

FOR INFORMATION PURPOSES ONLY

Draft Bill Aligning the Environmental Appeals Act and other provisions to Stipulations of European and International Law

Extract of the consolidated text (version: 26 April 2017) – amendments proposed by the Committee on the Environment of the German Bundestag

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

Section 1

Scope

(1) The present Act shall apply to appeals against the following decisions:

1. [...]
2. [...]
3. [...]
4. [...]
5. [...]
6. [...]

This Act shall also apply if, contrary to applicable statutory provisions, no decision has been taken pursuant to the first sentence. The following shall remain unaffected

1. section 44a of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*),
2. section 17 subsection (43), sentences 3 to 5, [and section 19 subsection \(2\), sentences 5 to 7](#), of the Repository Site Selection Act (*Standortauswahlgesetz*), as well as
3. section 15 subsection (3), sentence 2, of the Transmission System Grid Expansion Acceleration Act (*Netzausbaubeschleunigungsgesetz Übertragungsnetz*), section 17a subsection (5), sentence 1, of the Energy Industry Act (*Energiewirtschaftsgesetz*), [section 6 subsection \(9\) of the Offshore Wind Farming Act \(*Windenergie-auf-See-Gesetz*\)](#), section 15 subsection (5) and section 16 subsection (3) of the Environmental Impact Assessment Act and other corresponding legal provisions.

[...]

(2) [...]

(3) To the extent that in planning approval procedures specified in subsection (1), first sentence, no. 1, ~~or 2~~ [or 5](#) appeals may be brought pursuant to this Act, section 64 (1) of the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) shall not apply.

(4) [...]

Kommentar [LD1]:

The reference to the provision contained in the Repository Site Selection Act was adjusted in line with the recent amendment of that Act in editorial terms.

Kommentar [LD2]:

The provision refers to special provisions under other statutes for the incidental review of specific decisions. Section 6 subsection (9) of the Offshore Wind Farming Act also constitutes such a special provision. Since the latter Act came into force as per 1 January 2017, its section 6 subsection (9) has also been included.

Kommentar [LD3]:

The altered wording of section 1 subsection (3) of the Act is in response to a proposal of the Bundesrat regarding the relationship between this Act and the Federal Nature Conservation Act. The primacy afforded to section 1 subsection (3) of the Environmental Appeals Act has therefore been supplemented to include decisions on planning approval falling under section 1 subsection (1), sentence 1, number 5 of the Act.

Section 2 Appeals by associations

(1), (2) [...]

(3) If, in accordance with the legal provisions that are in place, a decision in accordance with section 1 subsection (1), sentence 1, was neither made public nor notified to the association, an objection must be lodged or an action brought within one year after the association becomes aware, or could have become aware, of the decision. [An objection or action against a decision in accordance with section 1 subsection \(1\), sentence 1, No. 5 or 6 must however be brought at the latest within two years of the administrative act having been handed down.](#) Sentence 1 shall apply mutatis mutandis if, contrary to the applicable statutory provisions, a decision in accordance with section 1 subsection (1), sentence 1, has not been taken and the association becomes aware, or could have become aware, of that circumstance.

Kommentar [LD4]:

The provision introduces a maximum period of two years for actions by recognised environmental associations against decisions in accordance with section 1 subsection (1), sentence 1, numbers 5 and 6 of the Act.

(4) [...]

Section 3 Recognition of associations

[...]

Section 4 Procedural errors

(1) [...]

(1a) [...]

(1b) [A violation of procedural provisions shall only lead to the rescission of the decision in accordance with section 1 subsection \(1\), sentence 1, Nos. 1 to 2b or 5 if it cannot be remedied by supplementing the decision or by a supplementary procedure.](#) The following provisions shall remain

unaffected:

1. section 45 subsection (2) of the Administrative Procedures Act,
2. section 75 subsection (1a) of the Administrative Procedures Act and other corresponding provisions having the effect of maintaining plans in force.

Upon application, the court can order that the proceeding be suspended until the procedural errors are remedied within the meaning of subsections (1) and (1a), as long as this is useful in terms of concentrating procedures.

(2)-(5) [...]

Kommentar [LD5]:

The provision constitutes a parallel provision to section 7 subsection (5) of the Act: Whilst the latter provision applies to remedying substantive errors, the new sentence 1 in section 4 subsection (1b) of the Act creates a possibility to remedy formal errors, subsequent to a court ruling. Instead of the court rescinding the administrative act, it finds that the administrative act is unlawful and may not be executed by the authority until any error has been remedied.

Section 5

Conduct in the appeal proceedings that is abusive or in bad faith

[...]

Section 6

Period for the reasoning of actions

~~A person or an association within the meaning of section 4 subsection (3), sentence 1, shall state within a period of six weeks the facts and items of evidence serving as reasoning of its action against a decision within the meaning of section 1 subsection (1), sentence 1, or its omission. Section 87b subsection (3) of the Code of Administrative Court Procedure shall apply mutatis mutandis. The period in accordance with sentence 1 may be extended by the presiding judge or by the rapporteur on request.~~

A person or an association within the meaning of section 4 subsection (3), sentence 1, shall state within a period of ten weeks from lodging the action the facts and items of evidence serving as reasoning of its action against a decision within the meaning of section 1 subsection (1), sentence 1, or its omission. Statements and items of evidence which are not submitted until after expiry of this deadline shall only be admitted if the precondition in accordance with section 87b subsection (3), sentence 1, No. 2 of the Code of Administrative Court Procedure [Verwaltungsgerichtsordnung] is satisfied. Section 87b subsection (3), sentences 2 and 3, of the Code of Administrative Court Procedure shall apply mutatis mutandis. The period in accordance with sentence 1 may be extended by the presiding judge or by the rapporteur on request if the person or association was unable to participate in the proceedings in which the impugned decision was handed down.

Kommentar [LD6]:

The provision introduces a mandatory 10-week period to submit reasoning for any action. The court may grant a deadline extension on request and subject to specific preconditions.

Section 7

Special provisions for appeals against certain decisions

[...]

Section 8 Transitional provision

(1) The present Act shall apply to appeals against decisions in accordance with section 1 subsection (1), sentence 1, numbers 1 and 2 which were handed down or should have been handed down subsequent to 25 June 2005. In derogation from sentence 1, section 6 shall only apply to those appeals specified in sentence 1 which have been collected after 28 January 2013.

(2) The present Act shall apply to appeals against decisions in accordance with section 1 subsection (1), sentence 1, numbers 4 to 6

1. which have not yet become final on ... [insert: date of entry into force of the present Act], or

2. which were handed down, or which should have been handed down, ~~subsequent to 31 December 2016~~ subsequent to that date.

(3) [...]

Kommentar [LD7]:

The provision contained in section 8 subsection (2) of the Act has been re-structured; section 8 subsection (2) number 2 of the Act corresponds to the provision contained in the Government draft. Number 1 expands the scope of the amended Act in terms of time to include decisions in accordance with section 1 subsection (1), sentence 1, numbers 4 to 6 of the Act which have not yet become final at the time when the Act comes into force.

Environmental Impact Assessment Act [Gesetz über die Umweltverträglichkeitsprüfung – UVPG]

Article 9 Participation of the public

(1) [...]

(1a) [...]

(1b) [...]

(1c) The concerned public can submit its comments in writing or for the record of the competent authority up to one month after the expiry of the display period. On expiry of the period for comments, all comments shall be ruled out for the proceedings on the permissibility of the project which are not based on specific titles under private law. This shall be indicated in the promulgation of the display or when announcing the period for comments.

(1d)-(1e) [...]

Kommentar [LD8]:

It was proposed in the Government's draft bill of 22 June 2016 to insert the following sub-clause here and in various other places*: "*unless the objections submitted are significant to the lawfulness of the decision.*"

The Committee on the Environment of the German Bundestag has decided to propose the removal of this amendment once more. As a consequence, the wording of the ministerial draft of April 2016 is retained. In order to avoid confusion, it was decided not to show the insertions and their subsequent reversals.

*This document does **not** contain the other provisions concerned hereof:

- Section 9a subsection 1 sentence 2 number 3 of the Environmental Impact Assessment Act [UVPG];
- Section 10 subsection 3 sentence 5 of the Federal Immission Control Act [BImSchG];
- Section 11a subsection 1 Sentence 1 of the Ordinance on the Licensing Procedure [9. BImSchV];
- Section 7 subsection 1 sentence 2 as well as section 7a subsection 1 sentence 3 of the Nuclear Licensing Procedure Ordinance [AtVfV].

**Act on the Prevention of Harmful Effects on the Environment Caused by Air Pollution, Noise,
Vibration
and Similar Phenomena
(- BImSchG)
(Bundes-Immissionsschutzgesetz)**

**Section 23b
Licensing Procedure under the Law on Major Accidents**

(1) [...]

(2) The public shall be consulted in the licensing procedure. To this end, the competent authority shall announce the project in public, and shall submit the application, the documents submitted by the applicant with the exception of the documents in accordance with subsection (1), sentence 4, as well as the reports and recommendations which are material to the decision which the authority has at its disposal at the time of the announcement, for inspection for one month. Persons whose interests are affected by the project, as well as associations which satisfy the requirements of section 3 subsection (1) or section 2 subsection (2) of the Environmental Appeals Act, may lodge objections in writing to the competent authority within the period stipulated in section 10 subsection (3), sentence 4, 1st clause. Section 10 subsection (3), sentence 5, and subsection (3a) shall apply mutatis mutandis. Objections based on private-law titles shall be referred to the legal channels through the ordinary courts.

(3)-(5) [...]

Kommentar [LD9]:

Section 23b of the Federal Immission Control Act was inserted into the Federal Immission Control Act in order to transpose the Seveso III Directive a couple of months ago. The marked changes of editorial nature bring the provision into line with section 10 of the Federal Immission Control Act in the version of the Act to Amend the Environmental Appeals Act (UmwRG).

Motion for a resolution of the parliamentary groups of the CDU/CSU and SPD on the draft Bill Aligning the Environmental Appeals Act and other provisions to Stipulations of European and International Law

The Bundestag is herewith requested to resolve as follows:

1. The German Bundestag herewith calls on the Federal Government to submit in the next parliament a draft to fully integrate the representative action under nature conservation law in accordance with section 64 of the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) into the Environmental Appeals Act. This transition is to take place without missing any of the content, and serves exclusively to make Federal law more systematic.
2. The German Bundestag requests the Federal Government to report to it four years after the amended Environmental Appeals Act comes into force on the practical experience in its implementation. This should in particular state whether it has led to an increase in the number of environmental appeals in accordance with this Act and to a significant lengthening of decision-making proceedings.
