

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

Article 1 Amendment to the Environmental Appeals Act	
Old version	New version
Section 1 Scope	
<p>(1) This Act applies to appeals against the following decisions:</p> <p>1. approval decisions as defined in section 2 (6) of the Environmental Impact Assessment Act (<i>Gesetz über die Umweltverträglichkeitsprüfung</i>) on the admissibility of projects for which there may be an obligation to carry out an environmental impact assessment (EIA) pursuant to</p> <p>a) the Environmental Impact Assessment Act</p> <p>b) the Ordinance on the Assessment of Environmental Impacts of Mining Projects (<i>Verordnung über die Umweltverträglichkeitsprüfung bergbaulicher Vorhaben</i>) or</p> <p>c) statutory provisions of the <i>Länder</i>;</p> <p>2. licences for installations that are labelled G in column c of Annex 1 to the Ordinance on Installations Subject to Licensing (<i>Verordnung über genehmigungsbedürftige Anlagen</i>), against decisions pursuant to section 17 (1a) of the Federal Immission Control Act (<i>Bundes-Immissionsschutzgesetz</i>), against permits pursuant to section 8 (1) of the Federal Water Act</p>	<p>(1) This Act applies to appeals against the following decisions:</p> <p>1. approval decisions as defined in section 2 (6) of the Environmental Impact Assessment Act (<i>Gesetz über die Umweltverträglichkeitsprüfung</i>) on the admissibility of projects for which there may be an obligation to carry out an environmental impact assessment (EIA) pursuant to</p> <p>a) the Environmental Impact Assessment Act</p> <p>b) the Ordinance on the Assessment of Environmental Impacts of Mining Projects (<i>Verordnung über die Umweltverträglichkeitsprüfung bergbaulicher Vorhaben</i>) or</p> <p>c) statutory provisions of the <i>Länder</i>;</p> <p>2. licences for installations that are labelled G in column c of Annex 1 to the Ordinance on Installations Subject to Licensing (<i>Verordnung über genehmigungsbedürftige Anlagen</i>), against decisions pursuant to section 17 (1a) of the Federal Immission Control Act (<i>Bundes-Immissionsschutzgesetz</i>), against permits pursuant to section 8 (1) of the Federal Water Act</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>(<i>Wasserhaushaltsgesetz</i>) for uses of waters which are connected to a project within the meaning of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast, OJ L 334, 17/12/2010, p. 17), and against plan approval decisions for landfills pursuant to section 35 (2) of the Circular Economy Act (<i>Kreislaufwirtschaftsgesetz</i>);</p> <p>2a. licences for installations pursuant to section 23b (1) sentence 1 or section 19 (4) of the Federal Immission Control Act or approvals of operating plans pursuant to section 57d (1) of the Federal Mining Act (<i>Bundesberggesetz</i>);</p> <p>2b. decisions on the admissibility of projects which constitute neighbouring objects of protection within the meaning of section 3 (5d) of the Federal Immission Control Act and which are to be implemented within the appropriate safety distance from an operational area pursuant to section 3 (5a) of the Federal Immission Control Act and require approval under the statutory provisions of the <i>Länder</i>;</p> <p>3. decisions under the Environmental Damage Act (<i>Umweltschadensgesetz</i>);</p> <p>4. decisions on the acceptance of plans and programmes within the meaning of section 2 (7) of the Environmental Impact Assessment Act and within the meaning of the relevant statutory provisions of the <i>Länder</i>, for which, pursuant to</p> <p>a) Annex 5 to the Environmental Impact Assessment Act or</p> <p>b) statutory provisions of the <i>Länder</i></p> <p>there may be an obligation to carry out a strategic environmental assessment; exempt from this are plans and programmes for</p>	<p>(<i>Wasserhaushaltsgesetz</i>) for uses of waters which are connected to a project within the meaning of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast, OJ L 334, 17/12/2010, p. 17), and against plan approval decisions for landfills pursuant to section 35 (2) of the Circular Economy Act (<i>Kreislaufwirtschaftsgesetz</i>);</p> <p>3. licences for installations pursuant to section 23b (1) sentence 1 or section 19 (4) of the Federal Immission Control Act or approvals of operating plans pursuant to section 57d (1) of the Federal Mining Act (<i>Bundesberggesetz</i>);</p> <p>4. decisions on the admissibility of projects which constitute neighbouring objects of protection within the meaning of section 3 (5d) of the Federal Immission Control Act and which are to be implemented within the appropriate safety distance from an operational area pursuant to section 3 (5a) of the Federal Immission Control Act and require approval under the statutory provisions of the <i>Länder</i>;</p> <p>5. decisions on projects or plans that must be assessed in accordance with sections 34 (1) or 36 of the Federal Nature Conservation Act (<i>Bundesnaturschutzgesetz</i>) for their compatibility with the conservation objectives of a Natura 2000 site, if they are not already covered by nos. 1 to 4.</p>
---	--

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>which the decision on acceptance is taken under formal law;</p> <p>5. administrative acts or public law contracts that approve projects other than those referred to in nos. 1 to 2b in application of environmental laws and regulations under federal law, <i>Länder</i> law or directly applicable legal acts of the European Union, and</p> <p>6. administrative acts concerning monitoring or supervisory measures for the implementation or execution of decisions pursuant to nos. 1 to 5 which are used to ensure compliance with environmental laws and regulations under federal law, <i>Länder</i> law or directly applicable legal acts of the European Union.</p> <p>This Act also applies in cases where, contrary to applicable laws and regulations, no decision pursuant to sentence 1 has been taken. The following provisions are unaffected:</p> <ol style="list-style-type: none"> 1. section 44a of the Code of Administrative Court Procedure (<i>Verwaltungsgerichtsordnung</i>), 2. section 17 (3) sentences 3 to 5 and section 19 (2) sentences 5 to 7 of the Repository Site Selection Act (<i>Standortauswahlgesetz</i>) and 3. section 15 (3) sentence 2 of the Grid Expansion Acceleration Act (<i>Netzausbaubeschleunigungsgesetz Übertragungsnetz</i>), section 17a (5) sentence 1 of the Energy Industry Act (<i>Energiewirtschaftsgesetz</i>), section 6 (9) sentence 1 of the Offshore Wind Energy Act (<i>Windenergie-auf-See-Gesetz</i>), section 47 (4) and section 49 (3) of the Environmental Impact Assessment Act and other relevant laws and regulations. 	<p>This Act also applies in cases where, contrary to applicable laws and regulations, no decision pursuant to sentence 1 has been taken. The following provisions are unaffected:</p> <ol style="list-style-type: none"> 1. section 44a of the Code of Administrative Court Procedure (<i>Verwaltungsgerichtsordnung</i>), 2. section 17 (3) sentences 3 to 5 and section 19 (2) sentences 5 to 7 of the Repository Site Selection Act (<i>Standortauswahlgesetz</i>) and 3. section 15 (3) sentence 2 of the Grid Expansion Acceleration Act (<i>Netzausbaubeschleunigungsgesetz Übertragungsnetz</i>), section 17a (5) sentence 1 of the Energy Industry Act (<i>Energiewirtschaftsgesetz</i>), section 6 (9) sentence 1 of the Offshore Wind Energy Act (<i>Windenergie-auf-See-Gesetz</i>), section 47 (4) of the Environmental Impact Assessment Act and other relevant laws and regulations; section 47 (4) of the Environmental Impact Assessment Act also applies to decisions on plans that
--	--

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>Sentences 1 and 2 do not apply if a decision within the meaning of this subsection was issued on the basis of a decision in administrative court legal proceedings.</p>	<p>must be assessed in accordance with section 36 sentence 1 no. 1 of the Federal Nature Conservation Act for their compatibility with the conservation objectives of a Natura 2000 site.</p> <p>Sentences 1 and 2 do not apply if a decision within the meaning of this subsection was issued on the basis of a decision in administrative court legal proceedings.</p>
	<p>(1a) This Act also applies to appeals against the following decisions of authorities pursuant to section 1 (4) of the Administrative Procedure Act (<i>Verwaltungsverfahrensgesetz</i>) which were taken within the scope of Article 9 (3) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Federal Law Gazette II 2006, p. 1251) in application of environmental laws and regulations:</p> <ol style="list-style-type: none"> 1. decisions under the Environmental Damage Act (<i>Umweltschadensgesetz</i>); 2. decisions on the acceptance of plans and programmes within the meaning of section 2 (7) of the Environmental Impact Assessment Act and within the meaning of the relevant statutory provisions of the <i>Länder</i> <ol style="list-style-type: none"> a) for which there may be an obligation under the Environmental Impact Assessment Act or statutory provisions of the <i>Länder</i> to carry out a strategic environmental assessment (SEA), and which are not already covered by subsection (1) sentence 1 no. 5 or b) which, for their acceptance, are otherwise subject to environmental laws and regulations under federal law, <i>Länder</i> law or directly applicable legal acts of the European Union;

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

	<p>exempt from this are plans and programmes for which the decision on acceptance is taken by formal law;</p> <p>3. administrative acts or public law contracts that approve projects in application of environmental laws and regulations under federal law, <i>Länder</i> law or directly applicable legal acts of the European Union and that are not already covered by subsection (1) sentence 1;</p> <p>4. decisions under section 63 (1) nos. 2 to 4 and subsection (2) nos. 4a to 7 of the Federal Nature Conservation Act and in cases under section 63 (2) no. 8 of the Federal Nature Conservation Act that are not already covered by subsection (1) sentence 1; the <i>Länder</i> can also allow appeals by recognised nature conservation associations in other cases in which participation is envisaged under subsection 63 (2) no. 8 of the Federal Nature Conservation Act;</p> <p>5. decisions taken by German authorities on type and design approvals or similar decisions on the approval of product groups in application of environmental laws and regulations under federal law, <i>Länder</i> law or directly applicable legal acts of the European Union;</p> <p>5a. decisions under Articles 31 and 32 of the EU Regulation on deforestation-free products (Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010);</p> <p>5b. decisions under Article 5 (1) and Article 6 (1) and (6) of Regulation (EU) 2020/741 of the European Parliament and of the Council of 25</p>
--	--

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

	<p>May 2020 on minimum requirements for water reuse;</p> <p>5c. decisions under Article 7 (3), Article 9 (1) and (9) and Article 14 (1) of Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC;</p> <p>5d. administrative acts concerning monitoring or supervisory measures under the Drinking Water Ordinance (<i>Trinkwasserverordnung</i>) of 20 June 2023 (Federal Law Gazette 2023 I No. 59) or under the Drinking Water Catchment Area Ordinance (<i>Trinkwassereinzugsgebieteverordnung</i>) of 4 December 2023 (Federal Law Gazette 2023 I No. 346);</p> <p>5e. administrative acts concerning monitoring or supervisory measures under section 47 (1) sentences 1 and 2 of the Circular Economy Act of 24 February 2012 (Federal Law Gazette I p. 212), last amended by Article 5 of the act of 2 March 2023 (Federal Law Gazette 2023 I No. 56), in conjunction with the Single-Use Plastics Ordinance (<i>Einwegkunststoffverbotsverordnung</i>) of 20 January 2021 (Federal Law Gazette p. 95) or the Single-Use Plastics Labelling Ordinance (<i>Einwegkunststoffkennzeichnungsverordnung</i>) of 24 June 2021 (Federal Law Gazette I p. 2024) and</p> <p>6. administrative acts concerning monitoring or supervisory measures for the implementation or execution of decisions under subsection (1) sentence 1 and under sentence 1 of this subsection which are used to ensure compliance with environmental laws and regulations under federal law, <i>Länder</i> law or directly applicable legal acts of the European Union, that are not already covered by nos. 5d or 5e.</p> <p>Subsection (1) sentences 2 to 4 applies accordingly.</p>
--	--

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>(2) (2) This Act also applies in the area of the exclusive economic zone or the continental shelf within the framework of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II p. 1799, 1995 II p. 602).</p>	<p>Unchanged.</p>
<p>(3) If appeals have been launched under this Act in plan approval procedures that fall under subsection (1) sentence 1 nos. 1, 2 or 5, section 64 (1) of the Federal Nature Conservation Act (<i>Bundesnaturschutzgesetz</i>) does not apply.</p>	<p>(3) This Act applies to associations that meet the requirements of section 3 (1) or section 2 (2). In addition, section 4 (1) to (3) and (5), sections 5 to 6, section 7 (2) sentences 1 and 3, (4) and (5) apply to appeals by natural persons and bodies corporate pursuant to section 61 no. 1 of the Code of Administrative Court Procedure and by associations pursuant to section 61 no. 2 of the Code of Administrative Court Procedure.</p>
<p>(4) Environmental laws and regulations within the meaning of this Act are provisions for the protection of humans and the environment relating to</p> <ol style="list-style-type: none"> 1. the state of the elements of the environment within the meaning of section 2 (3) no. 1 of the Environmental Information Act (<i>Umweltinformationsgesetz</i>) or 2. factors within the meaning of section 2 (3) no. 2 of the Environmental Information Act. 	<p>Unchanged.</p>
<p>Section 2 Appeals by associations</p>	
<p>(1) (1) A German or foreign association recognised in accordance with section 3 can, without obligation to assert a violation of its own rights, file an appeal according to the Code of Administrative Court Procedure against a decision under section 1 (1) sentence 1 or</p>	<p>(1) A German or foreign association recognised in accordance with section 3 can, without obligation to assert a violation of its own rights, file an appeal according to the Code of Administrative Court Procedure against a decision under section 1 (1) sentence 1 or (1a)</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>against the failure to take such a decision, if the association</p> <ol style="list-style-type: none"> 1. asserts that a decision under section 1 (1) sentence 1 or the failure to take such a decision conflicts with laws and regulations which may be relevant to the decision, 2. asserts that its field of activity according to its statutes of promoting the goals of environmental protection is affected by the decision under section 1 (1) sentence 1 or the failure to take such a decision, and 3. was entitled to participate in the case of a procedure pursuant to <ol style="list-style-type: none"> a) section 1 (1) sentence 1 nos. 1 to 2b; b) section 1 (1) sentence 1 no. 4, and expressed its views on the matter in accordance with the applicable laws and regulations or, contrary to the applicable laws and regulations, was not given an opportunity to express its views. <p>In the case of appeals against a decision under section 1 (1) sentence 1 nos. 2a to 6 or against the failure to take such a decision, the association must assert violation of environmental laws and regulations.</p>	<p>sentence 1, or against the failure to take such a decision, if the association</p> <ol style="list-style-type: none"> 1. asserts that a decision under section 1 (1) sentence 1 or (1a) sentence 1, or the failure to take such a decision conflicts with laws and regulations which may be relevant to the decision, 2. asserts that its field of activity according to its statutes or other charter of promoting the goals of environmental protection is affected by the decision under section 1 (1) sentence 1 or (1a) sentence 1, or the failure to take such a decision, and 3. was entitled to participate in the case of a procedure pursuant to <ol style="list-style-type: none"> a) section 1 (1) sentence 1; b) section 1 (1a) sentence 1 no. 2 letters (a) or (b) with a participation procedure that meets the minimum requirements of section 42 of the Environmental Impact Assessment Act and expressed its views on the matter in accordance with the applicable laws and regulations or, contrary to the applicable laws and regulations, was not given an opportunity to express its views. <p>In the case of appeals against a decision under section 1 (1a) sentence 1 or against the failure to take such a decision, the association must assert violation of environmental laws and regulations.</p>
<p>(2) An association that is not recognised under section 3 may file an appeal in accordance with subsection (1) only if</p>	<p>Unchanged.</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<ol style="list-style-type: none"> 1. it fulfils the requirements for recognition at the time the appeal is filed, 2. it has applied for recognition, and 3. a decision on its recognition has not yet been taken, for reasons for which the association is not responsible. <p>For a foreign association, the requirements under no. 3 are deemed to be met. The appeal is no longer admissible once a decision denying recognition becomes legally valid.</p>	
<p>(3) If a decision under section 1 (1) sentence 1 has not been publicly announced or notified to the association in accordance with applicable laws and regulations, an objection must be filed or an action brought within one year after the association becomes aware of or could have become aware of the decision. An objection must be filed or an action brought against a decision under section 1 (1) sentence 1 nos. 5 or 6 at the latest within two years after the administrative act was issued. Sentence 1 applies accordingly if, contrary to the applicable laws and regulations, a decision under section 1 (1) sentence 1 was not taken and the association becomes aware of or could have become aware of that circumstance.</p>	<p>(3) If a decision under section 1 (1) sentence 1 or (1a) sentence 1 has not been publicly announced or notified to the association in accordance with applicable laws and regulations, an objection must be filed or an action brought within one year after the association becomes aware of or could have become aware of the decision. An objection must be filed or an action brought against a decision under section 1 (1a) sentence 1 nos. 3 or 6 at the latest within two years after the administrative act was issued. Sentence 1 applies accordingly if, contrary to the applicable laws and regulations, a decision under section 1 (1) sentence 1 or (1a) sentence 1 was not taken and the association becomes aware of or could have become aware of that circumstance.</p>
<p>(4) Appeals under subsection (1) are justified if</p> <ol style="list-style-type: none"> 1. the decision pursuant to section 1 (1) sentence 1 nos. 1 and 2 or the failure to take such decision violates laws and regulations relevant to this decision, or 2. the decision pursuant to section 1 (1) sentence 1 nos. 2a to 6 or the failure to take such a decision violates 	<p>(4) Appeals under subsection (1) are justified if</p> <ol style="list-style-type: none"> 1. the decision pursuant to section 1 (1) sentence 1 or the failure to take such decision violates laws and regulations relevant to this decision, or 2. the decision pursuant to section 1 (1a) sentence 1 or the failure to take such a decision violates environmental legal

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>environmental legal provisions relevant to this decision,</p> <p>and this violation affects interests associated with the goals of the association as set out in its statutes. In the case of decisions under section 1 (1) sentence 1 nos. 1 or 4, there must also be an obligation to carry out an environmental impact assessment within the meaning of section 2 (10) of the Environmental Impact Assessment Act.</p>	<p>provisions relevant to this decision,</p> <p>and this violation affects interests associated with the goals of the association as set out in its statutes or other charter. In the case of decisions under section 1 (1) sentence 1 no. 1, there must also be an obligation to carry out an environmental impact assessment within the meaning of section 2 (10) of the Environmental Impact Assessment Act.</p>
<h4>Section 3 Recognition of associations</h4>	
<p>(1) Upon request, recognition for the purpose of filing an appeal under this Act is granted to a German or foreign association. The recognition must be granted if the association</p> <ol style="list-style-type: none"> 1. in accordance with its statutes predominantly promotes, non-materially and not only temporarily, the goals of environmental protection, 2. it has existed for at least three years at the time of recognition and has been active as defined in no.1 during that period, 3. offers guarantees of proper performance of its activities, especially proper participation in official procedures; in this context, the type and extent of its activities to date, membership and the effectiveness of the association must be taken into account, 4. it promotes public-benefit purposes as defined in section 52 of the German Tax Code (<i>Abgabenordnung</i>); and 5. allows any person who supports the goals of the association 	<p>(1) Upon request, recognition for the purpose of filing an appeal under this Act is granted to a German or foreign association; foundations under private law are also associations within the meaning of this Act. The recognition must be granted if the association</p> <ol style="list-style-type: none"> 1. in accordance with its statutes or other charter predominantly promotes, non-materially and not only temporarily, the goals of environmental protection, 2. has existed for at least three years at the time of recognition and has been active as defined in no.1 during that period, 3. offers guarantees of proper performance of its activities, especially proper participation in official procedures; the type and extent of its activities to date, the membership or, if there is no membership, the board members and the persons working for the association to promote the goals under no. 1 and the effectiveness of the association must be taken into account, and 4. promotes public-benefit purposes as defined in section 52 of the German Tax Code (<i>Abgabenordnung</i>).

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>to become a member; members are persons who are given full voting rights in the general assembly of the association upon joining; in associations of which at least three quarters of the members are legal entities, the association may be exempted from the requirement in the first half of this sentence, provided the majority of these legal entities fulfil this requirement.</p> <p>The recognition must refer to the field of activities set out in the statutes to which the recognition applies; in particular it must state whether the association focuses on supporting nature conservation and landscape management goals and must indicate the geographical area to which the recognition relates. The recognition can, also retrospectively, be subject to the requirement to notify changes to the statutes. The competent authority must publish the recognition on the internet.</p>	<p>The recognition must refer to the field of activities set out in the statutes or other charter to which the recognition applies; in particular it must state whether the association focuses on supporting nature conservation and landscape management goals and must indicate the geographical area to which the recognition relates. The recognition is subject to the requirement to notify changes to the statutes or other charter. The competent authority must publish the recognition on the internet. The recognition must be fully or partially revoked if one of the conditions for recognition subsequently ceases to exist.</p>
<p>(2) For a foreign association and for an association with an area of activity extending beyond a <i>Land</i> border, recognition is granted by the German Environment Agency. For an association under sentence 1 that focuses on the goals of nature conservation and landscape management, recognition is granted in agreement with the Federal Agency for Nature Conservation. No fees or expenses are charged for the recognition.</p>	<p>(2) For a foreign association and for an association with an area of activity extending beyond a <i>Land</i> border, recognition is granted by the German Environment Agency. For an association under sentence 1 that focuses on the goals of nature conservation and landscape management, recognition is granted or revoked in agreement with the Federal Agency for Nature Conservation. No fees or expenses are charged for the recognition.</p>
<p>(3) For a German association with an area of activity that does not extend beyond one <i>Land</i> border, recognition is granted by the competent authority of that <i>Land</i>.</p>	<p>Unchanged.</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

Section 4 Procedural errors	
<p>(1) The annulment of a decision on the admissibility of a project under section 1 (1) sentence 1 nos. 1 to 2b can be requested if</p> <ol style="list-style-type: none"> 1. a) an environmental impact assessment (EIA) or <ol style="list-style-type: none"> b) the preliminary examination needed in an individual case to determine whether there is an EIA obligation, as required in accordance with the Environmental Impact Assessment Act, the Ordinance on the Assessment of the Environmental Impacts of Mining Projects, or the corresponding statutory provisions of the <i>Länder</i> was not carried out and was not carried out at a later stage, 2. the necessary public participation within the meaning of section 18 of the Environmental Impact Assessment Act or within the meaning of section 10 of the Federal Immission Control Act was not carried out, and was not carried out at a later stage, or <p>there is another procedural error that</p> <ol style="list-style-type: none"> a) has not been remedied, b) is comparable in type and scale with the cases listed in nos. 1 and 2, and c) has denied the public concerned the opportunity to participate as prescribed by law in the decision-making process; participation in the decision-making process also includes access to documentation that must be made available to the public. 	<p>(1) The annulment of a decision on the admissibility of a project under section 1 (1) sentence 1 can be requested if</p> <ol style="list-style-type: none"> 1. a) an environmental impact assessment (EIA) or <ol style="list-style-type: none"> b) the preliminary examination needed in an individual case to determine whether there is an EIA obligation, as required in accordance with the Environmental Impact Assessment Act, the Ordinance on the Assessment of the Environmental Impacts of Mining Projects, or the corresponding statutory provisions of the <i>Länder</i> was not carried out and was not carried out at a later stage, 2. the necessary public participation within the meaning of section 18 of the Environmental Impact Assessment Act or within the meaning of section 10 of the Federal Immission Control Act was not carried out, and was not carried out at a later stage, or 3. there is another procedural error that <ol style="list-style-type: none"> a) has not been remedied, b) is comparable in type and scale with the cases listed in nos. 1 and 2, and c) has denied the public concerned the opportunity to participate as prescribed by law in the decision-making process; participation in the decision-making process also includes access to documentation that must be made available to the public.

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>A preliminary examination of an individual case to determine the EIA obligation that does not meet the requirement under section 5 (3) sentence 2 of the Environmental Impact Assessment Act is equivalent to not carrying out a preliminary examination under sentence 1 no. 1 letter (b).</p>	<p>A preliminary examination of an individual case to determine the EIA obligation that does not meet the requirement under section 5 (3) sentence 2 of the Environmental Impact Assessment Act is equivalent to not carrying out a preliminary examination under sentence 1 no. 1 letter (b).</p>
<p>(1a) Section 46 of the Administrative Procedure Act (<i>Verwaltungsverfahrensgesetz</i>) applies to procedural errors that do not fall within the scope of subsection (1). If the court is unable to ascertain whether a procedural error pursuant to sentence 1 influenced the decision, influence on the decision is assumed.</p>	<p>Unchanged.</p>
<p>(1b) A violation of procedural rules only results in annulment of the decision pursuant to section 1 (1) sentence 1 nos. 1 to 2b or 5 if the violation cannot be remedied by an addendum to the decision or a supplementary procedure. The following provisions are unaffected:</p> <ol style="list-style-type: none"> 1. section 45 (2) of the Administrative Procedure Act and 2. section 75 (1a) of the Administrative Procedure Act and other relevant provisions to maintain plans. <p>Upon request the court can order that the proceedings be suspended until the procedural errors within the meaning of subsections (1) and (1a) have been remedied, if this is useful in terms of concentrating proceedings.</p>	<p>(1b) A violation of procedural rules only results in annulment of the decision pursuant to section 1 (1) sentence 1 or section 1 (1a) sentence 1 no. 3 if the violation cannot be remedied by an addendum to the decision or a supplementary procedure. The following provisions are unaffected:</p> <ol style="list-style-type: none"> 1. section 45 (2) of the Administrative Procedure Act and 2. section 75 (1a) of the Administrative Procedure Act and other relevant provisions to maintain plans. <p>Upon request the court can order that the proceedings be suspended until the procedural errors within the meaning of subsections (1) and (1a) have been remedied, if this is useful in terms of concentrating proceedings.</p>
<p>(2) (2) If resolutions within the meaning of section 2 (6) no. 3 of the Environmental Impact Assessment Act are the subject of the court review, sections 214 and 215 and the related transitional provisions of the Federal Building Code (<i>Baugesetzbuch</i>) and the relevant statutory provisions of the <i>Länder</i> apply in derogation from</p>	<p>Unchanged.</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>subsections (1) to (1b).</p>	
<p>(3) Subsections (1) and (2) apply to appeals by</p> <ol style="list-style-type: none"> 1. persons pursuant to section 61 no. 1 of the Code of Administrative Court Procedure and associations pursuant to section 61 no. 2 of the Code of Administrative Court Procedure, and 2. associations which meet the requirements of section 3 (1) or section 2 (2). <p>Subsection (1) sentence 1 no. 3 applies to appeals by persons and associations in accordance with sentence 1 no. 1, with the proviso that the annulment of a decision may only be requested if the procedural error has denied the parties concerned the opportunity to participate in the decision-making process as prescribed by law.</p>	<p>(3) Subsection (1) sentence 1 no. 3 applies to appeals by persons and associations in accordance with section 1 (3) sentence 2, with the proviso that the annulment of a decision may only be requested if the procedural error has denied the parties concerned the opportunity to participate in the decision-making process as prescribed by law.</p>
<p>(4) subsections (1) to (2) must be applied accordingly to appeals by associations under subsection (3) sentence 1 no. 2 against decisions under section 1 (1) sentence 1 no. 4. In derogation from sentence 1, if regional plans in accordance with the Spatial Planning Act (<i>Raumordnungsgesetz</i>) are the subject of the court review, section 11 and section 27 (2) of the Spatial Planning Act and the relevant statutory provisions of the <i>Länder</i> apply.</p>	<p>(4) Subsections (1) to (2) apply accordingly to appeals by associations under section 1 (3) sentence 1 against</p> <ol style="list-style-type: none"> 1. decisions on plans under section 1 (1) sentence 1 no. 5, and 2. decisions under section 1 (1a) sentence 1 no. 2. <p>In derogation from sentence 1, if regional plans in accordance with the Spatial Planning Act (<i>Raumordnungsgesetz</i>) are the subject of the court review, sections 11 and 27 (2) of the Spatial Planning Act and the relevant statutory provisions of the <i>Länder</i> apply.</p>
<p>(5) For appeals against decisions under section 1 (1) sentence 1 nos. 3, 5 and 6, the respective specialist provisions and the provisions of the Administrative Procedure Act apply in the event of procedural errors.</p>	<p>(5) For appeals against decisions under section 1 (1a) sentence 1 nos. 1, 3 and 6, the respective specialist provisions and the provisions of the Administrative Procedure Act apply in the event of procedural errors.</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>Section 5 Improper or fraudulent conduct in the appeals procedure.</p>	

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

Objections that a person or association within the meaning of section 4 (3) sentence 1 raise for the first time during the appeals procedure are disregarded if the first assertion in the appeals procedure is improper or fraudulent.

Objections that a person or association within the meaning of **section 1 (3)** raise for the first time during the appeals procedure are disregarded if the first assertion in the appeals procedure is improper or fraudulent. **The first assertion of an objection in the appeals procedure is improper or fraudulent if the appellant was already aware of the objection in the administrative procedure and, in a reprehensible manner and with the intention to delay the proceedings, did not assert it until the appeals procedure.**

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

Section 6 Deadlines, failure to comply with deadlines	
<p>A person or association within the meaning of section 4 (3) sentence 1 must present the facts and items of evidence supporting their appeal against a decision under section 1 (1) sentence 1 or against the failure to take such a decision, within ten weeks of the date the action was brought. Declarations and items of evidence which are not submitted until after expiry of this deadline may only be permitted if the condition set out in section 87b (3) sentence 1 no. 2 of the Code of Administrative Court Procedure is met. Section 87b (3) sentences 2 and 3 of the Code of Administrative Court Procedure applies accordingly. Upon request, the deadline under sentence 1 can be extended by the presiding judge or the reporting judge if the person or association had no opportunity to participate in the procedure in which the contested decision was taken. The preceding sentences apply accordingly to cases in which the legal process for implementing a procedure to supplement or change a plan was suspended and recommenced at a later date; the deadline applies as from the continuation of the court proceedings.</p>	<p>(1) A person or association within the meaning of section 1 (3) must present the facts and items of evidence supporting their appeal against a decision under section 1 (1) sentence 1 or subsection (1a) sentence 1 or against the failure to take such a decision, within ten weeks of the date the action was brought. Declarations and items of evidence which are not submitted until after expiry of this deadline may only be permitted if the condition set out in section 87b (3) sentence 1 no. 2 of the Code of Administrative Court Procedure is met. Section 87b (3) sentences 2 and 3 of the Code of Administrative Court Procedure applies accordingly. Upon request, the deadline under sentence 1 can be extended by the presiding judge or the reporting judge if the person or association had no opportunity to participate in the procedure in which the contested decision was taken.</p>
	<p>(2) In the interests of speeding up the procedure, on presentation of the statement of claim the court, as a rule, sets the other parties concerned an adequate deadline to express their views. On request, the deadline under sentence 1 can be extended by the presiding judge or the reporting judge.</p>
	<p>(3) Subsections (1) and (2) apply accordingly to cases in which the legal process for implementing a procedure to supplement or change a</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

	<p>plan was suspended and recommenced at a later date; the deadline applies as from the continuation of the court proceedings.</p>
<p align="center">Section 7 Special provisions for appeals against certain decisions</p>	
<p>(1) If publication is not prescribed under applicable laws and regulations for decisions under section 1 (1) sentence 1 nos. 5 or 6, the competent authority must notify one or several precisely indicated persons or associations of the decision including information on rights of appeal, if this is requested</p> <ol style="list-style-type: none"> 1. by the applicant of the administrative act under section 1 (1) sentence 1 no. 5, or 2. by the person or association to which the authority addressed the administrative act under section 1 (1) sentence 1 no. 6. <p>The applicant bears the costs of the notification.</p>	<p>(1) If publication is not prescribed under applicable laws and regulations for decisions under section 1 (1a) sentence 1 nos. 3, 4, 5 and 6, the competent authority must notify one or several precisely indicated persons or associations of the decision including information on rights of appeal, if this is requested</p> <ol style="list-style-type: none"> 1. by the applicant of the administrative act or 2. by the person or association to which the authority addressed the administrative act. <p>The applicant bears the costs of the notification.</p>
<p>(2) Decisions on appeals against a decision under section 1 (1) sentence 1 no. 4 or against the failure to take such a decision are taken at the first instance by the Higher Administrative Court, including when there is no case under section 47 (1) nos. 1 or 2 of the Code of Administrative Court Procedure. If reformatory action or an application for an injunction under section 47 (1) of the Code of Administrative Court Procedure is not admissible, section 47 of the Code of Administrative Court Procedure must be applied accordingly. In the case of plans and programmes extending beyond <i>Land</i> borders, competence lies with the Higher Administrative Court in the district of the authority that took the decision on approving the plan or programme.</p>	<p>(2) Decisions on appeals against a decision under section 1 (1a) sentence 1 no. 2 or against the failure to take such a decision are taken at the first instance by the Higher Administrative Court, including when there is no case under section 47 (1) nos. 1 or 2 of the Code of Administrative Court Procedure. If reformatory action or an application for an injunction under section 47 (1) of the Code of Administrative Court Procedure is not admissible, section 47 of the Code of Administrative Court Procedure must be applied accordingly. In the case of plans and programmes extending beyond <i>Land</i> borders, competence lies with the Higher Administrative Court in the district of the authority that took the decision on approving the plan or programme.</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>(3) If an association within the meaning of section 4 (3) sentence 1 no. 2 has had an opportunity to make a statement in a procedure under section 1 (1) sentence 1 no. 4, it is barred from lodging any objections in the appeals procedure under subsection (2) that it did not assert in the procedure under section 1 (1) sentence 1 no. 4 or did not assert within the deadline according to applicable laws and regulations, but that it could have asserted. Sentence 1 does not apply to procedures to establish, change, supplement or revoke development plans under section 10 of the Federal Building Code.</p>	<p>(3) If an association within the meaning of section 1 (3) sentence 1 has had an opportunity to make a statement in a procedure under section 1 (1a) sentence 1 no. 2 letters (a) or (b), if the requirements under section 2 (1) sentence 1 no. 3 letter (b) of this Act are met, it is barred from lodging any objections in the appeals procedure under subsection (2) that it did not assert in the procedure under section 1 (1a) sentence 1 no. 2 letters (a) or (b) or did not assert within the deadline according to applicable laws and regulations, but that it could have asserted. Sentence 1 does not apply to procedures to establish, change, supplement or revoke development plans under section 10 of the Federal Building Code.</p>
<p>(4) In the appeals procedure against a decision under section 1 (1) sentence 1 nos. 1 to 2b, section 73 (4) sentences 3 to 6 of the Administrative Procedure Act does not apply, including in cases under its subsection (8).</p>	<p>(4) In the appeals procedure against a decision under section 1 (1) sentence 1, section 73 (4) sentences 3 to 6 of the Administrative Procedure Act does not apply, including in cases under its subsection (8). In the appeals procedure against a decision under section 1 (1) sentence 1 no. 5, section 42 (3) sentences 3 and 4 of the Environmental Impact Assessment Act does not apply.</p>
<p>(5) A violation of material legal provisions only results in annulment of a decision under section 1 (1) sentence 1 nos. 1 to 2b or 5 if it cannot be remedied by an addendum to the decision or a supplementary procedure. Sentence 1 does not apply to the area of application of section 75 (1a) of the Administrative Procedure Act.</p>	<p>(5) A violation of material legal provisions only results in annulment of the decision pursuant to section 1 (1) sentence 1 or section 1 (1a) sentence 1 no. 3, if it cannot be remedied by an addendum to the decision or a supplementary procedure. Sentence 1 does not apply to the area of application of section 75 (1a) of the Administrative Procedure Act.</p>
<p>(6) Subsection (2) sentences 1 and 3 and subsections (4) and (5) also apply to appeals by persons and associations under section 4 (3) sentence 1 no. 1.</p>	<p>(6) No longer applicable</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

Section 8 Transitional provision	
<p>(1) This Act applies to appeals against decisions under section 1 (1) sentence 1 nos. 1 and 2 that were taken or should have been taken after 25 June 2005. In derogation from sentence 1, section 6 must only be applied to appeals referred to in sentence 1 that were filed after 28 January 2013.</p>	<p>Unchanged.</p>
<p>(2) This Act applies to appeals against decisions under section 1 (1) sentence 1 nos. 4 to 6 that</p> <ol style="list-style-type: none"> 1. were not yet legally valid on 2 June 2017 or 2. that were taken or should have been taken after that date. 	<p>(2) This Act applies to appeals against decisions under section 1 (1a) sentence 1 nos. 2 letter (a), 3 and 6 that</p> <ol style="list-style-type: none"> 1. were not yet legally valid on 2 June 2017 or 2. were taken or should have been taken after that date.
	<p>(2a) This Act applies to appeals against decisions under section 1 (1) sentence 1 no. 5 and section 1 (1a) sentence 1 no. 2 letter (b) to no. 5e that</p> <ol style="list-style-type: none"> 1. on [insert date of entry into force of this Act under Article 6] are not yet official or 2. were taken or should have been taken after [insert date of entry into force of this Act under Article 6].
<p>(3) The following recognitions continue to be deemed recognitions:</p> <ol style="list-style-type: none"> 1. recognitions 	<p>Unchanged.</p>

Ministry draft of an act amending the Environmental Appeals Act and other provisions under environmental law

<p>a) under section 3 of this Act in the version of 28 February 2010,</p> <p>b) under section 59 of the Federal Nature Conservation Act in the version of 28 February 2010 and</p> <p>c) based on statutory provisions of the <i>Länder</i> in the context of section 60 of the Federal Nature Conservation Act in the version of 28 February 2010,</p> <p>that were issued before 1 March 2010, and</p> <p>2. recognitions of the Federation and the <i>Länder</i> in accordance with section 29 of the Federal Nature Conservation Act in the version valid until 3 April 2002.</p>	
	<p>(4) Section 6 in the version of this Act of [insert date of entry into force of this Act under Article 6] applies to procedures that have become pending from [insert date of entry into force of this Act under Article 6]. For procedures that were pending prior to [insert date of entry into force of this Act under Article 6], section 6 in the version published on 23 August 2017 (Federal Law Gazette I p. 3290), last amended by Article (...) of the act of (...) (Federal Law Gazette...) continues to apply.</p>
	<p>(5) The provisions of the <i>Länder</i> issued under section 64 (3) of the Federal Nature Conservation Act in the version valid until [insert date of entry into force of this Act under Article 6] continue to apply.</p>