

**Act Concerning Supplemental Provisions on Appeals in Environmental Matters Pursuant
to EC Directive 2003/35/EC (Environmental Appeals Act)^{*)}**

Of December 7th 2006

The Bundestag has adopted the following Act:

Article 1

Scope

(1) This Act shall apply to appeals against:

1. Decisions as defined in Article 2 paragraph (3) of the Federal Environmental Impact Assessment Act (Federal EIA Act) [Gesetz über die Umweltverträglichkeitsprüfung] concerning the admissibility of projects for which there may be an obligation to conduct an environmental impact assessment pursuant to:
 - a) The Federal EIA 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 German states [*Länder*].
2. Permits for installations requiring a permit according to Column 1 of the Annex to the Fourth Ordinance for the Implementation of the Federal Immission Control Act (Ordinance on Installations Requiring a Permit – 4. BImSchV), decisions pursuant to Article 17 para. (1a) of the Federal Immission Control Act [Bundes-Immissionsschutzgesetz], permissions pursuant to Article 2 and the first sentence of Article 7 paragraph (1) of the Federal Water Act [Wasserhaushaltsgesetz] in conjunction with statutory provisions of the *Länder* that were adopted on the basis of the third sentence of Article 7 para. (1) of the Federal Water Act, and planning approval notices [Planfeststellungsbeschlüsse] for landfills pursuant to Article 31 paragraph (2) of the Closed

^{*)} This Act transposes Article 3 number 7 and Article 4 number 4 of Directive 2003/35/EC of the European Parliament and 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 EU No. L 156 p. 17).

Substance Cycle and Waste Management Act [Kreislaufwirtschaft- und Abfallgesetz].

This Act shall also apply if, contrary to applicable statutory provisions, no decision has been taken pursuant to the first sentence. Article 15 paragraph (5) and Article 16 paragraph (3) of the Environmental Impact Assessment Act and Article 44a of the Rules of Procedure of the Administrative Courts [Verwaltungsgerichtsordnung] shall remain unaffected. The first and second sentence shall not apply if a decision within the meaning of this paragraph was issued on the basis of a decision in litigious proceedings before an Administrative Court.

- (2) This Act shall also apply 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 [BGBl.] 1994 II p. 1799, 1995 II p. 602).

Article 2 **Appeals by associations**

- (1) A German or foreign association that is recognized pursuant to Article 3 may, without having to assert that its own rights have been violated, file appeals in accordance with the Rules of Procedure of the Administrative Courts against a decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision if the association:
1. Asserts that a decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision violates statutory provisions that protect the environment, establish individual rights, and could be of importance for the decision;
 2. Asserts that promotion of the objectives of environmental protection in accordance with its field of activity as defined in its bylaws is affected by the decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision; and
 3. Was entitled to participate in a procedure under Article 1 paragraph (1) and expressed itself in that matter according to the applicable statutory provisions or, contrary to the applicable statutory provisions, was not given an opportunity to express itself.

(2) An association that is not recognized pursuant to Article 3 may file an appeal pursuant to paragraph (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 regarding recognition has not yet been made for reasons for which the association is not responsible.

The requirements of number 3 are considered to have been fulfilled by a foreign association. The appeal is no longer admissible when a decision denying recognition becomes final.

(3) If the association had an opportunity to express itself in the procedure in accordance with Article 1 paragraph (1), it shall be precluded during the appeal procedure from making any objections that it did not make, or did not make in a timely fashion according to the applicable statutory provisions, during the procedure in accordance with Article 1 paragraph (1), but that it could have made.

(4) If a decision pursuant to the first sentence of Article 1 paragraph (1) has not been publicly announced or notified to the association in accordance with applicable statutory provisions, an opposition must be lodged or an action brought within one year after the association becomes aware, or could have become aware, of the decision. The first sentence shall apply mutatis mutandis if a decision pursuant to Article 1 paragraph (1), first sentence, contrary to the applicable statutory provisions, was not taken and the association becomes aware, or could have become aware, of that circumstance. The first sentence of Article 47 paragraph (2) of the Rules of Procedure of the Administrative Courts shall apply to land-use plans.

(5) Appeals in accordance with paragraph (1) shall be justified:

1. If the decision pursuant to Article 1 paragraph (1), or the failure to take such a decision, violates statutory provisions that protect the environment, establish individual rights, and are of importance for the decision, and the violation involves issues of environmental protection that are among the objectives that are to be promoted by the association according to its bylaws;

2. In reference to land-use plans, if the determinations of the land-use plan that establish the admissibility of a project subject to an environmental impact assessment violate statutory provisions that protect the environment and establish individual rights, and the violation involves issues of environmental protection that are among the objectives that are to be promoted by the association according to its bylaws.

In the case of decisions pursuant to Article 1 paragraph (1) number 1, there must also be an obligation to conduct an environmental impact assessment.

Article 3

Recognition of associations

- (1) Upon request, a German or foreign association shall be recognized for the purpose of filing appeals pursuant to this Act. The association shall be recognized if:
 1. According to its bylaws, it predominantly, and not just temporarily, encourages the objectives of environmental protection;
 2. It has existed for at least three years at the time of recognition and has been active as defined in number 1 during that period;
 3. It offers guarantees of proper performance of its duties; the type and scope of its previous activity, its membership, and the effectiveness of the association must be taken into account in that regard;
 4. It promotes public-benefit purposes as defined in Article 52 of the German Tax Code [Abgabenordnung]; and
 5. It allows any person who supports the objectives of the association to become a member with full voting rights in its general meeting; associations whose members are exclusively legal entities may be exempted from the requirement in the first half of this sentence if the majority of such legal entities fulfil this requirement.

The field of activities in accordance with the bylaws to which the recognition applies must be referred to in the recognition. An association that is recognised as a nature conservation association pursuant to the Federal Nature Conservation Act [Bundesnaturschutzgesetz] or statutory provisions of the *Länder* shall simultaneously be considered to have been recognized in accordance with the first sentence.

(2) Recognition is pronounced by the Federal Environmental Agency [Umweltbundesamt]. It can also be publicly announced.

Article 4

Errors in following procedural requirements

(1) The reversal of a decision on the admissibility of a project pursuant to Article 1 paragraph (1), first sentence, number 1 can be requested if

1. An environmental impact assessment, or
2. A preliminary assessment of the individual case concerning the requirement for an environmental impact assessment

required in accordance with the Environmental Impact Assessment Act, the Ordinance on the Assessment of the Environmental Impacts of Mining Projects, or the corresponding statutory provisions of the *Länder* was not carried out, and was not carried out at a later stage. Article 45 paragraph (2) of the Administrative Procedures Act [Verwaltungsverfahrensgesetz] and other corresponding statutory provisions shall remain unaffected; the possibility of suspending court proceedings to remedy a procedural error shall remain unaffected.

(2) If the subject of the court review is decisions as defined in Article 2 paragraph (3) number 3 of the Environmental Impact Assessment Act, Articles 214 and 215 and the related transitional provisions of the Federal Building Code [Baugesetzbuch] and the relevant statutory provisions of the *Länder* shall apply, notwithstanding paragraph (1).

(3) Paragraph (1) and (2) shall apply *mutatis mutandis* to appeals by participants pursuant to Article 61 number 1 and 2 of the Rules of Procedure of the Administrative Courts.

Article 5
Transitional provision

This Act shall apply to procedures pursuant to Article 1 paragraph (1), first sentence that were initiated, or would have had to be initiated, after 25 June 2005; the first half of this sentence shall not apply to decisions pursuant to Article 1 paragraph (1), first sentence which became final before [date of entry into force of the Act].

Article 6
Entry into force

This Act shall enter into force on the day after its promulgation.