

PROVINCIAL LAW

GAZETTE

FOR CARINTHIA

Volume 2019

Issued on 18 December 2019

www.ris.bka.gv.at

104th law:

Carinthian Aarhus and Environmental Liability Amending Act

104th law from 21 November 2019, amending the Carinthian Fishing Act, the Carinthian Genetic Engineering Precautionary Measures Act, the Carinthian IPPC Facilities Act, the Carinthian Hunting Act 2000, the Carinthian Plant Protection Agent Act, and the Carinthian Nature Conservation Act 2002 (Carinthian Aarhus and Environmental Liability Amending Act)

The Carinthian Provincial Parliament has resolved:

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Article I

Amendment of the Carinthian Fishing Act

The Carinthian Fishing Act – K-FG, Provincial Law Gazette No 62/2000, last amended in the law Provincial Law Gazette

No 71/2018, shall be amended as follows:

1. After Article 35b, the following Article 35c shall be inserted:

“Article 35c

Participation of environmental organisations

(1) Recognised environmental organisations pursuant to Article 19 para. 7 Environmental Impact Assessment Act 2000 – UVP-G 2000 with local recognition for the Province of Carinthia shall have the right to file complaints with the Provincial Administrative Court against approvals pursuant to Article 35 para. 10 granting exemptions from the restrictions pursuant to Article 35 para. 8 and 9.

(2) Official notices pursuant to para. 1 shall be published on the electronic platform pursuant to Article 54a para. 2 Carinthian Nature Conservation Act 2002. After expiry of a period of two weeks following the day the official notice was published, it shall be deemed delivered vis-à-vis the environmental organisations pursuant to para. 1. They shall be permitted to inspect the administrative act starting on the day of publication. The official notices shall not be removed before the expiry of a period of six weeks after the day they are published on the electronic platform.

(3) Complaints of environmental organisations pursuant to para. 1 shall be submitted to the authorities in writing within four weeks from the date of delivery (para. 2). Complaints against official notices issued for reasons specified in Article 35 para. 10 lit. b shall have no suspensive effect.”

2. In Article 60 para. 2, the point in lit. g shall be replaced with a semicolon and the following lit. h shall be inserted:

“h) Environmental Impact Assessment Act 2000 – UVP-G 2000, Federal Law Gazette No 697/1993, last amended in the federal law Federal Law Gazette I No 80/2018.”

Article II
Amendment of the Carinthian Genetic Engineering Precautionary Measures Act

The Carinthian Genetic Engineering Precautionary Measures Act – K-GtVG, Provincial Law Gazette No 5/2005, last amended in the law Provincial Law Gazette No 71/2018, shall be amended as follows:

In Article 14c para. 2 number 2, the source “97/2013” shall be replaced with the source “74/2018”.

Article III
Amendment of the Carinthian IPPC Facilities Act

The Carinthian IPPC Facilities Act – K-IPPC-AG, Provincial Law Gazette No 52/2002, last amended in the law Provincial Law Gazette No 2/2014, shall be amended as follows:

In Article 12 para. 1 lit. g, the source “97/2013” shall be replaced with the source “74/2018”.

Article IV
Amendment of the Carinthian Hunting Act 2000

The Carinthian Hunting Act 2000 – K-JG, Provincial Law Gazette No 21/2000, last amended in the law Provincial Law Gazette No 49/2018, shall be amended as follows:

After Article 54b, the following Article 54c shall be inserted:

“Article 54c
Participation of environmental organisations

(1) Recognised environmental organisations pursuant to Article 19 para. 7 Environmental Impact Assessment Act 2000, Federal Law Gazette No 697/1993, last amended in the federal law Federal Law Gazette I No 80/2018, with local recognition for the Province of Carinthia shall have the right to file complaints with the Provincial Administrative Court against approvals pursuant to Article 52 para. 2 final sentence, para. 2a and 3, and Article 54a para 2.

(2) Official notices pursuant to para. 1 shall be published on the electronic platform pursuant to Article 54a para. 2 Carinthian Nature Conservation Act 2002. After expiry of a period of two weeks following the day the official notice was published, it shall be deemed delivered vis-à-vis the environmental organisations pursuant to para. 1. They shall be permitted to inspect the administrative act starting on the day of publication. The official notices shall not be removed before the expiry of a period of six weeks after the day they are published on the electronic platform.

(3) Complaints of environmental organisations pursuant to para. 1 shall be submitted to the authorities in writing within four weeks from the date of delivery (para. 2). Complaints against official notices issued for reasons specified in Art. 16 para. 1 lit. b of the Habitats Directive 92/43/EEC or Art. 9 para 1 lit. a third indent of the Birds Directive 2009/147/EC shall have no suspensive effect.”

Article V
Amendment of the Carinthian Plant Protection Agent Act

The Carinthian Plant Protection Agent Act – K-LPG, Provincial Law Gazette No 31/1991, last amended in the law Provincial Law Gazette No 27/2019, shall be amended as follows:

In Article 13a para. 2 number 1a, the source “97/2013” shall be replaced with the source “74/2018”.

Article VI
Amendment of the Carinthian Nature Conservation Act 2002

The Carinthian Nature Conservation Act 2002, Provincial Law Gazette No 79/2002, last amended in the law Provincial Law Gazette No 27/2019, shall be amended as follows:

1. In the table of contents, the following item shall be inserted after the entry relating to Article 54:

“Article 54a Participation of environmental organisations in the proceedings”

2. In Article 24b, the following para. 1a to 1c shall be inserted:

“(1a) In the case of plans and projects pursuant to para. 1 first sentence and para. 5 that are not subject to the provisions of the Carinthian Environmental Planning Act, the initial application shall be published on the electronic platform pursuant to Article 54a para. 2 including the information required to exercise the right of opinion pursuant to para. 1b. The environmental organisations pursuant to

Article 54a para. 1 shall be permitted to inspect the administrative act starting on the day of publication. Article 54a para. 3 final sentence shall apply.

(1b) Within a period of four weeks following the day the initial application was published pursuant to para. 1, environmental organisations pursuant to Article 54a para. 1 may file a well argued opinion on the implications of the project pursuant to para. 1 first sentence. The opinion shall be taken into account in coming to a decision on the application in the proceedings laid down in para. 2 to 5.

(1c) Environmental organisations pursuant to Article 54a para. 1 shall also have the right to submit an opinion on whether proceedings named in para. 1b second sentence that are not published on the electronic platform fall under para. 1a first sentence. Paragraph 1b second sentence shall apply.”

3. *The following sentence shall be added to Article 51 para. 3:*

“The Provincial Government shall be entitled to define more detailed provisions for the content and form of applications for official approval and the form and contents of the plans and descriptions required for the evaluation of projects by way of official order.”

4. *In Article 51a para. 2, the following sentence shall be inserted after the first sentence:*

“Article 51 para. 3 second sentence shall apply.”

5. *After Article 54, the following Article 54a shall be inserted:*

**“Article 54a
Participation of environmental organisations in the proceedings**

(1) Recognised environmental organizations pursuant to Article 19 para. 7 Environmental Impact Assessment Act 2000 – UVP-G 2000 with local recognition for the Province of Carinthia have the right to file complaints

1. against official approvals pursuant to Article 24b para. 2 to 5 or
2. against
 - a) official approvals pursuant to Article 9 and Article 24 para. 3,
 - b) exemptions from the prohibitions pursuant to Article 10, and
 - c) permits pursuant to Article 22 para. 2,
 if protected species listed in Annex IV to the Habitats Directive (Article 67a para. 3 lit. b) or in Annex I to the Birds Directive (Article 67a para. 3 lit. a) or referred to in Art. 4 para. 2 of the Birds Directive are affected,

with the Provincial Administrative Court alleging the violation of provisions of this law resolved in implementation of the Habitats Directive and the Birds Directive.

(2) The Provincial Government shall provide an electronic platform that is open only to the authorities and the recognised environmental organisations for the publication of the applications and official notices relevant to the proceedings to allow the environmental organisations to exercise their participation rights pursuant to Article 24b para. 1b and 1c and their right to file complaints pursuant to para. 1. The Provincial Government shall provide the recognised environmental organisations with access authorisation for the platform pursuant to para. 1 together with the information required to use the access authorisation upon request.

(3) All approvals in matters specified in para. 1 number 1 and 2 lit. a to c shall be published on the electronic platform pursuant to para. 2, without the limitation to species protected by Union law pursuant to the last half sentence of number 2. After expiry of a period of two weeks following the day the official notice was published, it shall be deemed delivered vis-à-vis the environmental organisations pursuant to para. 1. They shall be permitted to inspect the administrative act starting on the day of publication. The applications and official notices shall not be removed before the expiry of a period of six weeks after the day they are published on the electronic platform.

(4) Complaints of environmental organisations pursuant to para. 1 shall be submitted to the authorities in writing within four weeks from the date of delivery (para. 3).

(5) Complaints of an environmental organisation pursuant to para. 1 against

1. decisions pursuant to para. 1 number 1 when they relate to matters of Article 24b para. 1a shall be rejected as inadmissible if a well argued opinion was not filed within the defined period, or
2. official notices deemed delivered vis-à-vis the environmental organisation pursuant to para. 3 shall be rejected as inadmissible after the expiry of the period pursuant to para. 4

if the environmental organisation had access authorisation pursuant to para. 2 before the start of the period pursuant to Article 24b para. 1b first sentence (number 1) or Article 54a para. 3 second sentence (number 2).”

6. *Article 57j para. 1 shall read:*

“(1) Natural and legal persons who, due to damage to protected species or natural habitats (environmental damage),

1. may suffer health damage or damage to their property or other rights on an affected piece of land – but not stemming from a mere decrease in the market value – or
2. may be significantly restricted in the use of the natural resource or in the use of the function of the affected natural resource,

can request that the district administrative authority under whose domain the area where the environmental damage occurred falls take action pursuant to Articles 57f and 57g para. 2 in a written complaint.“

Article VII

Entry into force and transitional provisions

(1) This law shall enter into force on the first day following announcement.

(2) Article 35c K-FG as amended in Art. I number 1, Article 54c K-JG as amended in Art. IV and Article 54a para. 1 K-NSG 2002 as amended in Art. VI number 5 shall apply accordingly in accordance with para. 3 if official notices issued under these provisions before this law entered into force (para. 1) are involved and they

1. took effect between 20 December 2017 and the date on which this law entered into force, or
2. were issued but did not yet take effect.

(3) Environmental organisations recognised pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act 2000 – UVP-G 2000 with local recognition for the Province of Carinthia may within a period of six weeks after the entry into force of this law demand the delivery of official notices that concluded proceedings pursuant to para. 2 number 1 or 2. The period for filing complaints with the Provincial Administrative Court shall start upon the delivery of these official notices. Complaints filed against official notices pursuant to para. 2 number 1 shall have no suspensive effect. However, upon application by the complaining environmental organisation, the authority shall grant suspensive effect by official notice if, after consideration of the affected public interests and interests of other parties, the exercise of the permission granted through the contested notice would lead to disproportionate detrimental impacts on the environment. A complaint filed against an official notice by which suspensive effect has been granted has no suspensive effect.

(4) Any proceedings with the Administrative Court pending at the time of entry into force of Art. I, IV, and VI due to the lodging of a complaint by an environmental organisation recognised pursuant to Article 19 para. 7 of the Environmental Impact Assessment Act 2000 – UVP-G 2000 shall be continued even in cases where the official notice upon which the complaint is based took effect before 20 December 2017.

**President of the Provincial
Parliament: Ing. R o h r**

**Provincial
Secretary: Mag.^a
S c h a a r**

**Provincial
Secretary: G r
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