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Vienna, 22.02.2022

Statement: Country review of Austria regarding the United Nations Convention against Corruption (UNCAC)

Dear ladies and gentlemen,

OEKOBÜERO would, hereby, like to submit a statement with regards to the state of implementation of the United Nations Convention against Corruption (UNCAC) in Austria.

OEKOBÜERO is the alliance of the Austrian Environmental Movement. It is comprised of 20 Austrian organizations engaged in environmental, nature and animal protection, such as GLOBAL 2000 (Friends of the Earth Austria), FOUR PAWS and WWF Austria. OEKOBÜERO works on the political and legal level for the interests of the environmental movement.

1. Art 7 para 4 UNCAC

OEKOBÜERO would like to draw attention to an ongoing investigation regarding the alleged abuse of power and bribery of public officials in Styria. The allegations became known to the public in November 2021 and concern the unlawful approval of projects under the environmental impact assessment (EIA) procedure.¹ Decisions have allegedly been written, or at least influenced, by project applicants instead of the authorities themselves. However, public officials are by law obliged to make their decisions independently.

According to public statements of the state councilor, these allegations concern over 30 procedures and approved projects over the last few years. However, a full inquiry on the number of effected procedures, and their subsequent review, by the Styrian state government has not been evoked. The implementation of a parliamentary committee or a committee of inquiry on

¹ <https://steiermark.orf.at/stories/3129184>

this issue has been turned down by the federal state parliament.² In our opinion, the lack of political action taken in light of these serious allegations runs contrary to the obligations under Art 7 para 4 UNCAC.

2. Art 13 para 1 (a) UNCAC

In environmental matters, Austria has taken different legislative steps to implement the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Arhus Convention). This involves public participation in EIA and certain assessment procedures regarding water, ambient air, waste management or nature protection. However, according to the Aarhus Convention and EU law, participatory rights regarding projects in the environmental field must be granted in other areas as well. For example, at least since ECJ judgement in C-243/15, it is clear that habitats and species protection procedures can also fall under article 6 para 1 (b) Aarhus Convention and therefore require participation of the concerned public. Although this is already reflected to a certain extent in the Provincial Nature Protection Acts, it is still missing in forestry legislation.

The involvement of civil society regarding plans and programs is improving under the current constellation of the federal government. However, social partners playing an important role in the representation of interests of the respective groups in decision-making procedures, are usually not advocating for environmental interests. Compared to this, the representation of environmental interests in decision-making procedures is still rather weak in practice. Additionally, for members of the public the lack of transparency on how received statements have been taken into account is very problematic, although this is a clear requirement according to the Aarhus Convention's public participation provisions.

Furthermore, there is a lack of transparency regarding screening decisions for strategic environmental assessment (SEA): It is not clear which plans and program undergo a screening and whether they must be subject to strategic environmental assessment, and thus, be open to public participation (e.g. the Austrian NECP (National Energy and Climate Plan) was not subject to SEA).

3. Art 13 para 1 (b) UNCAC

Austria is the last country in the EU where official secrecy outweighs the right to know on a constitutional level. A draft for the Freedom of Information Act is pending since 2019 despite its planned implementation as established in the government program 2020-2024. This leaves Austria in the bottom 10 globally for the right to access information held by public authorities according to the Global Right to Information Rating.³ Furthermore, as any breach of official secrecy law can result in mandatory resignation, public officials tend to reluctantly exercise their duty to inform in practice.⁴

The country's General Information Act, which regulates the right to apply for information, does not guarantee civil society organisations and journalists a general right of access to information. Furthermore, the current regulation still offers much room for interpretation, leaving public officials with scant guidance on deciding whether to make the requested information public.

² <https://steiermark.orf.at/stories/3130876/>

³ <https://www.rti-rating.org/>

⁴ <https://www.indexcensorship.org/2018/11/austria-nation-shrouded-secrecy/>

In the environmental sector, access to information is granted in the corresponding federal and state environmental information laws. However, given the above-described culture of secrecy these laws are sometimes applied very restrictively or incompletely, which makes access to environmental information unnecessarily difficult. Moreover, these laws do not substitute full access to information in all relevant procedures.

Kind regards,

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