



## **Annex 1 - English translation of supporting document**

Denmark, prepared by the Ministry of Environment and Food, hereby submits an English translation of the pertinent sections of the explanatory statements accompanying the proposal for the Environmental Assessment Act of 3 March 2016, as referred to in footnote 1 in Denmark's response to the case ACCC/C/2019/162 (Denmark).

### **The Environmental Assessment Act**

The Environmental Assessment Act was adopted by the Danish parliament on 18 May 2016, and has later on been amended several times. The latest amendment of the Environmental Assessment Act was made on 8 June 2018.

Article 50 concerning legal standing has not been amended since the adoption of the act on 3 March 2016. In December 2016 articles 48 (3) and (4) and article 49 (1) were slightly amended, because the appeals board changed according to act no.1715 of 27 December 2016 from the Nature and Environment Board of Appeal to the Environment and Food Board of Appeal. This change, does not affect the paragraph's content in relation to this matter.

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Proposed by the Minister for Environment and Food on 3 March 2016

**Proposal  
for  
the Environmental Assessment Act**

(...)

*Plans and programs*

*Article 48*

1. A decision pursuant to article 10, where an authority does not have to undertake an environmental impact assessment of plans or programs, or changes thereof, may be

appealed according to the rules set by the law, under which the plan or program is established.

2. An authorities decision made when undertaking the environmental impact assessment pursuant to article 8 (1), may be appealed according to the rules set by the law, under which the plan or program is established.

3. Is the plan or the program, or changes thereof, not made in accordance to a law, or the concerned law does not grant access to an appeal procedure, may the decision pursuant to article 10, by which the authority shall not conduct an environmental impact assessment of the plans or programs, or changes thereof, be appealed to the Nature and Environment Board of Appeal, as assembled according to article 5 (1) no. 2 of the Nature and Environment Board of Appeal's Act, as far as the question of legality is concerned.

4. Is the plan or the program, or changes thereof, not made in accordance to a law, or the concerned law does not grant access to an appeal procedure, may the authority's decision, which is made when undertaking the environmental impact assessment pursuant to article 8 (1), be appealed to the Nature and Environment Board of Appeal, as assembled according to article 5 (1) no. 2 of the Nature and Environment Board of Appeal's Act, as far as the question of legality is concerned.

5. (...)

### *Projects*

#### *Article 49*

1. Decisions made pursuant to article 21, as far as the question of legality is concerned, decisions pursuant to article 25, and decisions pursuant to article 46, may be appealed to the Nature and Environment Board of Appeal, as assembled according to article 5 (1) no. 2 of the Nature and Environment Board of Appeal's Act, c.f. however paragraph 2.

2. The Minister for Environment and Food may establish rules, by which appeals according to paragraph 1, in some circumstances shall be handled by the Nature and Environment Board of Appeal, as assembled according to article 5 (1) no. 1 of the Nature and Environment Board of Appeal's Act.

3. (...)

4. (...)

### *Legal Standing*

#### *Article 50*

1. Pursuant to article 48 (3) and (4) and article 49 (1) the Minister for Environment and Food, anyone with a legal interest to the out the outcome of the case and nationwide associations and organizations, who's objective is to protect the nature and the environment or the safeguarding of significant user interests in land use, and have statutes

or regulation documenting its objective and representing at least 100 members, are granted legal standing.

2. The Minister concerned may establish special regulation regarding legal standing in cases relating to marine projects.

## **Comments to the Law Proposal**

### **General Comments**

#### *1. Introduction*

(...)

#### *9. The relation to the Aarhus Convention and the Espoo Convention*

With the Strategic Environmental Assessment Directive (SEA) and the Environmental Impact Assessment Directive (EIA) EU implements parts of the Aarhus Convention (The Convention on Access To Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted in Aarhus, Denmark, on 25 June 1998) and the Espoo Convention (The Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Espoo, Finland on 25 February 1999). This law proposal has the purpose of implementing the mentioned directives, and therefor performs the function of carrying on the national rules which implement these conventions.

This law proposal meets with the requirements of the Aarhus Convention and the Espoo Convention.

It should be noted that this law proposal entails a wider access to justice than the minimum requirements of the Aarhus Convention. See also under 'Comments to the Law Proposals Individual Articles' stated under article 50 in this law proposal.

In light of the judgment of the EU-Court in C-530/11, European Commission v United Kingdom of Great Britain, 13 February 2014, this law proposal's article 54 (2) contains a provision that the national courts, in cases concerning environmental matters, have to ensure that the costs of the case are not prohibitively expensive. This obligation lies with all national courts.

(...)

### **Comments to the law proposals individual articles**

(...)

*To Article 50*

This provision concerns the right to have legal standing, where there is granted access to justice in accordance to article 48 (2) and (3) or article 49 (1) of this law proposal.

Article 48 (2) and (3) of this law proposal concerns plans and programs and the right to have legal standing in cases concerning an authority's decision according to article 10, that determine that no environmental assessment (screening decision) has to be carried out or that the authority has to undergo an environmental assessment if the plan or program has not been prepared in accordance to a law or the concerned law does not provide a right to appeal.

Article 49 (1) of this law proposal concerns as the right to appeal an authorities decision concerning projects according to Article 21 (screening decision), decisions regarding permits according to Article 25 and decisions according to Article 46. This provision is an implementation of Article 11 of the EIA Directive.

According to this provisions paragraph 1 the Minister of the Environment and Food and anyone with a legal interest in the outcome of the case has the right to have legal standing. Thereby this provision carries on the same regulation as article 59 (1) of the Planning Act and the present environmental assessment act's article 16 (3) first sentence.

Furthermore, paragraph 1 proposes that nationwide associations and organizations whose purpose is the protection of the nature and the environment or the safeguarding of substantial user interests in land use, who have statutes or regulations documenting its objective and representing at least 100 members get granted legal standing to the wide-ranging decisions. This is a continuation of Article 59 (2) of the Planning Act, which was implemented by law no. 447 of 31 May 2000 to the 'law amending specific environmental regulations', and which implement the rules of the Aarhus Convention regarding access to justice for non-governmental organizations, cf. in particular article 9 (2) of the Convention and article 16 (3) of the Environmental Assessment Act.

According to article 9 (2) of the Aarhus Convention, any party to the Convention shall, within the framework of its national legislation, ensure that members of the public concerned who have sufficient interest have access to review procedure before a court of law and/or another independent and impartial body established by law to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 of this Convention. What constitutes sufficient interest is determined by the general rules of Danish law and with the objective of giving the concerned public wide access to a review procedure in line with the scope of the Convention. Non-governmental organizations are deemed to have sufficient interest if they

promote environmental protection and meet the requirements under national law, cf. also the Conventions article 2 (5).

The Aarhus Convention allows each country to determine that environmental organizations have to meet a set of requirements, in order to be granted access to a review procedure. Therefore, in accordance to the Convention, this law proposal establishes some minimum requirements for those organizations, which are granted the right to a review procedure, which have the purpose of ensuring that the organizations are actual established associations.

It is therefore proposed that the national associations or organizations should represent at least 100 members, i.e., the organization must by itself have at least 100 members or, in the case of an umbrella organization, there must be a total of at least 100 members in the affiliated associations. The proposals requirement of statutes or regulations ensures that the objective of the association is documented and that the association has official representatives. Please note that this law proposal allows associations and organizations, whose purpose is the safeguarding of substantial user interests in land use, the right to a review procedure, which goes further than the requirements laid down by the directives and the Aarhus Convention.

As background information, reference is made to the following extract from section 5 of the general comments to the proposal of the above mentioned 'law amending specific environmental regulations' (Implementation of the Aarhus Convention, etc.):

» In addition to the rules about environmental organization's right to be granted legal standing, all laws shall implement special provisions granting access to a review procedure to organizations, which represent substantial recreational interests.

Today, such organizations have limited access to justice. However, it seems naturally that not only organizations that protect the environment, but also those who, for example, use the nature, are given a right to appeal. Also at this point, the law proposal provides a wider access to justice than the minimum requirements set by the Convention. In the area of the Planning Act, the proposed wider access to justice includes organizations with other significant user interests in land use than a recreational one, because the purpose of this law covers all the social benefits of land use.«

*Paragraph 2* proposes that the Minister concerned is authorized to establish special regulation regarding access to justice in cases relating to marine projects. The

authorization may be used to set rules that carry on existing appeal regulation, for example, in the energy field.

According to the present regulation of Article 16 (3) of the Environmental Assessment Act, the Minister for the Environment and Food and anyone with a legal interest in the outcome of the case is granted legal standing under article 16 (2) of the Environmental Assessment Act. Subsequently an authority's decision made according to articles 4-13 of the Environmental Assessment Act can be appealed if the plan or program is not established on a legislative basis. National associations and organizations whose purpose is to protect the nature and the environment or the safeguarding of significant user interests in land use are also entitled to appeal if they have statutes or regulation documenting its objective and representing at least 100 members.

Reference is made to the general comments in section 3.12.

(...)