



Enabling the public to bring a case: German developments and perspectives

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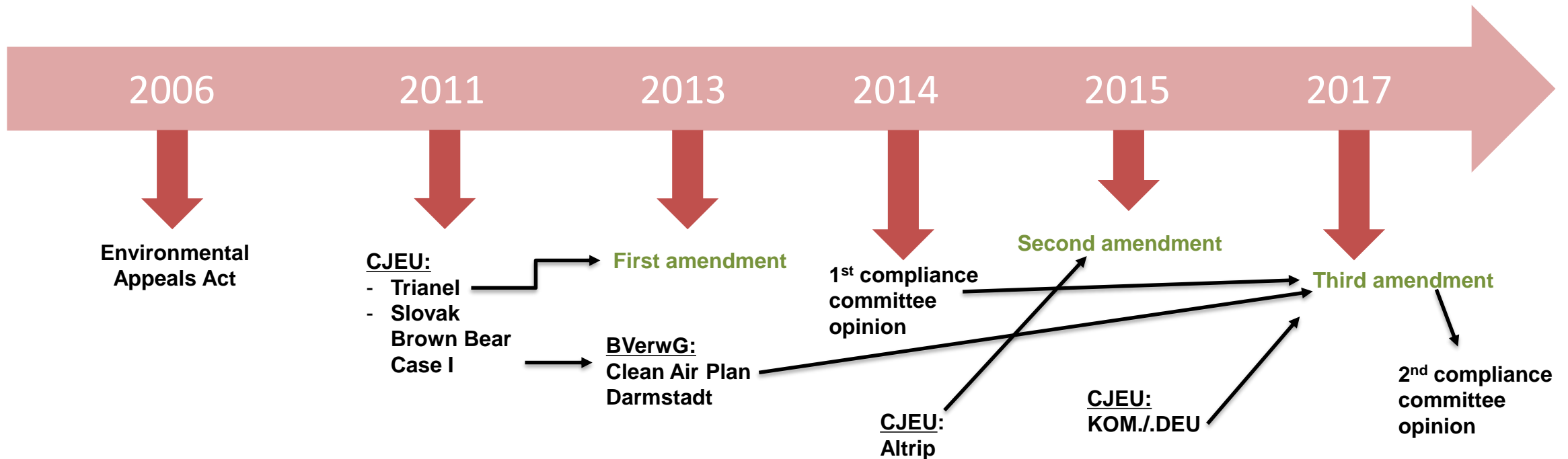
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A. Development of the German Environmental Appeals Act (UmwRG)

- **2001: Aarhus Convention**
- 2003: Art. 10a Directive 2003/35/EC (now: **Art. 11 Directive 2011/92/EU** [Environmental Impacts Assessment Directive] and Art. 15 Directive 2008/1/EC [IPPC Directive] (now: **Art. 25 Directive 2010/75/EU** [Industrial Emissions Directive])





B. Environmental Appeals Act 2017: Extension of Scope (Art. 9 (3) AC)

- Section 1 (1) sentence 1 Environmental Appeals Act 2017:
- no. 4: **decisions about the adaption or amendment of plans and programmes** as stated in Section 2 (5) UVPG, that have to pass an environmental impact assessment according to state law or the law of the federal states
- no. 5: **administrative acts** or public law contracts
- no. 6: **administrative** acts on monitoring and supervisory measures



B.I. Environmental Appeals Act 2017: Scope

No 4: Decisions on the adoption or amendment of plans and programmes

- Problem:
 - Clean air plans only subject to SEA if they set a framework for a project
 - When is there a specific reference to a concrete project?
- BVerwG, 27.2.2020, 7 C 3/19, Rn. 24: Whether the clean air plan is subject to a SEA is not relevant, as the legislator wanted it to be covered by the scope of application of the Environmental Appeals Act
- Questionable for a designation of a landscape conservation area – Interpretation of Article 3 (2a) lit. a) SEA-Directive 2001/42/EC => BVerwG, CJEU-submission, 4.5.2020 – 4 CN 4/18
=> CJEU, C-300/20, 22.2.2022: no plan, no scope of the Dir. 2001/42/EC



B.I. Environmental Appeals Act 2017: Scope

No. 5: Administrative acts or contracts under public law

- (P) Product approvals, in particular operating approvals for motor vehicles

=> VG Schleswig, 13.12.2017 – k 3 A 26/17, Rn. 101 ff. (-) => CJEU-submission

- VG Düsseldorf, 24.1.2018 – 6 K 12341/17, Rn. 79 ff. (-)

=> Aarhus Compliance Committee: (+)

- CJEU: ?

=> Advocate General Rantos, Opinion, 3.3.2022 – C 873/19 : (+)



B.I. Environmental Appeals Act 2017: Scope

- **No. 6: Administrative acts on monitoring and supervisory measures**

(P) Can an environmental association demand that the federal motor vehicle authority takes regulatory action against the operation of vehicles with illegally installed defeat devices?



B.II. Environmental Appeals Act 2017: Substantive Preclusion

- Abrogation of substantive preclusion clause

→ Compensation:

1. **New abuse clause**, Section 5 Environmental Appeals Act: „Objections raised for the first time in appeal proceedings by a person or an association within the meaning of section 4(3) sentence 1 shall be disregarded if the first assertion in appeal proceedings is abusive or dishonest.”
2. **Substantive preclusion clause for Article 9 (3) AC-objects**, in particular, plans and programmes subject to EIA and SEA
3. **In-process preclusion in the scope of legal proceedings:**
 - => extension of the time limit for statement of claim (10 weeks)
 - => tightening of options for extension of time limit (Section 6 Environmental Appeals Act)



B.II. Environmental Appeals Act 2017: Substantive Preclusion

➔ in-process preclusion in the scope of legal proceedings:

- **High requirements for the statement of grounds** (Higher Bavarian administrative court, 16.5.2021 – 8 ZB 20.1873):
 - ⇒ The applicant shall state all facts which lead to his legally protected interests being affected
 - ⇒ If facts can be established with little effort, then no preclusion: burden on plaintiff must be obvious (Purpose: early specification of the process material)
- **Consequence:** mandatory preclusion by operation of law, which leads to the action being unfounded
- BVerwG: No application to standard checks of plans, in particular development plans (Decision 29.10.2020, 4 CN 9/19)



C. Environmental Appeals and Climate Litigation

- BVerfG, 24.3.2021 - 1 BvR 2656/18
(also VG Berlin, 31.10.2019 - 10 K 412.18: no legal standing):
- Entitlement to more ambitious climate protection targets and measures?

=> No standing to appeal for associations: associations cannot have their own fundamental rights violated

=> Right of appeal for individual plaintiffs (+), possibly violation of state duties to protect or intertemporal freedom rights



D. Evaluation and Perspectives

- Climate lawsuits are conceivable, as the EU has set binding climate targets that Member States must meet.
- Product approvals are not yet explicitly covered by the scope of application => CJEU!
- Significant differences between procedural requirements for subjects of Article 9 (2) and 9 (3) AC leads to legal uncertainty
- Tendency towards objective judicial control (also for individual action) (ECJ: Brown Bear II, Protect-Decision due to reference to Art. 47 CFR)
- Tendency towards an interested party action system instead of an injured party action system
- Readjustment of German Environmental Appeals Act *or*
Simplification and transfer of Environmental Appeals Act into Administrative Court Code (VwGO)?