower Austrian Nature Conservation Act and Lower Austrian Hunting Act (NÖ Naturschutzgesetz 2000, NÖ Jagdgesetz 1974)
- Salzburg Aarhus Participation Act 2019 (Salzburger Aarhus-Beteiligungsgesetz 2019)
- Styrian Amendment of the Law on Institutions for the Protection of the Environment (Gesetz vom 17. September 2019, mit dem das Gesetz über Einrichtungen zum Schutz der Umwelt geändert wird)

- Tyrolian Aarhus Participation Act (Tiroler Aarhus-Beteiligungsgesetz 2019)
- Vorarlberg Aarhus Participation Act (Aarhus Beteiligungsgesetz)
- Upper Austrian Nature and Landscape Conservation Act Amendment 2019, Upper Austrian Act amending the Fishing and Hunting Act (Oö. Natur- und Landschaftsschutzrechtsnovelle 2019, Landesgesetz, mit dem das Landesgesetz über die Regelung des Fischereiwesens in Oberösterreich (Oö. Fischereigesetz 2020) erlassen und das Oö. Jagdgesetz geändert wird)
- for Vienna, a draft law amending the corresponding legislation has been sent out for public consultation in summer 2020 and a revised draft is expected for adoption in spring 2021 (Begutachtungsentwurf eines Wiener Landesgesetz, mit dem das Wiener Nationalparkgesetz, Wiener Fischereigesetz, Wiener Naturschutzgesetz und Wiener Jagdgesetz geändert wird).

Concerning training activities for judges and public prosecutors, a training event organised by the Austrian Academy for Administrative Courts (Österreichische Akademie der Verwaltungsgerichtsbarkeit) took place in December 2018. This training event, which particularly had its focus on public participation, was attended by 12 administrative judges. Furthermore, the Federal Ministry of Justice takes part in an EU-funded project lead by the Austrian Criminal Intelligence Service (Bundeskriminalamt) aiming at building capacity in the field of environmental (criminal) law. A relevant part of this project is the implementation of two training events for judges and prosecutors dealing with environmental cases in Vienna and Salzburg, respectively. Not only national and international practitioners will contribute to the specific design and to developing the content, but also representatives of the academia. The training events, which will also tackle the relevant provisions of the Aarhus Convention, are intended to take place in 2021 and, if possible, the implementation of face-to-face activities. In order to reach a target group as big as possible, the environmental topics will be linked to other related topics of relevance for the general judicial practice and thus allowing raising general awareness of practitioners not (yet) directly involved with environmental cases.

Concerning capacity-building activities a project has started in 2016 where an Austrian environmental NGO has developed a capacity-building programme focussing on administrative authorities dealing with environmental procedures (“KOMM Recht”). The follow-up project “KOMM Recht reloaded” focussed on legal questions in relation to the requirements on access to justice with regard to the Aarhus Convention and EU and environmental law including the jurisprudence of the European Court of Justice. A practical guidebook and a legal study on Article 9 (3) of the Convention were elaborated as main output of these projects and are publicly available at the website of the NGO.

Finally, it has to be stated that the Austrian administration, Administrative Courts as well as the Supreme Courts are dealing with legal affairs involving the Aarhus Convention more frequently than in the past. NGOs or individuals have started to demand for the (direct) application of the Aarhus Convention and its third pillar especially also when it comes to policy programmes or acts of a more general legal nature.

Article 9, paragraph 4

98. Regarding civil (and criminal) matters at the lowest level about 140 district courts (Bezirksgerichte) have been established. Regional Courts (Landesgerichte) are functioning as courts of first instance and also as appeal courts for the district courts. Four courts of appeals (Oberlandesgerichte) are competent for appeals from cases decided by the regional courts. At the highest level is the Supreme Court for civil and criminal affairs (Oberster Gerichtshof).

99. With regard to administrative matters they are firstly addressed by administrative bodies. Regional Administrative Courts and the Federal Administrative Court (i.a. for matters regarding environmental impact assessment) are in charge of legal review. Administrative decisions or regulations can only be contested by those persons affected by the decision or regulation in question and in environmental cases by NGOs as legal parties (see under para. 97). Illegal administrative actions, breaches of procedural or material provisions may be appealed to the Supreme Administrative Court of last instance (Verwaltungsgerichtshof), whose decisions can be cassatory or based on the merits of the case. Judicial review of the legality of administrative decisions and regulations as well as the constitutionality of laws is reserved to the Constitutional Court (Verfassungsgerichtshof). The Constitutional Court has competence to review the legality of administrative regulations and decisions violating fundamental rights.

100. As a general principle participation in administrative procedures is free of cost in Austria. Thus, e.g. the EIA and IPPC administrative procedures are cost-free both for neighbours and NGOs. It has to be noted, that the public is neither obliged to employ a lawyer nor to provide technical expertise in the EIA development consent procedure. Costs could occur where NGOs/neighbours contests a technical expertise commissioned by the competent authority which fulfills all necessary requirements (coherence and consistency), following the legal practice that such expertise only can be challenged at the same level by another one. Only if a technical expertise commissioned by the competent authority does not even meet these minimum requirements there is no need for the parties to provide a counter expertise (to contest the commissioned technical expertise).

101. In order to comply with Decision V/9b Austria has adopted an amendment of the Environmental Information Act (Umweltinformationsgesetz UIG) at federal level (Federal Law Gazette I No. 95/2015). The amended Act now explicitly states that if the environmental information requested is not at all or not to the requested extent provided, a decree shall be issued on this fact without undue delay, but two months after receipt of the request for information at the latest. With that amendment Austria sees the Committee's recommendation in para. 3 (a) (i) of Decision V/9b as fulfilled when it comes to the federal level. For the provincial level, the provinces of Austria have already amended or started to amend their corresponding legislation accordingly.

Article 9, paragraph 5

102. The Legal Information System of the Republic of Austria (RIS) is a computer-assisted information system on Austrian law, which is coordinated and operated by the Federal Chancellery. The content of RIS covers all legislation on the federal level as well as of the provinces. The case-law was made the third key component of RIS. The databases contain both the legal maxims and the full text of the rulings, inter alia, of the following tribunals: Constitutional Court, Supreme Administrative Court, Supreme Court (decisions of civil and criminal law) and Administrative Courts at federal and regional level.

29. Obstacles encountered in the implementation of article 9

103. On the first implementation report certain members of the general public have criticized the existing implementation of Article 9, paragraph 3, for being not comprehensive enough. Public consultation on the updates of the implementation report has shown similar results. In the past, NGOs as well as the Federal Chamber of Labour articulated critique on the slow pace of development on full implementation of Art. 9 (3). In an environmental liability case, an NGO complained that they had to bear the costs for an officially appointed expert because they were applicant in the said procedure. An NGO raised that practical experience shows that further training, e.g. regarding the right to access to environmental information, would be well-needed.

On the newly introduced recognition criteria for environmental NGOs it has been criticized that this poses a severe burden on NGOs which leads to a setback of access to justice according to Article 9 (2) and (3). Other obstacles that been claimed by an NGO include the lack of a right to induce an EIA screening decision/procedure or nature impact assessments.

According to certain provincial nature protection acts NGOs do not have a right to participate in screening procedures nor to challenge negative screening decisions.

30. Further information on the practical application of the provisions of article 9

104. Also the instrument of environmental mediation provides a reference to Article 9, paragraph 3, of the Convention with regard to the inclusion of the concerned public. Environmental mediation is a voluntary and structured procedure in the framework of which all those affected by a project which is relevant for the environment are striving for a joint and durable solution. This process covers mediation procedures with regard to projects laying the emphasis not only on economic and social interests, but also on aspects of environmental protection, quality of life and the development of areas (of unspoiled nature). It is especially about projects subject to environmental law provisions or possibly having an impact on the environment (emissions, consumption of resources, use of areas of unspoiled nature, etc.). The 2000 Austrian EIA Act provides that the public authority shall be entitled to interrupt the approval procedures upon the request of the project applicant in order to enable a mediation procedure. The results of the mediation procedure are submitted to the authority responsible for EIA and can be considered by such authorities in the further stages of the approval procedure as well as in the decision.

105. In the framework of a specific promotion scheme, the BMK supports ÖKOBÜRO, which has its primary focus on environmental law and on the Convention. In the framework of the Environmental Legal Service, ÖKOBÜRO provides easy-to-understand information on the contents of key environmental legislation and consulting with regard to inquiries coming from citizen initiatives and NGOs. The NGO network Justice and Environment supports national and international activities of European NGOs. This cooperation aims at improving the state of the environment by way of better application of European and national environmental legislation.

31. Website addresses relevant to the implementation of article 9

umweltanwaltschaft.gv.at

partizipation.at/umweltmediation.html

volksanwaltschaft.gv.at

oekobuero.at/de/themen/umweltverfahren/aarhus-konvention/
bmk.gv.at/themen/klima_umwelt/eu_international/aarhus.html
umweltdachverband.at/themen/umweltrecht/komm-recht/
umweltdachverband.at/themen/umweltrecht/kommrecht-reloaded/

32. General comments on the convention's objective

106. The experience of several years made by the current National Focal Point has shown that primarily specialized circles in Austria are familiar with the term and the process of the Aarhus Convention per se.

107. What is apparently more important for implementation is the fact that the Austrian population acts in a very confident way with regard to administration at all levels, claims its rights, wherever necessary, and is obviously very familiar with the key contents of the Convention.

33. Legislative, regulatory and other measures implementing the provisions on genetically modified organisms pursuant to article 6 BIS and annex 1 BIS

108. As mentioned under Article 6, paragraph 11, the Genetic Engineering Act (Federal Law Gazette I No. 510/1994, last amended by Federal Law Gazette I No 114/2012) transposes into national law, inter alia, the EU Deliberate Release Directive 2001/18/EC and aims at the prevention of harmful impact of genetically modified organisms (GMO) on the environment.

109. According to Decision II/1, the Genetic Engineering Act includes provisions on the announcement to and hearing of the general public in the case of GMO release (Articles 43 and 44) and on the information of the general public on permits granted for bringing the respective substances into circulation (Article 58(a)).

110. There are no exceptions to the public participation procedure concerning the deliberate release of GMOs in the national regulatory framework. Some exceptions exist for the placing on the market. These are, however, in accordance with exceptions granted at the EU level and in compliance with the EU regulatory framework on GMOs.

111. In order to make available to the public in an adequate, timely and effective manner a summary of the notification introduced to obtain an authorization for the deliberate release or placing on the market, there are provisions in the Genetic Engineering Act (see its Article 43) as well as in the Ordinance on Public Hearings (Federal Law Gazette I No 61/1997 as amended by Federal Law Gazette I No 164/1998).

112. Provisions to ensure the transparency of decision-making procedures and to provide access to the relevant procedural information to the public including the nature of possible decisions, the public authority responsible for taking the decision, public participation arrangements laid down pursuant to paragraph 1 annex I bis, an indication of the public authority from which relevant information can be obtained and an indication of the public authority to which comments can be submitted and of the time schedule for the transmittal of comments are reflected in the Genetic Engineering Act as well as the Ordinance on Public Hearings (see above).

113. Provisions to ensure that the arrangements introduced to implement paragraph 1 of annex I bis allow the public to submit, in any appropriate manner, any comments, information, analyses or opinions that it considers relevant to the proposed deliberate release or placing on the market are also reflected in the Genetic Engineering Act as well as the Ordinance on Public Hearings (see above).

114. Concerning measures to ensure that due account is taken of the outcome of public participation procedures organized pursuant to paragraph 1 of annex I bis, it can be said that results of public hearings are reflected in the decision document by the competent authority.

115. Austria is a Party to the Aarhus Convention as well as to the Cartagena Protocol on Biosafety to the Convention on Biodiversity. The legal implementation as described above ensures a complementary as well as mutually supportive approach. Requirements made in accordance with the provisions of annex I bis are complementary to and mutually supportive of the Party's national biosafety framework and consistent with the objectives of the Cartagena Protocol.

34. Obstacles encountered in the implementation of the provisions of article 6 BIS and annex 1 BIS

There are no cases of deliberate releases of GMOs, hence to obstacles could be encountered.

35. Further information on the practical application of the provisions of article 6 BIS and annex 1 BIS

See above: since there are no cases at the national level, there are no statistics.

36. Website addresses relevant to the implementation of article 6 BIS and annex 1 BIS

sozialministerium.at/Themen/Gesundheit/Gentechnik.html

bmlrt.gv.at/land/produktion-maerkte/pflanzliche-produktion/gentechnik.html

umweltbundesamt.at/gentechnik/

37. Follow up on issues of compliance

116. For Austria's compliance with Decision V/9b see under Art. 4 (7), Art. 9 (3) and (4) as well as for details the progress reports of 2014 and 2015.