

REAL DEAL country profile

Austria



**REAL
DEAL**

RESHAPING CITIZENS'
DELIBERATION FOR THE
EUROPEAN GREEN DEAL



1

Overview

Austria is a federal republic consisting of nine federal states. Certain aspects of the European Green Deal Implementation are federal competences, while certain other aspects are the competences of the states. This goes hand in hand with devolved public consultation and deliberation responsibilities. In practice, this means that the actual application and fulfilment of legal obligations to consult the public on environmental and sustainability matters happens via a complex system at both levels.

At the very outset, it has to be emphasised that Austrian federal constitutional law does not provide for a fundamental or basic right to live in a healthy environment. Therefore, environmental law in Austria is intrinsically linked with a host of different constitutionally guaranteed rights, such as the right to life or the freedom of assembly. Similarly, the Austrian Federal Constitutional law landscape does not have one single uniform environmental law act but rather has many different acts for specific policy areas, as well as a multitude of acts at the regional level.

Therefore, the basis of Austrian environmental policy is the act on Sustainability, Animal Welfare, Comprehensive Environmental Protection, Securing Water and Food Supply and [Research BGBl. I Nr. 111/2013](#). While not a basic right, the act does turn environmental protection into a federal objective. This falls short of a constitutionally enforceable subjective public right but does confer an obligation and a mandate on federal and state organs.

The vast majority of legal obligations to consult citizens on environmental or sustainability matters fall into the remit of the Austrian Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK). Similar to other EU Member States, the Austrian implementation and transposition of the principles of the Aarhus Convention has largely been carried out via the implementation of specific EU laws (mainly Directives 2003/4/EC and 2003/35/EC) into national and, where relevant, state laws.



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Dimensions of environmental governance

For decades, the Austrian political landscape had been considered as comparatively stable and so has been the cultural value attributed to the environment, in particular, in the tourism sector. In recent years, Austria has been increasingly subjected to electoral volatility and polarisation. While it is still too early to tell what the long-term effects of these developments will be on the culture of participation and the value attributed to environmental protection, it is clear that the political unpredictability carries risks for the standards of environmental democracy in Austria.

While ecological values have been embraced by all political parties, the interplay with the value attributed to economic growth varies significantly. Where environmental protection is not an immediate threat to economic growth, recent governments have embraced it. Globally, Austria likes to position itself as a frontrunner in global climate governance, but it is difficult to align these ambitions with the domestic performance on environmental protection.

Austria's geographical location makes it a transit country for a lot of industry and trade. The recent governments have had difficulties meeting emission reduction targets. Austria's greenhouse gas emission levels, both per capita and nationwide, are exceptionally high for a country its size and Austria was one of the few EU members states having failed to meet the Kyoto Protocol objectives. Strong participation by the industry lobby can be identified as a major contributing factor to the Austrian failure to adequately control the market of carbon emission certificates.

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The Austrian understanding of what constitutes solid standards for public participation were developed at the federal level in the early 2000s including codes of conducts for administrative bodies, good practice recommendations, as well as practical guidelines. However, there do not seem to have been any updates to these soft law approaches in over a decade.

2.1

Transparency (access to information)

In a broad sense, Austria's access to information legislation is different from most European counterparts as constitutionally guaranteed state secrecy is still the norm. There is no general freedom of information act and access to document regimes are either non-existent or weak. Austria still does not have a general freedom of information act and the current legislative proposal is stuck in negotiations at the time of writing. This makes access to information difficult in Austria, although there are certain special avenues for access to environmental information.

Policymaking (European Commission, "Public Administration and Governance: Austria (2020)") is considered informal and lacking in overall transparency, due to many government levels and interest groups being involved in social and economic decision- and law-making processes.

In order to comply with the Aarhus Convention obligations and EU directive 2003/4/EC, Austria amended its Environmental Information Act (Federal Law Gazette No. 495/1993). Similarly, the state legislations were adapted as well. There is an Environmental Information Act for each of the nine federal states (Landes-Umweltinformationsgesetze – L-UIGs), so, citizens have to invoke different laws depending on the type of information (e.g., nature protection falls within the competence of the federal states). Through the federal act, there does exist an *actio popularis* for requests of environmental information.

Following an Aarhus Convention Compliance Committee finding and decision V/9b by the Convention, Austria was obliged to amend the Environmental Information Act so that any refusal or partial refusal to grant access to information is concluded by an official decision or decree that can then be appealed.

Austria implemented, in 2016, the data sharing obligation under the INSPIRE directive.



Proactive publication

Duties for proactive publication can be found in article 9 of the Environmental Information Act. These include for example plans and programmes, reports on the state of the environment, and environmental impact assessments. Besides the usual online resources available via federal and state ministry platforms, Austria also has a federal environment agency which publishes a detailed report on the state of implementation of environmental control every three years.

2.2

Participation

Public participation in decisions on environmental matters, guaranteed by Article 6 of the Aarhus Convention and Directive 2003/35/EC, is implemented in Austria at the federal and provincial level. Its obligations are contained in Austrian federal and provincial acts on environmental impact assessment, trade, and hazardous activities laws.

The general decision-making procedure, including on environmental policy and the public participation possibilities thereof, is regulated via the General Administrative Procedure Act. Through this law, a distinction is made between parties and participants in proceedings. A party is entitled to full procedural rights, whereas participants are limited to oral proceedings and specific rights granted to them. In the case of environmental NGOs, party rights are usually granted subject to the ministries' recognition of a particular NGO.

Special procedural particularities are common in Austrian forestry, nature conservation, and water authority decision-making.

Austria has transposed the Aarhus Convention's public participation requirements with regard to Environmental Impact Assessments via Federal Act (Law Gazette No. 80/2018). This act also grants special status to a list of environmental organisations, subject to approval. If recognised under the act, a civil society organisation can obtain third party rights during the process of an environmental impact assessment. This means that an NGO can formally intervene and



Helpful resources:

- [Information about participation and sustainable development and is based on an initiative of the Austrian Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.](#)
- [Participation of the public and environmental bodies](#)

submit documents in the assessment process and thus exercise privileged rights of participation which are not available to the regular citizen.

There are further specific public participation obligations throughout many different federal pieces of legislation ranging from the Austrian federal industry act to the federal act on forest and pastures usage rights. Special procedural particularities are common in Austrian forestry, nature conservation, and water authority decision-making.

Some of the federal states and the federal government itself have through their transposition of the EU Environmental Impact Assessment Directive, the Strategic Environmental Assessment Directive, and the Public Participation Directive 2005/35/EC developed additional Guidelines to steer public authorities towards greater compliance of public participation obligations.

While the legal minimum requirements for public participation in environmental matters seem to be largely met, Austria has done little to actively encourage participation, and no statistical data or government-issued reports on the levels and degrees of participation in environmental decision-making processes are available. A dedicated website has been created (see below under Helpful Resources), but it is not focused on environmental policies in particular and does not have a strong enough link to environmental impact assessments. Participation in Environmental Impact Assessments and Strategic Environmental Assessments should be further encouraged, and information made more accessible. Standardised and transparent processes for public involvement during the regulatory process (i.e., systematic stakeholder involvement, consultations, etc.) are not established, and settings that allow for the direct participation of citizens are very rare ([European Commission \(2020\)](#)).

Standards of inclusivity (Gender analysis etc)

While the Austrian legal framework contains the main non-discrimination principles, the authors were unable to find any specific legal obligations relating to inclusivity standards for public participation.

While the legal minimum requirements seem to be largely met, Austria has done little to actively encourage participation.



2.3

Access to Justice

Austria has implemented the access to justice requirements as well via the Federal Environmental Information Act and several pieces of state legislation (predominantly state laws on nature conservation areas or specific Aarhus Participation acts). Any final decision or decree can be brought in front of the Austrian administrative courts for appeal at which point the Austrian general administrative procedure act will take force. A particularly relevant piece of legislation is the Aarhus participation law (BGBl. I Nr. 73/2018) which regulates access for affected individuals and NGOs specifically in the areas of water, waste, and air quality law. Overall, there is plenty of room for improvement for access to justice and especially with regard to limiting standing requirements and an issue of decisions not being taken in the form of a reviewable final legal act (Environmental Implementation Review 2022 Country Report). Austria is currently subject to an infringement proceeding at EU level for failure to offer sufficient standing to the public concerned.

In practice, the main source for the requirements for NGOs as parties to proceedings can be found in the Austrian Federal Environmental Information Act. Section 19 details that, in order to qualify as an environmental NGO benefiting from standing as an automatically recognised interested party, the organisation must fulfil the following requirements: firstly, the organisation must have been a non-profit organisation for at least 3 years; secondly, it must have at least 100 members; and thirdly, its main objective must be environmental protection. Organisations structured as federations must comprise at least five member associations. In addition to these substantive requirements, organisations must also prove their compliance with these conditions every three years.

Due to the fact that Austrian law does not have a horizontal general obligation to grant access to courts, most review possibilities are limited to final decisions, such as laws and ordinances. This is particularly concerning with regard to plans and programs on environmental policy, which are effectively impossible to review on procedural grounds, such as ineffective or missing public participation during the decision-making process.

With regard to the general requirement for access to justice under article 9(3) of the Aarhus Convention, Austrian law sees several different general legal avenues. Relevant for access to the courts is the Austrian Civil Code which spells out which review procedures within the federal and state authorities have to be exhausted first before an applicant turn to court. A relevant list of authorities which serve as first instance review bodies can be found in the procedural law on administrative litigation (BGBl. I Nr 51/2012).

Helpful resources:

- [Legal Information System of the Republic of Austria](#)
- [Applications for financial support \(Federal Administrative Court, Application form for the granting of legal aid, Application form for Legal Aid for Filing an Extraordinary Appeal\)](#)



The costs for accessing justice in Austria have not been subject to much criticism. Many instances do not oblige parties to be represented by a lawyer and the nominal access fees to court proceedings are generally non-prohibitive. Applications for financial support are possible in most instances.

2.3

Compliance assurance, accountability, and effectiveness

Annual environmental inspection reports are drafted by state and available on the federal ministry's website. However, the reports lack information on follow-ups to non-compliance. The private reporting of alleged non-compliance by individuals or companies varies significantly depending on the state or subject matter. The system of Ombudsman and environmental Ombudsman services, however, is extensive, and the relative authority of their findings and decisions is high.

The Austrian Federal Environmental Agency has created a national environmental inspection plan, which is used at the state level for routine environmental inspections. While detailed information about specific inspections is available, aggregated data is lacking. Public interaction with this inspection data is difficult.

Austria is home to a notable example of a public participation

Burgenland wind energy example.

Austria is home to a notable example of a public participation and deliberation process that is worth highlighting due to its exceptional success and frequent references in many academic studies on public participation. The Burgenland in Austria underwent a transition to regional, renewable energy to, among other reasons, meet climate goals and reduce dependence on energy imports. The project had to navigate several nature protection sites, protected species, and the concerns of stakeholders, including the local tourism and industry sectors. Starting in 2013 and 2014 and continuing to this day, the Burgenland has managed to actively engage environmental organisations and regional residents to achieve both the goal of setting up a high number of wind power units and minimising local environmental impact. The project involved the early and proactive publication of relevant environmental information, active outreach and involvement of different stakeholders, consideration of citizen science, and a decision-making process that took voiced opinions into account.



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Institutional context

Due to Austria's federal structure and the lack of an overarching single environmental law act, environmental policy, including participation therein, falls under the competence of different administrative authorities: the federal and state ministries, and local government. These competences are largely governed by articles 10 – 15 of the federal constitutional law (B-VG).

There are three different levels of devolution of powers in Austria regulated by the federal constitutional law: firstly, legislative power is federal, while enforcement is a state power. Secondly, policy-setting power is federal, and implementing legislation and enforcement is state power. Thirdly, both legislative and enforcement powers are state powers. Many environmental policies and their public participation requirements fall under the third category in Austria.

The Austrian Federal Environmental Agency's mandate is detailed in the Environmental Control Act. With little executive and enforcement power, the agency's work is focused on providing analyses and data collection, policy recommendations, development of strategies, and coordination of several international environmental programmes in Austria.

The institutional context in Austria is characterized by a particularly strong relationship with recognized social partners. These comprise 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). While the influence of these social partners is slowly declining, they remain influential actors in environmental policy. Their participation in decision-making processes is de facto guaranteed.

In addition, Austria has a system of state Ombudsman institutions specifically mandated with environmental matters. These Ombudsman services are independent offices of the nine individual states. Their mandate extends to the compliance with environmental interests and the informing of the public on environmental matters. In some cases, they are able to partake as a party in administrative court proceedings and to lodge complaints with these administrative courts. The connection to civil society varies but one of the nine state environmental ombudsman is actually elected by the local environmental NGOs.

Helpful resources:

- [Aarhus National Focal Points and Contact Points](#)



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Role of Civil Society

Sources:

- [Austria's 5th Implementation Report on the Aarhus Convention](#)
- [Practical Guide for Public Participation under current Environmental Law in Austria](#)
- [Sustainable Governance Indicators 2020 Austria Report](#)
- [Development of an assessment framework on environmental governance in the EU Member States No 07.0203/2017/764990/SER/ENV.E.4 Environmental Governance Assessment Austria](#)
- [Sustainable Governance in the Context of the COVID-19 Crisis Austria Report \(2021\)](#)

Legal sources:

All legislation referred to in the text above can be found on the [Austrian directory of laws](#).

Official websites:

[Federal Ministry for Climate Action, Environment, Energy, Mobility,](#)

Sustainable development

Within the area of sustainable development, the Austrian government under the legal obligation of the Federal Act on Development Cooperation from 2003, has instructed its ministries from 2016 onwards to integrate the 2030 Agenda and the Sustainable Development Goals in their future strategies and plans. Practically, these commitments take the form of three-year programmes. The drafting of these programmes and strategies relies on stakeholder groups and consultative processes. Influenced by these policy developments and corresponding deliberative approaches, SDG Watch Austria was established in 2017.

Cooperation at EU level

Austria has an established practice of consulting civil society ahead of coordination meetings preceding formal EU council of Ministers meetings.

CSOs active in this area

Austrian NGO ÖKOBÜRO has been one of the main NGOs focussed on Austria's compliance with the obligations under the Aarhus Convention, including those on Austria's legal obligations to consult the public on environmental and sustainability matters.

Innovation and Technology.

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