

Attachment

to the Response to the Committee's "Questions with regard to Communication ACCC/C/2011/63", as detailed in the Committee's letter of 4 Oct 2012

1. Federal Environmental Liability Act (as amended by Federal Law No 55/2009)

§ 2 (1) This Federal Act shall apply to:

1. water damage and to any imminent threat of such damage occurring by reason of any of the professional activities listed in Annex I; [...]

§ 4: For the purpose of this Federal Act the following definitions shall apply:

1. "Environmental damage" shall be:

a) any significant water damage, which is any damage that significantly adversely affects the ecological, chemical or quantitative status or ecological potential, as defined in the Federal Water Law Act 1959, Federal Law No 215, of the waters concerned and that is not covered by a permit according to the Federal Water Law Act 1959 and [...]

§ 11 Request for action

(1) Natural or legal persons, whose rights are likely to be infringed by environmental damage are entitled to submit a written request to the regional administrative authorities in whose local sphere of influence the alleged environmental damage occurred to take action in accordance with §§ 6 and 7 para 2. The Ombudsman for the environment (§ 2 para 4 of the Environmental Impact Assessment Act 2000, Federal Law No. 697/1993) and those environmental organisations recognized under § 19 para 7 of the Federal Environmental Impact Assessment Act, likewise are entitled to exercise the right to submit a request for action.

(2) "Rights" as defined in para 1 subpara 1 shall be:

1. the protection of human life and health as well as

2. in matters of waters: existing prior rights as defined by § 12 para 2 of the Federal Water Law Act 1959 and

3. in matters of soil: ownership and other proprietary rights of a property concerned, not however only a possible reduction in the market value of the property.

(3) The request for action shall be accompanied by the relevant information and data, which show in a plausible manner that the requirements stated in para 1 are met. If the regional administrative authority applied to is not competent in the matter, it shall, as soon as possible, forward the request for action directly to the competent regional administrative authority as referred to in § 9 and inform the requesting person thereof.

(4) If however the authority concludes that there is no entitlement for submitting a request for action referred to in paras 1 and 2, no environmental damage has occurred or all necessary preventive or restorative measures have already been taken, it shall issue a decision thereon.

2. Upper Austrian Environmental Liability Act (as amended by Provincial Law No 95/2009)

§ 2 (1) This Provincial Act shall apply to:

1. damage to protected species and natural habitats and to any imminent threat of such damage occurring by reason of any of the occupational activities listed in Annex 1 and

2. damage to protected species and natural habitats and to any imminent threat of such damage caused by any occupational activities other than those listed in Annex 1, whenever the operator has been at fault or negligent and [...]

§ 4 Definitions

For the purpose of this Provincial Act the following definitions shall apply:

1. "Environmental damage" shall be:

a) any damage to protected species and natural habitats, which is any damage that

has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species, [...]

3. "Protected species" and "natural habitats" shall be:

a) the species mentioned in Art 4 para 2 Directive 79/409/EEC or listed in Annex I thereto or listed in Annexes II and IV to Directive 92/43/EEC or

b) the habitats of species mentioned in Article 4(2) of Directive 79/409/EEC or listed in Annex I thereto or listed in Annex II to Directive 92/43/EEC, and the natural habitats listed in Annex I to Directive 92/43/EEC and the breeding sites or resting places of the species listed in Annex IV to Directive 92/43/EEC; [...]

§ 11 Request for action

(1) Natural or legal persons, whose rights in matters of soil are likely to be infringed by environmental damage are entitled to submit a written request to the regional administrative authorities in whose local sphere of influence the alleged damage occurred to take action in accordance with §§ 6 and 7 para 2. The Upper Austrian Ombudsman for the environment and those environmental organisations recognized under § 19 para 7 of the Federal Environmental Impact Assessment Act 2000 - Federal Law No. 697/1993, as amended by Federal Law No 2/2008, likewise are entitled to exercise the right to submit a request for action in matters of endangered species and natural habitats as well as in matters of soil damages.

(2) "Rights" as defined in para 1 subpara 1 shall be the protection of human health, ownership and other proprietary rights of a property concerned, not however only a possible reduction in the market value of the property.

(3) The request for action shall be accompanied by the relevant information and data, which show in a plausible manner that the requirements stated in para 1 are met. If the regional administrative authority applied to is not competent in the matter, it shall, as soon as possible, forward the request for action directly to the competent regional administrative authority as referred to in § 9 and inform the requesting person thereof.

(4) If however the authority concludes that there is no entitlement for submitting a request for action referred to in paras 1 and 2, no environmental damage has

occurred or all necessary preventive or restorative measures have already been taken, it shall issue a decision thereon.

3. **Frogs and toads** - lat: *ranidae*, *hylidae*, *pelobatidae*, *discoglossidae* or *bufonidae* - are "species of Community interest" in accordance with Art 1 (g) of Directive 92/43/EEC, as they are listed in Annex II (*Rana latastei*) and Annex IV a).

Some also are protected under the Upper Austrian Nature Conservation Act and the Protected Species Order (Annex 3).