

Non-binding translation for information purposes

Act Concerning Supplemental Provisions on Appeals in Environmental Matters Pursuant to EC Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz – UmwRG)

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This Act implements Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment in the version of Directive 2014/52/EU (OJ L 124, 25.4.2014, p. 1), Article 4 of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17), Article 25 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast) (OJ L 334, 17.12.2010, p. 17), Article 23 of Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ L 197, 24.7.2012, p. 1) and Article 13 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

Section 1 Scope

(1) This Act applies to appeals against the following decisions:

1. approval decisions as defined in section 2 (6) of the Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitsprüfung*) on the admissibility of projects

for which there may be an obligation to carry out an environmental impact assessment (EIA) pursuant to

- a) the Environmental Impact Assessment Act
 - b) the Ordinance on the Assessment of Environmental Impacts of Mining Projects (*Verordnung über die Umweltverträglichkeitsprüfung bergbaulicher Vorhaben*) or
 - c) statutory provisions of the *Länder*;
2. licences for installations that are labelled G in column c of Annex 1 to the Ordinance on Installations Subject to Licensing, against decisions pursuant to section 17 (1a) of the Federal Immission Control Act (*Bundes-Immissionsschutzgesetz*), against permits pursuant to section 8 (1) of the Federal Water Act (*Wasserhaushaltsgesetz*) for uses of waters which are connected to a project within the meaning of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast), OJ L 334, 17.12.2010, p. 17), and against plan approval decisions for landfills pursuant to section 35 (2) of the Circular Economy Act (*Kreislaufwirtschaftsgesetz*);
- 2a licences for installations pursuant to section 23b (1) sentence 1 or section 19 (4) of the Federal Immission Control Act or approvals of operating plans pursuant to section 57d (1) of the Federal Mining Act (*Bundesberggesetz*);
- 2b decisions on the admissibility of projects which constitute neighbouring objects of protection
- within the meaning of section 3 (5d) of the Federal Immission Control Act and which are to be implemented within the appropriate safety distance from an operational area pursuant to section 3 (5a) of the Federal Immission Control Act and require approval under the statutory provisions of the *Länder*;
3. decisions under the Environmental Damage Act (*Umweltschadensgesetz*);
4. decisions on the acceptance of plans and programmes within the meaning of section 2 (7) of the Environmental Impact Assessment Act and within the meaning of the relevant statutory provisions of the *Länder* for which there may be an obligation to carry out a strategic environmental assessment pursuant to
- a) Annex 5 to the Environmental Impact Assessment Act or
 - b) statutory provisions of the *Länder*;
- exempt from this are plans and programmes for which the decision on acceptance is taken by formal law;
5. administrative acts or public law contracts that approve projects other than those referred to in nos. 1 to 2b in application of environmental laws and regulations under federal law, *Länder* law or directly applicable legal acts of the European Union, and

6. administrative acts concerning monitoring or supervisory measures for the implementation or execution of decisions pursuant to nos. 1 to 5 which are used to ensure compliance with environmental laws and regulations under federal law, *Länder* law or directly applicable legal acts of the European Union.

This Act also applies in cases where, contrary to applicable laws and regulations, no decision pursuant to sentence 1 has been taken. The following provisions are unaffected:

1. section 44a of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*),
2. section 17 (3) sentences 3 to 5 and section 19 (2) sentences 5 to 7 of the Repository Site Selection Act (*Standortauswahlgesetz*) and
3. section 15 (3) sentence 2 of the Grid Expansion Acceleration Act (*Netzausbaubeschleunigungsgesetz Übertragungsnetz*), section 6 (9) sentence 1 of the Offshore Wind Energy Act (*Windenergie-auf-See-Gesetz*), section 47 (4) and section 49 (3) of the Environmental Impact Assessment Act and other relevant laws and regulations.

Sentences 1 and 2 do not apply if a decision within the meaning of this subsection was issued on the basis of a decision in administrative court legal proceedings.

(2) This Act also applies in the area of the exclusive economic zone or the continental shelf within the framework of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II p. 1799, 1995 II p. 602).

(3) If appeals have been launched under this Act in plan approval procedures that fall under subsection (1) sentence 1 nos. 1, 2 or 5, section 64 (1) of the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) does not apply.

(4) Environmental laws and regulations within the meaning of this Act are provisions for the protection of humans and the environment relating to

1. the state of the elements of the environment within the meaning of section 2 (3) no. 1 of the Environmental Information Act (*Umweltinformationsgesetz*) or
2. factors within the meaning of section 2 (3) no. 2 of the Environmental Information Act.

Section 2 Appeals by associations

(1) A German or foreign association recognised in accordance with Section 3 can, without obligation to assert a violation of its own rights, file an appeal according to the Code of Administrative Court Procedure against a decision under section 1 (1) sentence 1 or against the failure to take such a decision, if the association

1. asserts that a decision under section 1 (1) sentence 1 or the failure to take such a decision conflicts with laws and regulations which may be relevant to the decision,

2. asserts that its field of activity according to its statutes of promoting the goals of environmental protection is affected by the decision under section 1 (1) sentence 1 or the failure to take such a decision, and
3. in the case of a procedure under
 - a) section 1 (1) sentence 1 nos.1 to 2b, was entitled to participate;
 - b) section 1 (1) sentence 1 no. 4, was entitled to participate and expressed its views on the matter in accordance with the applicable laws and regulations or, contrary to the applicable laws and regulations, was not given an opportunity to express its views.

In the case of appeals against a decision under section 1 (1) sentence 1 nos. 2a to 6 or against the failure to take such a decision, the association must assert violation of environmental laws and regulations.

(2) An association that is not recognised under section 3 may file an appeal in accordance with subsection (1) only if

1. it fulfils the requirements for recognition at the time the appeal is filed,
2. it has applied for recognition, and
3. a decision on its recognition has not yet been taken, for reasons for which the association is not responsible.

For a foreign association, the requirements under no. 3 are deemed to be met. The appeal is no longer admissible once a decision denying recognition becomes legally valid.

(3) If a decision under section 1 (1) sentence 1 has not been publicly announced or notified to the association in accordance with applicable laws and regulations, an objection must be filed or an action brought within one year after the association becomes aware of or could have become aware of the decision. An objection must be filed or an action brought against a decision under section 1 (1) sentence 1 nos. 5 or 6 at the latest within two years after the administrative act was issued. Sentence 1 applies accordingly if, contrary to the applicable laws and regulations, a decision under section 1 (1) sentence 1 was not taken and the association becomes aware of or could have become aware of that circumstance.

(4) Appeals under subsection (1) are justified if

1. the decision under section 1 (1) sentence 1 nos. 1 and 2 or the failure to take such a decision violates laws and regulations relevant to this decision, or
2. the decision pursuant to section 1 (1) sentence 1 numbers 2a to 6 or the failure to take such a decision violates environmental laws and regulations relevant to this decision,

and this violation affects interests associated with the goals of the association as set out in its statutes. In the case of decisions under section 1 (1) sentence 1 nos. 1 or 4, there must also be an obligation to carry out an environmental impact assessment within the meaning of section 2 (10) of the Environmental Impact Assessment Act.

Section 3 Recognition of associations

(1) Upon request, recognition for the purpose of filing an appeal under this Act is granted to a German or foreign association. The recognition must be granted if the association

1. in accordance with its statutes predominantly promotes, non-materially and not only temporarily, the goals of environmental protection,
2. has existed for at least three years at the time of recognition and during that period has been active within the meaning of no. 1,
3. offers guarantees of proper performance of its activities, especially proper participation in official procedures; in this context, the type and extent of its activities to date, membership and the effectiveness of the association must be taken into account,
4. promotes public-benefit purposes within the meaning of section 52 of the German Fiscal Code (*Abgabenordnung*) and
5. allows any person who supports the goals of the association to become a member; members are persons who are given full voting rights in the general assembly of the association upon joining; in associations of which at least three quarters of the members are legal entities, the association may be exempted from the requirement in the first half of this sentence, provided the majority of these legal entities fulfil this requirement.

The recognition must refer to the field of activities set out in the statutes to which the recognition applies; in particular it must state whether the association focuses on supporting nature conservation and landscape management goals and must indicate the geographical area to which the recognition relates. The recognition can, also retrospectively, be subject to the requirement to notify changes to the statutes. The competent authority must publish the recognition on the internet.

(2) For a foreign association and for an association with an area of activity extending beyond a *Land* border, recognition is granted by the German Environment Agency. For an association under sentence 1 that focuses on the goals of nature conservation and landscape management, recognition is granted in agreement with the Federal Agency for Nature Conservation. No fees or expenses are charged for the recognition.

(3) For a German association with an area of activity that does not extend beyond one *Land* border, recognition is granted by the competent authority of that *Land*.

Section 4 Procedural errors

(1) The annulment of a decision on the admissibility of a project under Section 1 (1) sentence 1 nos. 1 to 2b can be requested if

1.
 - a) an environmental impact assessment (EIA) or
 - b) the preliminary examination needed in an individual case to determine whether there is an EIA obligation,

as required under the provisions of the Environmental Impact Assessment Act, the Ordinance on the Assessment of the Environmental Impacts of Mining Projects

(*Verordnung über die Umweltverträglichkeitsprüfung bergbaulicher Vorhaben*) or the relevant statutory provisions of the *Länder*, was not carried out and was not carried out at a later stage,

2. the necessary public participation within the meaning of section 18 of the Environmental Impact Assessment Act or within the meaning of section 10 of the Federal Immission Control Act was not carried out and was not carried out at a later stage, or
3. there is another procedural error that
 - a) has not been remedied,
 - b) is comparable in type and scale with the cases listed in nos. 1 and 2, and
 - c) has denied the public concerned the opportunity to participate as prescribed by law in the decision-making process; participation in the decision-making process also includes access to documentation that must be made available to the public.

A preliminary examination of an individual case to determine the EIA obligation that does not meet the requirement under section 5 (3) sentence 2 of the Environmental Impact Assessment Act is equivalent to not carrying out a preliminary examination under sentence 1 no. 1 (b).

(1a) Section 46 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) applies to procedural errors that do not fall within the scope of subsection (1). If the court is unable to ascertain whether a procedural error pursuant to sentence 1 influenced the decision, influence on the decision is assumed.

(1b) A violation of procedural rules only results in annulment of the decision in accordance with section 1 (1) sentence 1 nos. 1 to 2b or 5 if the violation cannot be rectified by an addendum to the decision or a supplementary procedure. The following provisions are unaffected:

1. section 45 (2) of the Administrative Procedure Act and
2. section 75 (1a) of the Administrative Procedure Act and other relevant provisions to maintain plans.

Upon request the court can order that the proceedings be suspended until the procedural errors within the meaning of subsections (1) and (1a) have been remedied, if this is useful in terms of concentrating proceedings.

(2) If resolutions within the meaning of section 2 (6) no. 3 of the Environmental Impact Assessment Act are the subject of the court review, sections 214 and 215 and the related transitional provisions of the Federal Building Code (*Baugesetzbuch*) and the relevant statutory provisions of the *Länder* apply in derogation from subsections (1) to (1b).

(3) Subsections (1) to (2) apply to appeals by

1. persons pursuant to section 61 no. 1 of the Code of Administrative Court Procedure and associations pursuant to section 61 no. 2 of the Code of Administrative Court Procedure, and

2. associations which meet the requirements of section 3 (1) or section 2 (2).

Subsection (1) sentence 1 no. 3 applies to appeals by persons and associations in accordance with sentence 1 no. 1, with the proviso that the annulment of a decision may only be requested if the procedural error has denied the parties concerned the opportunity to participate in the decision-making process as prescribed by law.

(4) Subsections (1) to (2) must be applied accordingly to appeals by associations under subsection (3) sentence 1 no. 2 against decisions under section 1 (1) sentence 1 no. 4. In derogation from sentence 1, if regional plans in accordance with the Spatial Planning Act (*Raumordnungsgesetz*) are the subject of the court review, sections 11 and 27 (2) of the Spatial Planning Act and the relevant statutory provisions of the *Länder* apply.

(5) For appeals against decisions under section 1 (1) sentence 1 nos. 3, 5 and 6, the respective specialist provisions and the provisions of the Administrative Procedure Act apply in the event of procedural errors.

Section 5 Improper or fraudulent conduct in the appeals procedure

Objections that a person or association within the meaning of section 4 (3) sentence 1 raise for the first time during the appeals procedure are disregarded if the first assertion in the appeals procedure is improper or fraudulent.

Section 6 Deadline for statement of claim

A person or association within the meaning of section 4 (3) sentence 1 must present the facts and items of evidence supporting their appeal against a decision under section 1 (1) sentence 1, or against the failure to take such a decision, within ten weeks of the date the action was brought. Declarations and items of evidence which are not submitted until after expiry of this deadline may only be permitted if the condition set out in section 87b (3) sentence 1 no. 2 of the Code of Administrative Court Procedure is met. Section 87b (3) sentences 2 and 3 of the Code of Administrative Court Procedure applies accordingly. Upon request, the deadline under sentence 1 can be extended by the presiding judge or the reporting judge if the person or association had no opportunity to participate in the procedure in which the contested decision was taken. The preceding sentences apply accordingly to cases in which the legal process for implementing a procedure to supplement or change a plan was suspended and recommenced at a later date; the deadline applies as from the continuation of the court proceedings.

Section 7 Special provisions for appeals against certain decisions

(1) If publication is not prescribed under applicable laws and regulations for decisions under section 1 (1) sentence 1 nos. 5 or 6, the competent authority must notify one or several precisely indicated persons or associations of the decision including information on rights of appeal, if this is requested

1. by the applicant of the administrative act under section 1 (1) sentence 1 no. 5, or

2. by the person or association to which the authority addressed the administrative act under section 1 (1) sentence 1 no. 6.

The applicant bears the costs of the notification.

(2) Decisions on appeals against a decision under section 1 (1) sentence 1 no. 4 or the failure to take such a decision are taken at the first instance by the Higher Administrative Court, including when there is no case under section 47 (1) nos. 1 or 2 of the Code of Administrative Court Procedure. If reformatory action or an application for an injunction under section 47 (1) no. 1 of the Code of Administrative Court Procedure is not admissible, section 47 of the Code of Administrative Court Procedure must be applied accordingly. In the case of plans and programmes extending beyond *Land* borders, competence lies with the Higher Administrative Court in the district of the authority that took the decision on approving the plan or programme.

(3) If an association within the meaning of section 4 (3) sentence 1 no. 2 has had an opportunity to make a statement in a procedure under section 1 (1) sentence 1 no. 4, it is barred from lodging any objections in the appeals procedure under subsection (2) that it did not assert in the procedure under section 1 (1) sentence 1 no. 4 or did not assert within the deadline according to applicable laws and regulations, but that it could have asserted. Sentence 1 does not apply to procedures to establish, change, supplement or revoke development plans under section 10 of the Federal Building Code.

(4) In the appeals procedure against a decision under section 1 (1) sentence 1 nos. 1 to 2b, section 73 (4) sentences 3 to 6 of the Administrative Procedure Act does not apply, including in cases under its subsection (8).

(5) A violation of material legal provisions only results in annulment of a decision under section 1 (1) sentence 1 nos. 1 to 2b or 5 if it cannot be remedied by an addendum to the decision or a supplementary procedure. Sentence 1 does not apply to the area of application of section 75 (1a) of the Administrative Procedure Act.

(6) Subsection (2) sentences 1 and 3 and subsections (4) and (5) also apply to appeals by persons and associations pursuant to section 4 (3) sentence 1 no. 1.

Section 8 Transitional provision

(1) This Act applies to appeals against decisions under section 1 (1) sentence 1 nos. 1 and 2 that were taken or should have been taken after 25 June 2005. In derogation from sentence 1, section 6 must only be applied to appeals referred to in sentence 1 that were filed after 28 January 2013.

(2) This Act applies to appeals against decisions under section 1 (1) sentence 1 nos. 4 to 6 that

1. were not yet legally valid on 2 June 2017 or
2. were taken or should have been taken after that date.

(3) The following recognitions remain recognitions within the meaning of this Act:

1. recognitions

- a) under section 3 of this Act in the version of 28 February 2010,
- b) under section 59 of the Federal Nature Conservation Act in the version of 28 February 2010 and
- c) based on statutory provisions of the *Länder* in the context of section 60 of the Federal Nature Conservation Act in the version of 28 February 2010,

that were issued before 1 March 2010, and

- 2. recognitions of the Federation and the *Länder* in accordance with section 29 of the Federal Nature Conservation Act in the version valid until 3 April 2002.