



Federal Ministry for the  
Environment, Nature Conservation  
and Nuclear Safety

## **Act on Nature Conservation and Landscape Management (Federal Nature Conservation Act – BNatSchG) of 29 July 2009**

- unofficial translation -

Note: The Act on Nature Conservation and Landscape Management (Federal Nature Conservation Act – BNatSchG) has been translated for information purposes. Only the German version (Federal Law Gazette 2009, part I, no. 51, p. 2542ff.) is legally binding.

Federal Nature Conservation Act in the version promulgated on 06 August 2009  
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## Chapter 1

### General Provisions

#### Article 1

##### Purposes of nature conservation and landscape management

(1) By virtue of their intrinsic value and importance as a basic necessity of human life, and also as a responsibility to future generations, nature and landscape in both settled and non-settled areas are to be protected, in keeping with the following paragraphs, so as to permanently safeguard

1. biological diversity,
2. the performance and functioning of the natural balance, including the ability of natural resources to regenerate and lend themselves to sustainable use, and
3. the diversity, characteristic features and beauty of nature and landscape, as well as their recreational value.

Such protection shall include management, development and, as necessary, restoration of nature and landscape (general principle).

(2) In order to permanently safeguard biological diversity, the following actions are to be taken, in accordance with the relevant threat levels:

1. viable populations of wild plants and animals, including their living sites, shall be protected, and exchange between relevant populations, and migrations and resettlement, shall be facilitated,
2. threats to naturally occurring ecosystems, biotopes and species shall be countered,
3. communities and biotopes, including their structural and geographic characteristics shall be preserved, in representative distributions; certain parts of landscapes shall be permitted to undergo natural dynamics.

(3) In order to permanently safeguard the performance and functioning of the natural balance, the following actions are to be taken:

1. the natural balance, in its geographically delimited parts, is to be protected in such a way that its biological functions, material and energy flows and characteristic landscape structures are protected; economical and careful use is to be made of those natural resources which are not renewable; renewable natural resources must only be used in such a way as to ensure their sustainable availability,

2. soil is to be conserved in a way which allows it to fulfil its function in the natural balance; sealed land areas which are no longer in use shall be restored to a natural state or, where unsealing of soil is not possible or would represent an unreasonable burden, the land areas are to be permitted to undergo natural development,

3. marine and inland water bodies are to be protected from adverse effects, and their natural dynamics and self-cleaning ability are to be maintained; this shall especially apply with regard to natural and semi-natural water bodies, including their shorelines, riparian meadows and other natural water-retention areas; flood protection is to be achieved also via natural or semi-natural measures; aims of precautionary groundwater protection and balanced precipitation-runoff regimes are also to be achieved via measures of nature conservation and landscape management,

4. the air and the climate are also to be protected via measures of nature conservation and landscape management; this shall apply especially with regard to areas with favourable air-cleansing or climatic efforts, such as areas in which fresh or cold air develop, or pathways for air exchange; establishment of sustainable energy supply systems, especially via increasing use of renewable energies, is to have special priority,

5. wild plants and animals, their communities, their living sites and their biotopes are to be protected, also with regard to their respective functions within the balance of nature,

6. development of self-regulating ecosystems, in suitable areas, is to be permitted, and sufficient space and time are to be allowed for such development.

(4) In order to permanently safeguard the diversity, characteristic features, beauty and recreational value of nature and landscape, the following actions are to be taken, in particular:

1. natural landscapes, and cultural landscapes that have developed over time, and including their cultural, structural and soil monuments, are to be protected against defacement and disfigurement, urban sprawl and other adverse effects,

2. for purposes of outdoor recreation, suitable areas for recreational purposes, in terms of their properties and location, are to be protected and kept or rendered accessible, particularly in settled areas and areas close to human settlements.

(5) Extensive, largely unfragmented landscape areas are to be protected against further fragmentation. Re-use of already developed, built-up areas, and development of undeveloped areas within areas of settlements, including areas both with and without binding land-use plans, but not areas earmarked for use as green spaces, is to have priority over use of open land outside of settlement areas. Transport routes, power lines and similar projects are to be routed, designed and combined in such a way that fragmentation and use of the landscape, and adverse effects on the natural

balance, are avoided or kept to an absolute minimum. In exploration for, and mining of, mineral resources, and in excavation and landfilling, permanent damage to the natural balance and destruction of valuable landscape components are to be avoided; any unavoidable adverse effects on nature and landscape are to be compensated for or mitigated, in particular by encouraging natural succession, renaturation, semi-natural landscaping, rehabilitation, or recultivation.

(6) Open spaces within and near settlements, including such areas' various components, such as parks, large green spaces and green belts, forests and edges of woods, trees and woody shrubbery, rivers and streams, including their shoreline zones and riparian areas, standing waters, nature experience areas and areas in horticultural and agricultural use, are to be protected and to be re-established in those areas in which they are not present to an adequate extent.

## Article 2

### Achievement of purposes

(1) Every individual should contribute, to the best of his or her abilities, to the realisation of the purposes of nature conservation and landscape management, and should conduct himself or herself in such a way that nature and landscape are not impaired any more than is unavoidable under the circumstances.

(2) Within the scope of their responsibility, Federal and Länder authorities shall support the realisation of the purposes of nature conservation and landscape management.

(3) In any given individual case, the purposes of nature conservation and landscape management shall be achieved to the extent possible, necessary and appropriate as determined by weighing up all the requirements resulting from Article 1 (1) against one another and against all other public requirements vis-à-vis nature and landscape.

(4) In management of land under public ownership or custody, particular consideration shall be given to the purposes of nature conservation and landscape management.

(5) European efforts in the area of nature conservation and landscape management shall be supported especially via the establishment and protection of the "Natura 2000" network. International efforts in the area of nature conservation and landscape management shall be supported especially via protection of cultural and natural heritage within the meaning of the Convention of 16 November 1972 concerning the Protection of the World Cultural and Natural Heritage (Federal Law Gazette 1977 II pp. 213, 215).

(6) A general understanding of the purposes of nature conservation and landscape management should be promoted by suitable means. Parties responsible for schooling, education and information provision should work to provide information, on

all relevant levels, regarding the importance of nature and landscape, the ways in which they are to be managed and used and the tasks of nature conservation and landscape management, and should work to raise awareness of the need for responsible treatment of nature and landscape.

### Article 3

Competencies, tasks and authorisations,

contractual agreements, co-operation of authorities

(1) The competent authorities in charge of nature conservation and landscape management, within the meaning of this Act, are

1. the competent authorities for nature conservation and landscape management pursuant to the legislation of the Länder, or

2. the Federal Agency for Nature Conservation (Bundesamt für Naturschutz, BfN), to the extent it is assigned responsibilities under this Act.

(2) The competent authorities in charge of nature conservation and landscape management shall monitor compliance with provisions of this Act, and with regulations issued on the basis of this Act, and shall take the measures necessary, in individual cases, and using discretion in accordance with their responsibilities, to ensure such compliance, except as provided otherwise.

(3) In the case of measures of nature conservation and landscape management, priority shall be given to reviewing whether the intended purpose could also be achieved via contractual agreements, at reasonable expense.

(4) For the implementation of landscaping and landscape-management measures, the competent authorities should engage, where possible, agricultural and forestry companies; associations in which municipalities or municipal associations, farmers and associations focussed especially on promoting aims of nature conservation and landscape management are equally represented (landscape management associations); recognised nature conservation associations or sponsors of nature parks. Sovereign powers may not be transferred.

(5) Federal and Länder authorities shall inform the competent authorities in charge of nature conservation and landscape management, during the relevant planning phases, regarding all public planning and measures that could affect interests of nature conservation and landscape management, and shall give them the opportunity to respond, except where a more extensive form of participation is provided for. The participation obligation pursuant to Sentence 1 shall apply mutatis mutandis for the competent authorities in charge of nature conservation and landscape management, where planning and measures for nature conservation and landscape management could relate to the task areas of other authorities.

(6) The competent authorities in charge of nature conservation and landscape management shall provide for early exchanges with stakeholders and the concerned public regarding their planning and measures.

(7) A municipality or a municipal association shall have tasks pursuant to this Act only if the municipality or a municipal association has been charged with such tasks pursuant to the legislation of the Land.

#### Article 4

Ensuring of proper function in connection with areas for public purposes

For nature conservation and landscape management measures in areas which solely or predominantly serve the following purposes:

1. defence, including compliance with international obligations and protection of the civilian population,
2. the Federal police,
3. public transport, as public transport routes,
4. shipping on lakes and inland waterways,
5. supply, including areas designated as requiring protection for this purpose, and disposal,
6. flood protection, or
7. telecommunications,

or which have been designated for any of the above purposes in a binding plan, measures must be taken to safeguard their use for the intended purpose. The objectives of nature conservation and landscape management must be observed.

#### Article 5

Agriculture, forestry and fisheries

(1) In connection with nature conservation and landscape management measures, the special importance, in conserving cultural and recreational landscapes, of agriculture, forestry and fishing designed to be compatible with nature and landscape conservation shall be taken into account.

(2) In agricultural uses, in addition to requirements arising from provisions applying to agriculture and from Article 17 (2) of the Federal Soil Protection Act (Bundes-Bodenschutzgesetz), the following principles of good practice shall especially be observed:

1. cultivation must be appropriate to the relevant location, and the sustained fertility of the soil and long-term usability of the land must be ensured;

2. the natural features of the arable land (soil, water, flora, fauna) must not be impaired beyond the extent required to achieve a sustainable yield;
3. the landscape components required for the linking of biotopes shall be preserved and, where possible, their numbers increased;
4. animal husbandry must be in a balanced relationship to crop cultivation, and harmful environmental impacts are to be avoided;
5. on slopes at risk from erosion, in flood plains, at sites with a high groundwater level and in boggy locations, farmers shall refrain from tilling grassland;
6. fertilisers and plant-protection products must be used in accordance with the provisions of specialised laws pertaining to agriculture; records must be kept of use of fertilisers and plant-protection products, pursuant to Article 7 of the Fertiliser Application Ordinance (Düngeverordnung) in the version promulgated on 27 February 2007 (Federal Law Gazette I p. 221), amended by Article 1 of the ordinance of 6 February 2009 (Federal Law Gazette I p. 153), and Article 6 (4) of the Federal Plant Protection Act (Pflanzenschutzgesetz) in the version promulgated on 14 May 1998 (Federal Law Gazette I, p. 971, 1527, 3512), last amended by Article 1 of the Act of 5 March 2008 (Federal Law Gazette I p. 284, 1102).

(3) Regarding the use of woodlands for forestry purposes, the aim must be to establish semi-natural forests and to manage these sustainably without clear-felling. An adequate proportion of native woodland plants must be retained.

(4) In use of surface water bodies by the fishing industry, these shall be preserved and promoted as living sites and habitats for native species of fauna and flora, including their riparian zones. As a general principle, the stocking of such waters with non-native species of fauna is to be avoided. In the case of fish farming and aquaculture by the freshwater fishing industry, adverse effects on native species of fauna and flora shall be limited to the extent required in order to attain a sustainable yield.

## Article 6

### Monitoring of nature and landscape

(1) The Federal Government and the Länder shall monitor nature and landscape, in the framework of their respective responsibilities (general principle).

(2) Such monitoring shall serve the purpose of focussed, ongoing determination, description and assessment of the condition of nature and landscape, of changes in their condition and of the reasons for, and consequences of, such changes.

(3) In particular, such monitoring shall cover

1. the condition of landscapes, biotopes and species, with regard to the fulfilment of obligations under international law,
  2. the conservation status of natural habitat types and species of Community interest, including unintentional capture or killing of animal species listed in Annex IV Letter a of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ EC L 206, of 22 July 1992, p.7), most recently amended by Directive 2006/105/EC (OJ EC L 363 of 20 December 2006, p. 368), and of European bird species and their habitats; in this connection, special attention shall be given to priority natural habitat types and priority species.
- (4) The competent Federal and Länder authorities shall support each other in such monitoring. They should co-ordinate their monitoring measures.
- (5) The Federal Agency for Nature Conservation (BfN) shall be responsible for carrying out the Federal Government's tasks in the area of monitoring nature and landscape, except where provided otherwise in relevant legal provisions.
- (6) Legal provisions with regard to secrecy, protection of personal data and protection of operational and business secrets shall not be affected.

## Article 7

### Definitions

(1) For the purposes of this Act, the following definitions shall apply:

1. biological diversity

the diversity of fauna and flora species, including diversity within species and diversity of types of communities and biotopes;

2. natural balance

the natural components soil, water, air, climate, fauna and flora, and the interactions between such components;

3. recreation

nature and leisure activities designed to be compatible with nature and landscape conservation, including sporting activities in the countryside which are compatible with nature and landscape conservation, as long as such activities do not hamper the achievement of the other purposes of nature conservation and landscape management;

4. natural habitat types of Community interest

the habitat types listed in Annex I of Directive 92/43/EEC;

5. priority natural habitat types

the habitat types marked with an (\*) in Annex I to Council Directive 92/43/EEC;

#### 6. Sites of Community importance

the sites included in the list pursuant to Article 4 (2) sub-paragraph 3 of Directive 92/43/EEC, even in cases in which protection within the meaning of Article 32 (2) through (4) is not yet assured;

#### 7. special protection areas

areas within the meaning of Article 4 (1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ EC L 103, of 25 April 1979, p.1), most recently amended by Directive 2008/102/EC (OJ EC L 323 of 3 December 2008, p. 31), where protection within the meaning of Article 32 (2) through (4) is already assured;

#### 8. Natura 2000 sites

Sites of Community importance and special protection areas;

#### 9. conservation objectives

objectives defined for a Natura 2000 site with regard to maintenance or restoration of a favourable conservation status for a natural habitat type of Community interest, or of a species listed in Annex II of Directive 92/43/EEC or Article 4 (2) or Annex I of Directive 79/409/EEC.

(2) For the purposes of this Act, the following additional definitions shall apply:

##### 1. animals

a) any species of wild animal, whether alive or dead, as well as living animals of wild species which have been caught or bred in activity and which have not been abandoned,

b) eggs (including empty eggs), larvae, pupae or other forms of development of wild species of fauna,

c) easily recognisable parts of wild species of fauna, and

d) easily recognisable products made from parts of wild fauna species;

##### 2. plants

a) plants growing in the wild, artificially propagated wild plants, and dead plants of wild species,

b) seeds, fruits or other forms of development of wild flora species,

c) easily recognisable parts of wild flora species, and

d) easily recognisable products made from parts of wild flora species;

lichens and fungi shall also be considered plants within the meaning of this Act;

3. species

any species, subspecies or subpopulation of a species or subspecies; species shall be identified by their scientific nomenclature;

4. biotope

habitat of a community of fauna and flora living in the wild;

5. living site

site at which individuals of a wild species are regularly found;

6. population

a biologically or geographically differentiated number of individuals of a species;

7. native species

a wild species of fauna or flora whose range or regular migration area, either wholly or partially,

a) is, or was historically, located within the country,

or

b) extends into the country naturally;

a wild species of fauna or flora shall also be considered native if individuals of that species that have reverted to a wild state, or have become established through human influence, are able to survive within the country as populations in the wild, and without human assistance, for several generations;

8. alien species

a wild species of fauna and flora which does not occur in the wild in the affected area, or has not done so for more than 100 years;

9. invasive species:

a species whose populations outside of its natural range present a significant threat to the naturally occurring ecosystems, biotopes or species in the area in question;

10. species of Community interest

species of fauna and flora listed in Annexes II, IV or V of Directive 92/43/EEC;

11. priority species

species of fauna and flora marked with an asterisk (\*) in Annex II to Directive 92/43/EEC;

## 12. European bird species

bird species occurring naturally in Europe within the meaning of Article 1 of Directive 79/409/EEC;

## 13. specially protected species

a) fauna and flora species listed in Annex A or B of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ EC 1997 L 61 of 3 March 1997, p. 1, L 100 of 17 April 1997, p. 72, L 298 of 1 November 1997, p. 70, L 113 of 27 April 2006, p. 26), last amended by Regulation (EC) No 318/2008 (OJ EC L 95 of 8 April 2008, p. 3),

b) where not included under Letter a)

aa) fauna and flora species listed in Annex IV of Directive 92/43/EEC,

bb) European bird species,

c) fauna and flora species listed in a statutory ordinance pursuant to Article 54 (1);

## 14. strictly protected species

those specially protected species listed in

a) Annex A of Council Regulation (EC) No 338/97,

b) Annex IV of Directive 92/43/EEC,

c) in a statutory ordinance pursuant to Article 54 (2);

## 15. bred animals

animals born, or propagated by other means, in a controlled environment and whose parents have been acquired by legal means;

## 16. artificially propagated plants

plants produced under controlled conditions from seeds, tissue cultures, cuttings or division;

## 17. to offer

to declare a willingness to sell or to buy, and to carry out similar actions, including advertising, arranging for advertising and encouraging others to engage in negotiations for buying or selling;

## 18. to market

to offer to others, to keep in stock for purposes of selling, to have on sale and to provide to others in any way;

## 19. legal

in conformance with the applicable statutory regulations for the protection of the relevant species in the relevant country, and with legal instruments of the European Community in the area of species protection and with the Convention of 3 March 1973 on International Trade in Endangered Species of Wild Fauna and Flora (Federal Law Gazette 1975 II p. 773, 777) – CITES – within the framework of the relevant spatial and chronological validity or applicability;

20. Member State

a country that is a member of the European Union;

21. third country

a country that is not a member of the European Union.

(3) Where this Act refers to Annexes of

1. Regulation (EC) No 338/97,

2. Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards (OJ EC L 308 of 9 November 1991, p.1),

3. Directives 92/43/EEC and 79/409/EEC,

4. Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom (EC OJ L 91, of 9 April 1983, p.30), most recently amended by Directive 89/370/EEC (OJ EC L 163, of 14 June 1989, p. 37),

or reference is made to provisions of the aforementioned legal instruments in which reference is made to annexes, the relevant versions of said regulations and directives as published in the Official Journal, Part L, of the European Union shall be decisive.

(4) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit, BMU) shall promulgate the specially protected species and the strictly protected species, along with the dates on which they were placed under protection.

(5) Where specially protected species already enjoyed special protection as a result of regulations in force until 8 May 1998, the time at which they were placed under protection shall be equivalent to the relevant date under such regulations. Similar provisions shall apply to strictly protected species, where such species were designated "threatened with extinction" in regulations in force until 8 May 1998.

## Chapter 2

### Landscape planning

#### Article 8

##### General principle

The purposes of nature conservation and landscape management are specified as the basis for precautionary action in the framework of landscape planning at both the local and supra-local levels, and the requirements and measures for achieving such purposes are described and justified.

#### Article 9

Tasks and content of landscape planning;

authorisation to issue statutory ordinances

(1) The tasks of landscape planning shall include specifying the purposes of nature conservation and landscape management, for the respective planning area, and identifying applicable requirements and measures for achieving such purposes, also with regard to plans and administrative procedures whose decisions may affect nature and landscape in the planning area.

(2) The content of landscape planning shall include description and justification of specified purposes of nature conservation and landscape management, and of the requirements and measures serving the achievement of such purposes. Such description and justification shall be provided, pursuant to Articles 10 and 11, in landscape programmes (Landschaftsprogramme), landscape master plans (Landschaftsrahmenpläne), landscape plans (Landschaftspläne) and open space structure plans (Grünordnungspläne).

(3) Such plans shall contain information about

1. the existing and anticipated status of nature and landscape,
2. the specified purposes of nature conservation and landscape management,
3. an assessment of the existing and anticipated status of nature and landscape on the basis of these purposes, including any resultant conflicts,
4. requirements and measures relative to achievement of specified purposes of nature conservation and landscape management and, especially, relative to
  - a) avoiding, mitigating or eliminating adverse effects on nature and landscape,
  - b) protecting certain parts of nature and landscape within the meaning of Chapter 4 and of biotopes, communities and living sites of plants and animals living in the wild,

- c) such achievement on areas that, due to their condition, location or natural development potential, are especially suited for future measures of nature conservation and landscape management, especially for offsetting interventions in nature and landscape and for application of funding oriented to nature and landscape,
- d) establishing and protecting a biotope network, links between biotopes and the "Natura 2000" network,
- e) protecting, improving the quality of and regenerating soils, water bodies, air and climate,
- f) conserving and developing the diversity, characteristics, beauty and recreational value of nature and landscape,
- g) conserving and developing open spaces in settled and non-settled areas.

Allowance shall be made for the usability of landscape planning for regional plans (Raumordnungspläne) and local land-use plans (Bauleitpläne). The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised to define, by statutory ordinance issued with the consent of the Bundesrat, the planning symbols to be used for identifying relevant content.

(4) Landscape planning shall be updated as soon as, and to the extent that, such updating becomes necessary with regard to requirements and measures within the meaning of (3) Sentence 1 No 4, especially because significant changes to nature and landscape have occurred, are planned or are anticipated. Such updating may be carried out in the form of a subject-oriented or spatial partial plan, if the circumstances that justify the updating are confined to a specific subject or spatial area.

(5) Planning and administrative procedures must make allowance for the content of landscape planning. In particular, the content of landscape planning must be consulted in evaluation of environmental compatibility and compatibility as defined in Article 34 (1) of this Act, and in establishment of the programmes of measures within the meaning of Article 82 of the Federal Water Act (Wasserhaushaltsgesetz). Where a decision does not make allowance for the contents of landscape planning, justification must be given.

## Article 10

### Landscape programmes and landscape master plans

(1) Supra-locally specified purposes, requirements and measures of nature conservation and landscape management shall be set forth in a landscape programme for the area of a Land; for parts of a Land, they shall be set forth in

landscape master plans. Such plans shall comply with regional planning objectives and shall take account of the principles and other requirements of regional planning.

(2) Landscape programmes may be established. Landscape master plans shall be established for all parts of a Land, except where a landscape programme, in terms of its content and degree of specification, is equivalent to a landscape master plan.

(3) Where specified purposes, requirements and measures of nature conservation and landscape management are spatially significant, they shall be taken into account in the weighing pursuant to Article 7 (2) of the Regional Planning Act (Raumordnungsgesetz).

(4) The relevant competencies, the plan-preparation procedure and the relationship of landscape programmes and landscape master plans to regional plans shall be determined pursuant to the legislation of the Länder.

## Article 11

### Landscape plans and open space structure plans

(1) The purposes, requirements and measures of nature conservation and landscape management specified for the local level shall be specified in landscape plans, for the areas of municipalities, and in open space structure plans, for parts of municipal areas; they shall be specified on the basis of landscape master plans. Such plans shall comply with regional planning objectives and shall take account of the principles and other requirements of regional planning. Such plans should contain the information specified in Article 9 (3), where such information is needed for description of the purposes, requirements and measures specified for the local level. Diverging provisions of the Länder regarding the content of landscape plans and open space structure plans, and regarding the legally binding nature of such plans, shall not be affected.

(2) Landscape plans shall be prepared as soon as, and to the extent that, such preparation becomes necessary with regard to requirements and measures within the meaning of Article 9 (3) Sentence 1 No 4, especially because significant changes to nature and landscape have occurred, are planned or are anticipated. Open space structure plans may be prepared.

(3) The purposes, requirements and measures of nature conservation and landscape management specified for the local level, in landscape plans, shall be taken into account in the weighing pursuant to Article 1 (7) of the Federal Building Code (Baugesetzbuch), and may be included in local land-use plans as representations or designations pursuant to Articles 5 and 9 of the Federal Building Code.

(4) In the Länder of Berlin, Bremen and Hamburg, if the local requirements and measures relating to nature conservation and landscape management are outlined in

the form of landscape programmes or landscape master plans, such plans shall replace the landscape plans.

(5) The relevant competencies, the procedure for preparation of landscape plans and open space structure plans and the procedures for implementing such plans shall be determined pursuant to the legislation of the Länder.

## Article 12

### Co-operation among the Länder in the field of planning

In preparation and updating of programmes and plans pursuant to Articles 10 and 11 for areas that border other Länder, the relevant programmes and plans of such other Länder shall be taken into account. The relevant Länder are to co-ordinate such programmes and plans as is necessary.

## Chapter 3

### General protection of nature and landscape

## Article 13

### General principle

Intervening parties shall primarily avoid any significant adverse effects on nature and landscape. Unavoidable significant adverse effects are to be offset via compensation measures (Ausgleichsmaßnahmen) or substitution measures (Ersatzmaßnahmen) or, where such offset is not possible, via monetary substitution.

## Article 14

### Interventions in nature and landscape

(1) Interventions in nature and landscape, as defined in this Act, shall refer to any changes affecting the shape or use of areas, or changes in the groundwater level associated with the active soil layer, which may significantly impair the performance and functioning of the natural balance or landscape appearance.

(2) The use of soil for agricultural, forestry and fishing purposes shall not be deemed an intervention, provided the purposes of nature conservation and landscape management are taken into account. The use of soil for agricultural, forestry and fishing purposes corresponding to the requirements specified in Article 5 (2) to (4) of this Act, and to the rules of good practice as defined in the laws on agriculture, forestry and fishing as well as in Article 17 (2) of the Federal Soil Conservation Act, does not, as a general rule, contradict the purposes of nature conservation and landscape management.

(3) Resumption of use of soil for agricultural, forestry and fishing purposes shall not be deemed an intervention if such use was temporarily restricted or interrupted

1. on the basis of contractual agreements or on the basis of participation in public programmes for restriction of cultivation, and if the resumption takes place within ten years after the relevant restriction or interruption has expired,

2. on the basis of the implementation of advance offset measures, where the relevant advance measure is not claimed as an offset.

## Article 15

Obligations of the intervening party, inadmissibility of intervention; authorisation to issue statutory ordinances

(1) The intervening party is obligated to refrain from causing any avoidable adverse effects on nature and landscape. Adverse effects shall be considered avoidable if reasonable alternatives are available for achieving the purpose of the intervention, at the same location, with lesser or no adverse effects on nature and landscape. Where adverse effects cannot be avoided, reasons for such unavailability must be provided.

(2) The intervening party is obligated to compensate for any unavoidable adverse effects by means of nature conservation and landscape management measures (compensation measures) or to substitute them in some other way (substitution measures). An adverse effect shall be considered to have been compensated as soon as the impaired functions of the natural balance have been restored in an equivalent way and landscape appearance has been restored or re-designed in a manner consistent with the landscape. An adverse effect shall be considered to have been substituted as soon as the impaired functions of the natural balance, in the relevant natural area, have been restored to an equivalent value and landscape appearance has been re-designed in a manner consistent with the landscape. Designations of development and restoration measures for areas within the meaning of Article 20 (2) Nos 1 through 4 and in management plans pursuant to Article 32 (5), of measures pursuant to Article 34 (5) and Article 44 (5) Sentence 3 of this Act and of measures in programmes of measures within the meaning of Article 82 of the Federal Water Act shall not hinder the recognition of such measures as compensation and substitution measures. In determination of the nature and scope of compensation and substitution measures, the programmes and plans pursuant to Articles 10 and 11 shall be taken into account.

(3) In use of agriculturally or silviculturally used areas for compensation and substitution measures, concerns pertaining to agricultural structures shall be taken into account; in particular, areas with soil especially suited for agricultural use are to be used only to the necessary extent. Priority shall be given to review of whether relevant compensation or substitution can also be achieved via measures for unsealing soil, via measures for relinking habitats or via cultivation or management measures supporting lasting improvements of the natural balance or of landscape

appearance, in the interest of making it unnecessary, if at all possible, for land areas to be taken out of use.

(4) Compensation and substitution measures shall be maintained throughout the relevant required period and shall be legally protected. The relevant maintenance period shall be set forth by the competent authority in the relevant official approval notice. The intervening party, or his legal successor, shall be responsible for carrying out, maintaining and securing compensation and substitution measures.

(5) An intervention may not be permitted or carried out if the relevant adverse effects are unavoidable or cannot be compensated for or substituted in some other way within an appropriate period of time, and the interests of nature conservation and landscape management take precedence over other concerns in a weighing-up of all the requirements applying to nature and landscape.

(6) If an intervention pursuant to (5) is permitted or carried out, even though the relevant adverse effects cannot be avoided or cannot be compensated for or substituted within an appropriate period of time, the intervening party shall provide monetary substitution. The amounts of such substitution payments shall be determined in accordance with the average costs of the unfeasible compensation and substitution measures, including the necessary average costs for planning and maintaining such measures and for providing the necessary areas, also taking account of relevant personnel costs and other administrative costs. If such costs cannot be determined, the amount of a substitution payment shall be determined in accordance with the duration and severity of the intervention, taking account of the resulting advantages accruing to the intervening party. The substitution payment shall be set forth by the competent authority in the relevant official approval notice or, if the intervention is carried out by an authority, shall be determined before the intervention is carried out. The payment is to be made prior to the implementation of the intervention. A different time for the payment may be set; in such cases, provision of security should be required. The substitution payment is to be earmarked for measures, of nature conservation and landscape management, and within the affected natural area if at all possible, for which no legal obligation is already in place under other provisions.

(7) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) is hereby authorised, in consultation with the Federal Ministry of Food, Agriculture and Consumer Protection (Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz, BMELV) and the Federal Ministry of Transport, Building and Urban Development (Bundesministerium für Verkehr, Bau und Stadtentwicklung, BMVBS), and with the consent of the Bundesrat, to specify the details of offsetting interventions, particularly

1. regarding the content, nature and extent of compensation and substitution measures, including measures for unsealing soil, for relinking habitats and for

cultivation and management, and to define relevant standards, especially standards applying to comparable types of interventions,

2. regarding the amounts of substitution payments and the procedures for imposing them.

As long as, and to the extent that, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) does not make use of such authorisation, the details of offsetting interventions shall be determined pursuant to the legislation of the Länder, except where such legislation contradicts the above paragraphs.

## Article 16

### Stocking of offsetting measures

(1) Nature conservation and landscape management measures that have been carried out with regard to anticipated interventions are to be recognised as compensation or substitution measures if

1. the prerequisites of Article 15 (2) are fulfilled,
2. they have been carried out at no legal obligation,
3. no public funding has been claimed for them,
4. they do not contradict programmes and plans pursuant to Articles 10 and 11, and
5. records showing the original condition of the relevant areas are available; Länder regulations pertaining to requirements for such records shall not be affected.

(2) Stocking of advance compensation and substitution measures, via "eco-accounts", pools of areas or other measures; and, especially, recording, assessment or accounting of advance compensation and substitution measures in "eco-accounts"; requirements pertaining to approval of such accounts and their tradability; and transfer of responsibility pursuant to Article 15 (4) to third parties that carry out advance compensation and substitution measures, shall be determined pursuant to the legislation of the Länder.

## Article 17

### Procedures; authorisation to issue statutory ordinances

(1) Where an intervention, pursuant to other legal provisions, is subject to regulatory approval or necessitates notification to an authority or is carried out by an authority, the relevant authority must also take the decisions and measures necessary for execution of Article 15 in consultation with the competent authority for nature conservation and landscape management, except where Federal laws or the legislation of the Länder provide for a more extensive form of participation or the

competent authority for nature conservation and landscape management itself takes the relevant decision.

(2) If, in the case of interventions approved or carried out by Federal authorities, a departure is to be made from the position of the competent authority for nature conservation and landscape management, the Federal authority with the relevant specialised responsibility shall decide, in consultation with the highest authority for nature conservation and landscape management of the Land, except where a more extensive form of participation is provided for.

(3) An intervention that is not carried out by an authority, and does not require regulatory approval or notification pursuant to other legal provisions, shall require a permit from the authority responsible for nature conservation and landscape management. Such a permit must be applied for in writing. Such a permit is to be issued if the requirements pursuant to Article 15 are fulfilled. The competent authority for nature conservation and landscape management shall take the decisions and measures necessary for execution of Article 15.

(4) For purposes of preparation of the decisions and measures for execution of Article 15, the intervening party shall provide the information, to an appropriate extent in light of the nature and scope of the intervention, needed to assess the intervention; in particular, such information shall include information about

1. the location, nature, extent and chronological progression of the intervention, and
2. the planned measures for avoidance, compensation and substitution of adverse effects on nature and landscape, including information regarding the actual and legal availability of the areas required for compensation and substitution.

The competent authority may require submission of expert opinions, where such opinions are needed for assessing the impacts of the relevant intervention and compensation and substitution measures. In the case of an intervention that is to take place on the basis of a specialised plan provided for under public law, the body charged with the relevant planning shall provide the necessary information pursuant to Sentence 1 in the specialised plan or in an accompanying landscape-management plan, and in the form of both text and a map. Such plan shall also include information relative to the necessary measures for assuring the coherence of the "Natura 2000" network pursuant to Article 34 (5) and to advance compensation measures pursuant to Article 44 (5), where these provisions are of relevance for the project. The accompanying landscape-management plan shall constitute a part of the specialised plan.

(5) The competent authority may require payment of a security in an amount no greater than the anticipated costs for the compensation or substitution measures, where such security is needed to ensure fulfilment of obligations pursuant to Article

15. Security shall be subject to Articles 232 through 240 of the German Civil Code (Bürgerliches Gesetzbuch).

(6) The compensation and substitution measures, and the areas on which they are carried out, shall be recorded in an offset directory. The competent authorities pursuant to (1) and (3) shall provide the necessary information to this end.

(7) The competent authority pursuant to (1) or (3) shall review whether the prevention measures, and the designated compensation and substitution measures, including the necessary maintenance measures, are carried out properly and on time. To this end, the authority may require the intervening party to submit a pertinent report.

(8) Where an intervention is carried out without the necessary approval or notification, the competent authority shall prohibit further implementation of the intervention. Where a legally conformal condition cannot be achieved by other means, the authority should require either measures pursuant to Article 15 or restoration of the earlier condition. Article 19 (4) is to be observed.

(9) The competent authority is to be notified of termination of an intervention, and of interruptions that last longer than one year. An insignificant continuation of an intervention shall be deemed equivalent to an interruption. If an intervention is interrupted for longer than one year, the authority may require the intervening party to carry out preliminary measures for ensuring that compensation and substitution measures can be carried out, or, if completion of the intervention cannot be expected within a reasonable period of time, to offset the extent of the intervention carried out until the time in question.

(10) If the intervention is a project subject to an environmental impact assessment under the Act on the Assessment of Environmental Impact (Gesetz über die Umweltverträglichkeitsprüfung), then the procedure in which decisions pursuant to Article 15 (1) through (5) are made must comply with the requirements of the aforementioned Act.

(11) The Länder governments are authorised to issue statutory ordinances to define the details of the procedure set forth in (1) through (10), including the offset directory. Via statutory ordinances, they may transfer the authorisation pursuant to Sentence 1 to other Länder authorities.

## Article 18

### Relationship to building law

(1) If interventions in nature and landscape are anticipated as a result of the preparation, modification, supplementation or suspension of local land-use plans or of statutes pursuant to Article 34 (4) Sentence 1 No 3 of the Federal Building Code, then the decisions governing relevant avoidance, compensation and substitution shall be taken in accordance with the provisions of the Federal Building Code.

(2) Articles 14 through 17 shall not be applied to projects in areas with binding land-use plans (Bebauungspläne) pursuant to Article 30 of the Federal Building Code, nor shall they be applied during plan preparation pursuant to Article 33 of the Federal Building Code or to parts of built-up areas pursuant to Article 34 of the Federal Building Code. For projects in areas outside of built-up areas pursuant to Article 35 of the Federal Building Code, and for binding land-use plans that replace plan approval, the applicability of Articles 14 through 17 shall not be affected.

(3) Decisions regarding projects pursuant to Article 35 (1) and (4) of the Federal Building Code, and on the construction of structures pursuant to Article 34 of the Federal Building Code, shall be taken in consultation with the competent authorities responsible for nature conservation and landscape management. If, in cases governed by Article 34 of the Federal Building Code, the authority responsible for nature conservation and landscape management fails to express an opinion within one month, then the authority responsible for the decision may safely assume that the relevant project does not affect issues of nature conservation and landscape management. Such consultation shall not be required for projects in areas with binding land-use plans, during plan preparation pursuant to Articles 30 and 33 of the Federal Building Code, or in areas with statutes pursuant to Article 34 (4) Sentence 1 No 3 of the Federal Building Code.

(4) If, in a project pursuant to Article 34 of the Federal Building Code, and in the framework of consultation pursuant to (3), indications emerge that the project can cause damage within the meaning of Article 19 (1) Sentence 1, this must be communicated to the project proponent. Upon application of the project proponent, the authority responsible for issuing the approval shall, in consultation with the competent authority for nature conservation and landscape management, take the decisions pursuant to Article 15, to the extent such decisions serve the purpose of avoiding, compensating for or substituting damage pursuant to Article 19 (1) Sentence 1; in such cases, Article 19 (1) Sentence 2 shall apply. Otherwise, (2) Sentence 1 shall not be affected.

## Article 19

### Damages to certain species and natural habitats

(1) Any damage that has significant adverse effects on the achievement or maintenance of the favourable conservation status of habitats or species is damage to such species and natural habitats within the meaning of the Environmental Damage Act (Umweltschadensgesetz). In derogation of Sentence 1, no damage shall be deemed to have occurred in the case of previously determined adverse effects of activities of a responsible person that were approved by the competent authority, or are permissible, pursuant to Articles 34, 35, 45 (7) or Article 67 (2) or, if such review is not required, pursuant to Article 15 or, on the basis of preparation of a binding land-use plan, pursuant to Article 30 or Article 33 of the Federal Building Code.

(2) Species within the meaning of (1) are species that are listed in

1. Article 4 (2) or Annex I of Directive 79/409/EEC or
2. Annexes II and IV of Directive 92/43/EEC.

(3) Natural habitats within the meaning of (1) are

1. habitats of species that are listed in Article 4 (2) or Annex I of Directive 79/409/EEC or in Annex II of Directive 92/43/EEC,
2. natural habitat types of Community interest and
3. breeding and resting sites of species listed in Annex IV of Directive 92/43/EEC.

(4) If a responsible person pursuant to the Environmental Damage Act has caused damage to protected species or natural habitats, that person shall take the necessary remedial measures pursuant to Annex II No 1 of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ EC L 143, of 30 April 2004, p. 56), amended by Directive 2006/21/EC (OJ EC L 102, of 11 April 2006, p. 15).

(5) The question of whether effects pursuant to (1) are significant shall be determined with regard to the original condition, taking account of the criteria of Annex I of Directive 2004/35/EC. As a rule, significant damage shall not be deemed to have occurred in the case of

1. negative variations that are smaller than natural fluctuations regarded as normal for the species or habitat in question,
2. negative variations due to natural causes or resulting from intervention relating to the normal management of the respective areas, as defined in habitat records or documents on conservation targets or as carried on previously by owners or operators,
3. damage to species or habitats for which it is established that they will recover, within a short time and without intervention, in such a way that either the baseline condition is reached, or, solely by virtue of the dynamics of the species or habitat, a condition deemed equivalent or superior to the baseline condition.

## **Chapter 4**

### **Protection of certain parts of nature and landscape**

#### Section 1

Biotope network and linking of biotopes;  
protected parts of nature and landscape

## Article 20

### General principles

(1) A network of linked biotopes (biotope network) is to be created that is to cover at least 10 percent of the area of each Land.

(2) Parts of nature and landscape may be protected

1. pursuant to Article 23, as nature conservation area,
2. pursuant to Article 24, as national park or national nature monument,
3. as biosphere reserve,
4. pursuant to Article 26, as landscape protection area,
5. as nature park,
6. as natural monument, or
7. as protected landscape element.

(3) The parts of nature and landscape referred to in (2) shall be parts of the biotope network, to the extent they are suited for that purpose.

## Article 21

### Biotope network, linking of biotopes

(1) The biotope network is designed to serve the enduring conservation of populations of wild fauna and flora, including their living sites and biotopes and communities, as well as the preservation, restoration and development of functioning ecological interaction relationships. It also has the purpose of improving the coherence of the "Natura 2000" network.

(2) The biotope network should transcend borders between the Länder. In this respect, the Länder shall co-ordinate with one another.

(3) The biotope network shall consist of core areas, connecting areas and connecting elements. Components of the biotope network shall include:

1. national parks and national nature monuments,
2. nature conservation areas, Natura 2000 sites and biosphere reserves, or parts of such areas,
3. legally protected biotopes within the meaning of Article 30,
4. other areas and elements, including areas and elements of the National Natural Heritage, the "Green Belt" (Grünes Band) and parts of landscape protection areas and nature parks, if they are suited to the achieving of the purpose set forth in (1).

(4) The necessary core areas, connecting areas and connecting elements are to be legally protected, via their declaration as protected parts of nature and landscape within the meaning of Article 20 (2), via designations under planning law, via long-term contractual agreements or via other suitable measures, to ensure the biotope network's permanent existence.

(5) Notwithstanding Article 30, surface waters, including their peripheral zones, shoreline zones and riparian meadows, are to be conserved as living sites and biotopes for naturally occurring fauna and flora species. They are to be developed in such a manner as to ensure that they can permanently fulfil their function of serving as connecting links over large areas.

(6) At the regional level, and especially in landscapes shaped by agriculture, the linear and punctate elements needed to link biotopes, especially hedges and field borders and "stepping-stone" biotopes, are to be conserved and, where they are not present to a sufficient degree, to be created (linking of biotopes).

## Article 22

### Declaration as protected parts of nature and of landscape

(1) Parts of nature and landscape are placed under protection by means of declarations. Such declarations shall define the area to be protected, the purpose of its protection, the orders and prohibitions required to fulfil this purpose and, where necessary, relevant management, development and restoration measures, or shall contain the necessary authorisations for such definitions. Protected areas may be divided into zones with graded degrees of protection corresponding to the various relevant protection purposes; in this regard, the surrounding areas necessarily relevant for such protection may also be included.

(2) The required forms and procedures for placing under protection; the significance of formal and procedural errors and the possibilities for eliminating such errors; and the continuing validity of existing declarations relative to protected parts of nature and landscape shall be determined pursuant to the legislation of the Länder. Designated protected areas may transcend borders between the Länder.

(3) Parts of nature and landscape which are earmarked for protection may be placed under provisional protection for a period of up to two years, if there is reason for concern that the intended protection purpose could be endangered by changes or disruptions. Such provisional protection may be renewed once, for a period of up to two years, as long as the prerequisites of Sentence 1 are fulfilled. In provisionally protected parts of nature and landscape, actions and measures shall be prohibited, in keeping with the terms of the protection declaration, that could adversely change the area to be protected. Provisional protection shall be suspended, either completely or in part, if the prerequisites for such protection are no longer, or are no longer completely, fulfilled. Paragraph 2 shall apply *mutatis mutandis*.

(4) Protected parts of nature and landscape are to be registered and labelled. Further relevant details shall be determined pursuant to the legislation of the Länder.

(5) Declarations of areas as national parks or national nature monuments, including changes to such declarations, shall be issued in consultation with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) and the Federal Ministry of Transport, Building and Urban Affairs (BMVBS).

## Article 23

### Nature conservation areas

(1) Nature conservation areas are areas that have been designated in a legally binding manner and in which the special protection of nature and landscape as a whole, or of individual parts thereof, is required for the following reasons:

1. in order to conserve, develop or restore living sites, biotopes or communities of certain species of wild fauna and flora,
2. for reasons of science, natural history or national heritage, or
3. because of their rarity, special characteristics or outstanding beauty.

(2) All actions which may lead to the destruction of, damage to, or changes in, a nature conservation area, or parts thereof, or which may cause permanent disturbance thereto, shall be prohibited, in keeping with more specific provisions to be adopted. Nature conservation areas can be opened to the public, as long as this does not counter their protection purposes.

## Article 24

### National parks and national nature monuments

(1) National parks are areas that have been designated in a legally binding manner, that are to be protected in a consistent way and that

1. are large, largely unfragmented and have special characteristics,
2. fulfil the requirements for a nature conservation area in the greater part of their territory, and
3. in the greater part of their territory, have not been affected by human intervention at all, or to a limited extent only, or are suitable for developing, or being developed, into a state which ensures the undisturbed progression, as far as possible, of natural processes in their natural dynamics.

(2) The purpose of national parks is to serve as areas, in the greater part of their territory, in which it is assured that natural processes, in their natural dynamics, can take place in the most undisturbed manner possible. Provided this is compatible with the purpose of protection, national parks may also serve the purposes of scientific

environmental monitoring, nature education, and enabling the general public to experience nature.

(3) National parks are to be protected in the same manner as nature conservation areas, taking account of their special protection purpose and the exceptions necessary in light of their large size and use for settlement.

(4) National nature monuments are areas that have been designated in a legally binding manner and that

1. for reasons of science, natural history, cultural history or national heritage, and

2. because of their rarity, special characteristics or beauty

are of outstanding importance. National nature monuments are to be protected in the same manner as nature conservation areas.

## Article 25

### Biosphere reserves

(1) Biosphere reserves are areas that are to be protected and developed in a consistent way and that

1. are large and are typical representatives of certain landscape types,

2. fulfil the requirements for nature conservation areas in essential parts of their territory, and the requirements for landscape protection areas throughout the greater part of the rest of their territory,

3. serve the primary purpose of conserving, developing or restoring landscapes shaped by traditional, diverse forms of use, along with their species and biotope diversity as evolved over time, including wild forms and formerly cultivated forms of commercially used or usable animal and plant species, and

4. illustrate ways of developing and testing forms of economic activity that are especially conserving of natural resources.

(2) To the extent permitted by their protection purpose, biosphere reserves also serve purposes of research, of observation of nature and landscape and of education for sustainable development.

(3) Biosphere reserves are to be developed via a system of core zones, maintenance zones and development zones, with due regard for the exceptions required as a result of biospheres' large size and inclusion of populated areas, and are to be protected in the same manner as nature conservation areas or landscape protection areas.

(4) Biosphere reserves may also be referred to as "biosphere areas" or "biosphere regions".

## Article 26

### Landscape protection areas

(1) Landscape protection areas are areas that have been designated in a legally binding manner and in which special protection of nature and landscape is required for the following reasons:

1. in order to conserve, develop or restore the efficiency and proper functioning of the natural balance, or the capability of natural resources to regenerate themselves and to be available for sustainable use, and to protect living sites and habitats of certain wild fauna and flora species,
2. because of the diversity, special characteristics, beauty or special cultural-historical significance of their landscapes, or
3. because of their special importance for recreation.

(2) In a landscape protection area, all actions which alter the character of the area or which are not compatible with the purpose of its protection shall be prohibited, with particular consideration for Article 5 (1) and in keeping with more specific provisions to be adopted.

## Article 27

### Nature parks

(1) Nature parks are areas that are to be developed and managed in a consistent way and that

1. are large in size,
2. consist mainly of landscape protection areas or nature conservation areas,
3. are particularly suitable for recreational purposes by virtue of their landscape assets and are areas in which efforts are being made to encourage sustainable tourism,
4. are intended for recreational purposes in accordance with the requirements of regional planning,
5. serve the conservation, development or restoration of landscapes characterised by diverse uses, and of such landscapes' species and biotope diversity, and, to this end, are sites for endeavours toward sustained environmentally compatible land use, and
6. are particularly well-suited to the promotion of sustainable regional development.

(2) Nature parks are to be planned, structured, developed and improved in accordance with their purposes as outlined in (1), with due regard for the principles and objectives of nature conservation and landscape management.

## Article 28

### Natural monuments

(1) Natural monuments are unique creations of nature, or corresponding areas of up to 5 ha, that have been designated in a legally binding manner and that require special protection for the following reasons:

1. for reasons of science, natural history or national heritage, or
2. because of their rarity, special characteristics or beauty.

(2) The removal of natural monuments, as well as any action which may lead to their destruction, damage or alteration, shall be prohibited, in keeping with more specific provisions to be adopted.

## Article 29

### Protected landscape elements

(1) Protected landscape elements are parts of nature and landscape that have been designated in a legally binding manner and whose special protection is required:

1. in order to conserve, develop or restore the efficiency and proper functioning of the natural balance,
2. in order to revive, structure or preserve the appearance of a local community or landscape,
3. in order to avert adverse impacts, or
4. due to their importance as the living sites of certain wild species of fauna and flora.

Relevant protection may be provided for all tree-lined roads, rows of trees on single sides of roads, trees, hedges or other landscape elements throughout an entire Land or parts thereof.

(2) The removal of protected landscape elements, as well as any action which may lead to their destruction, damage or alteration, shall be prohibited, in keeping with more specific provisions to be adopted. In cases involving reductions of protected landscape elements, the obligation to provide suitable, reasonable substitution plantings, or to provide monetary substitution, may be imposed.

(3) Provisions of the legislation of the Länder regarding legal protection for tree-lined roads shall not be affected.

## Article 30

### Legally protected biotopes

(1) Certain parts of nature and landscape that have special importance as biotopes shall be legally protected (general principle).

(2) Actions that could lead to the destruction or other significant adverse effects on the following biotopes shall be prohibited:

1. natural or semi-natural areas of flowing and standing inland water bodies, including their banks and the relevant natural or semi-natural vegetation associated with the banks, together with their natural or semi-natural sedimentation areas, backwaters and areas that are regularly flooded,
2. bogs, swamps, reeds and large-sedge reed beds, wetland meadows rich in sedges and rushes, springs and inland salt deposits,
3. open inland dunes, open natural boulder, rubble and scree slopes, clay and loess walls, dwarf-shrub, broom and juniper heaths, matgrass communities, dry meadows, heavy metal grassland, forests and bushes in xerothermic locations,
4. fen and bog woodlands, riparian forests, forests of ravines, slopes and screes, subalpine larch forests and riparian larch forests,
5. open rock formations, alpine grassland, snowbeds and elfin woodland,
6. rocky shores and cliffs, coastal dunes and beach ridges, coastal lakes, bodden with terrestrialisation zones, salt meadows and tidal shallows in the coastal region, seagrass meadows and other marine macrophyte populations, reefs, sublittoral sandbanks and silty bottoms with boring bottom megafauna and species-rich gravel, coarse-sand and shell layers in marine and coastal regions.

The prohibitions of Sentence 1 shall also apply to other biotopes that are legally protected by the Länder.

(3) Exemptions to the prohibitions set forth in (2) may be permitted, upon application, if the relevant adverse effects can be compensated for.

(4) If actions within the meaning of (2) are anticipated as a result of preparation, modification or supplementation of binding land-use plans, a decision may be made, by application of the relevant municipality and prior to preparation of the pertinent binding land-use plan, regarding a necessary exception to, or exemption from, the prohibitions of (2). If an exception has been permitted, or an exemption granted, no further exception or exemption shall be required for the implementation of a project that is otherwise permissible, if the implementation of the project begins within seven years following the entry into force of the relevant binding land-use plan.

(5) In the case of legally protected biotopes that have arisen during the term of a contractual agreement or during participation in public programmes for restriction of cultivation, (2) shall not apply for resumption of a permissible agricultural, forestry or

fishing use within ten years after the termination of the relevant contractual agreement or participation in the relevant public programmes.

(6) In the case of legally protected biotopes that have arisen on areas in which permissible extraction of mineral resources was restricted or interrupted, (2) shall not apply to resumption of extraction within five years after the relevant restriction or interruption.

(7) Legally protected biotopes shall be registered, and such registration shall be made accessible to the public, by suitable means. Such registration, and access to it, shall be determined pursuant to the legislation of the Länder.

(8) More extensive protection provisions, including provisions regarding exceptions and exemptions, shall not be affected.

## Section 2

### The "Natura 2000" Network

#### Article 31

##### Establishment and protection of the "Natura 2000" network

The Federal Government and the Länder fulfil the obligations arising via Directives 92/43/EEC and 79/409/EEC relative to the establishment and protection of the coherent European ecological network "Natura 2000", within the meaning of Article 3 of Directive 92/43/EEC.

#### Article 32

##### Protected areas

(1) The Länder shall select the sites that, pursuant to Article 4 (1) of Directive 92/43/EEC and Article 4 (1) and (2) of Directive 79/409/EEC, are to be notified to the Commission, and shall do so in keeping with the provisions set forth in these directives. To this end, they shall consult with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). That ministry shall arrange for the participation of the other Federal ministries whose areas of competence are concerned, and shall notify the relevant selected sites to the Commission. That ministry shall also communicate to the Commission estimates regarding the financial participation of the Community that is required for fulfilment of obligations pursuant to Article 6 (1) of Directive 92/43/EEC, including payment of relevant financial compensation, especially compensation for the agriculture and forestry sectors.

(2) The sites included in the list pursuant to Article 4 (2) subparagraph 3 of Directive 92/43/EEC are to be declared protected parts of nature and landscape within the meaning of Article 20 (2), in keeping with Article 4 (4) of that Directive, and the areas

notified pursuant to Article 4 (1) and (2) of Directive 79/409/EEC are to be declared protected parts of nature and landscape within the meaning of Article 20 (2), in keeping with the relevant conservation objectives.

(3) Declaration as a protected area shall set forth the relevant protection purpose, in keeping with the relevant conservation objectives, and the required site boundary definitions. It shall also stipulate whether priority natural habitat types or priority species are to be protected. Suitable orders and prohibitions shall be issued, and suitable management and development measures carried out, to ensure that the requirements of Article 6 of Directive 92/43/EEC are fulfilled. More extensive protection provisions shall remain unaffected.

(4) The placing of sites under protection as set forth in (2) and (3) shall not be mandatory if protection of equal value is guaranteed by other statutory regulations, including this Act and area-oriented provisions of the legislation of the Länder, by administrative provisions, via authorisation of a public or non-profit responsible agency, or via contractual agreements.

(5) For Natura 2000 sites, management plans may be established either as separate, stand-alone plans or as parts of other plans.

(6) Selection and declaration of sites within the meaning of (1) Sentence 1 and (2), within the German exclusive economic zone and on the continental shelf, as protected parts of nature and landscape within the meaning of Article 20 (2), shall be in accordance with Article 57.

## Article 33

### General provisions pertaining to protection

(1) All changes and disturbances that could lead to significant adverse effects on a Natura 2000 site, in the elements of the site that are central to the conservation objectives or protection purpose shall be prohibited. The competent authority for nature conservation and landscape management may, if the conditions set forth by Article 34 (3) through (5) are fulfilled, permit exceptions to the prohibition of Sentence 1 and to prohibitions within the meaning of Article 32 (3).

(2) In the case of a site within the meaning of Article 5 (1) of Directive 92/43/EEC, during the consultation phase until the Council's decision, (1) Sentence 1 shall apply *mutatis mutandis* with regard to the priority natural habitat types and priority species occurring within the site. Articles 34 and 36 shall not apply.

## Article 34

### Compatibility and inadmissibility of projects; exceptions

(1) Prior to the approval or the implementation of projects, their compatibility with the conservation objectives of a Natura 2000 site shall be assessed, if they, either

individually or in combination with other projects or plans, have the potential to affect the site significantly, and do not directly serve the purpose of the site's management. Where a Natura 2000 site is a protected part of nature and landscape within the meaning of Article 20 (2), the standards applying to such compatibility shall derive from the protection purpose, and from the provisions issued to that end, if such purpose and provisions already take account of the relevant conservation objectives. The project proponent shall provide the documents needed for assessing such compatibility and fulfilment of the conditions pursuant to (3) through (5).

(2) If appropriate assessment of compatibility reveals that a project can result in significant adverse effects on a site, in the elements of the site that are relevant for the conservation objectives or protection purpose, the project shall be inadmissible.

(3) In derogation from (2), a project may be approved or executed only if

1. it is essential, for imperative reasons of overriding public interest, including those of a social or economic nature, and

2. there are no reasonable alternative ways of achieving the project's purpose at another location with no or fewer adverse effects.

(4) If the project could affect priority natural habitat types or priority species in the site, the only imperative reasons of overriding public interest that may be raised are those relating to human health, public safety – including national defence and protection of the civilian population – or the project's beneficial consequences of primary importance for the environment. Other reasons within the meaning of (3) No 1 may be taken into account only if the competent authority has previously obtained the Commission's opinion via the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU).

(5) If a project pursuant to (3), also in conjunction with (4), is to be approved or executed, then the measures necessary to ensure the coherence of the "Natura 2000" network shall be taken. Via the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the competent authority shall notify the Commission of the measures taken.

(6) If a project within the meaning of (1) Sentence 1, which is not carried out by an authority, does not require a regulatory decision or notification to an authority, pursuant to other legal provisions, then it must be notified to the competent authority for nature conservation and landscape management. That authority may impose a time limitation on the project's implementation, or may otherwise restrict the project, in order to ensure fulfilment of the conditions set forth in (1) through (5). If the authority fails to make a decision within one month after receiving the relevant notification, the implementation of the project may begin. If the implementation of a project is begun even though the required notification has not been provided, the

authority may mandate a provisional cessation of the project. If, in a case to which (2) applies, the prerequisites set forth by (3) through (5) are not fulfilled, the authority must prohibit the project's implementation. Sentences 1 through 5 shall be applied only insofar as protection regulations of the Länder, including provisions on exceptions and exemptions, do not include more stringent provisions pertaining to the permissibility of projects.

(7) Paragraphs (1) through (6) shall apply to protected parts of nature and landscape within the meaning of Article 20 (2), and to legally protected biotopes within the meaning of Article 30, only insofar as the relevant protection regulations, including those relating to exceptions and exemptions, do not include more stringent provisions pertaining to the permissibility of projects. The obligations pursuant to (4) Sentence 2, relative to the participation of the Commission, and to (5) Sentence 2, relative to notification of the Commission, shall not be affected.

(8) With the exception of binding land-use plans that replace plan approvals, paragraphs (1) through (7) shall not apply to projects within the meaning of Article 29 of the Federal Building Code in areas with binding land-use plans pursuant to Article 30 of the Federal Building Code and during plan preparation pursuant to Article 33 of the Federal Building Code.

## Article 35

### Genetically modified organisms

With regard to

1. releases of genetically modified organisms within the meaning of Article 3 No 5 of the Genetic Engineering Act (Gentechnikgesetz) and
2. agricultural, forestry and fishing uses of products legally placed on the market that contain genetically modified organisms or consist of such organisms, and other uses, especially non-commercial uses, of such products, with impacts that are comparable to those of the aforementioned uses, and within a Natura 2000 site,

Article 34 (1) and (2) shall be applied *mutatis mutandis*.

## Article 36

### Plans

With regard to

1. line determinations pursuant to Article 16 of the Federal Highway Act (Bundesfernstraßengesetz) and Article 13 of the Federal Waterway Act (Bundeswasserstraßengesetz) and
2. plans that must be observed or taken into account in connection with authorities' decisions,

Article 34 (1) through (5) shall be applied mutatis mutandis.

In the case of regional plans within the meaning of Article 3 (1) No 7 of the Regional Planning Act, and local land-use plans and statutes pursuant to Article 34 (4) Sentence 1 No 3 of the Federal Building Code, Article 34 (1) Sentence 1 shall not apply.

## **Chapter 5**

### **Protection of wild fauna and flora species, of their living sites and of their biotopes**

#### Section 1

#### General provisions

#### Article 37

#### Tasks of species protection

(1) The provisions of this Chapter, and Article 6 (3), serve the purpose of protecting wild fauna and flora species. Species protection comprises the following tasks:

1. protecting wild fauna and flora species, and their communities, against impairments caused by human beings, and protecting their other necessary living conditions,
2. protecting living sites and biotopes of wild fauna and flora species, and
3. re-establishing displaced wild fauna and flora species in suitable biotopes within their natural range of distribution.

(2) The provisions of laws on plant protection, animal welfare, contagious diseases and forestry, hunting and fishing shall remain unaffected by the provisions of this Chapter and any statutory provisions adopted on the basis of this Chapter. Where no particular provisions relating to the protection and management of affected species exist or are adopted in hunting and fishing law provisions, then the provisions of this Chapter, together with any statutory provisions adopted on the basis of this Chapter, shall apply, subject to the rights of those who are licensed to practise hunting and fishing.

#### Article 38

#### General provisions on the protection of species, living sites and biotopes

(1) For preparation and execution of the tasks pursuant to Article 37 (1), the Federal and Länder authorities with responsibility for nature conservation and landscape management shall prepare protection, management and development objectives, on the basis of monitoring pursuant to Article 6, and achieve them.

(2) Where necessary for transposition of provisions of international or Community law, or for protection of species listed in an ordinance pursuant to Article 54 (1) No 2, including such species' living sites, the Federal and Länder authorities with responsibility for nature conservation and landscape management shall enact effective and co-ordinated preventive protection measures or establish species-assistance programmes. They shall take the measures that are necessary to ensure that unintentional capture or unintentional killing do not have any significant adverse impacts on strictly protected species.

(3) The necessary research and necessary scientific work within the meaning of Article 18 of Directive 92/43/EEC and of Article 10 of Directive 79/409/EEC shall be promoted.

## Section 2

### General protection of species

#### Article 39

##### General protection of wild fauna and flora;

##### authorisation to issue statutory ordinances

(1) It is prohibited:

1. wilfully to disturb wild animals or to capture, injure or kill them without good cause,
2. to remove, without good cause, wild plants from their locations, or to use them, cut down their populations, or destroy them in any way,
3. to impair or destroy, without good cause, the living sites of wild animals and plants.

(2) Subject to the provisions of laws on hunting and fishing, it shall be prohibited to remove wild plants and animals of species listed in Annex V of Directive 92/43/EEC from nature. The Länder may grant exceptions to Sentence 1 under the conditions set forth in Article 45 (7) or Article 14 of Directive 92/43/EEC.

(3) In derogation from (1) No 2, anyone may carefully remove from nature and take possession of, at sites not subject to any prohibitions on access, and for their own personal needs, small amounts of wild flowers, grasses, ferns, mosses, lichens, fruits, mushrooms, herbs for tea and medicinal herbs and branches of wild plants.

(4) Notwithstanding the rights of owners and other parties entitled to use, commercial removal and treatment or processing of wild plants shall require a permit from the competent authority for nature conservation and landscape management. Such a permit shall be granted if the population of the relevant species, at the removal site, is not endangered and such collection will not significantly impair the natural balance. Such removal must be carried out with care. In decisions regarding collection for purposes of production of regional seeds, the relevant favourable impacts on

objectives of nature conservation and landscape management shall be taken into account.

(5) It is prohibited:

1. to burn off the soil cover on meadows, field boundaries, field dikes and unused soil areas, and on hedges and slopes, and to treat areas not used for agriculture, forestry or fishing purposes in such a manner as to impair the pertinent fauna and flora,
2. to cut or graft trees located outside of forests, short-rotation forestry operations or horticulturally used soil areas, and hedges, living fences, shrubs and other woody plants, in the period from 1 March to 30 September; gentle pruning for form and care, for removal of additional growth or for maintenance of tree health, is permitted,
3. to cut back reeds in the period from 1 March to 30 September; outside of that period, reeds may be cut back only section-wise,
4. to use trenchers to clear ditches with continual water flow, where such action would significantly impair the natural balance, and especially the local fauna.

The prohibitions of Sentence 1 Nos 1 through 3 shall not apply

for

1. measures ordered by authorities,
2. measures that, in the public interest, cannot be carried out by other means or at other times, where such measures
  - a) are carried out by authorities,
  - b) have been approved by authorities, or
  - c) serve the purpose of maintaining safety,
3. measures that, pursuant to Article 15, are permissible interventions in nature and landscape,
4. permissible construction projects, if only small amounts of shrubbery have to be removed in order to carry out the relevant construction measures.

The Länder governments are authorised to issue ordinances providing for expanded prohibition periods, with regard to the prohibitions set forth in Sentence 1 Nos 2 and 3, for all or parts of the territory of a Land. Via ordinances, they may transfer the authorisation pursuant to Sentence 3 to other Land authorities.

(6) In the period from 1 October to 31 March, it is prohibited to visit caves, mine tunnels, earth cellars or similar rooms and spaces that serve as winter roosts of bats; this shall not apply to the execution of unpostponable actions that cause only slight

disturbances, nor shall it apply to areas developed for tourism or to heavily used areas.

(7) More extensive protection provisions, especially the provisions of Chapter 4 and of Section 3 of Chapter 5, including the provisions on exceptions and exemptions, shall not be affected.

#### Article 40

##### Non-native, alien and invasive species

(1) Suitable measures must be taken to counter threats to ecosystems, biotopes and species presented by non-native or invasive species of plants and animals.

(2) Where there are indications that species could be invasive species, the relevant species are to be monitored.

(3) The competent Federal and Länder authorities shall immediately take suitable measures aimed at eliminating, or preventing the spread of, newly appearing plants and animals of invasive species. In the case of invasive species that have already spread, they shall take measures to prevent the species' further spreading and to mitigate the impacts of the existing spreading, to the extent that such measures seem likely to succeed and the relevant success is not disproportional to the relevant required effort and expense. Sentences 1 and 2 shall not apply to plants within the meaning of (4) Sentence 3 No 1 that are cultivated in agriculture and forestry.

(4) Planting of alien species of plants, and release of alien species of animals, in natural surroundings shall require a permit from the competent authority. Artificially propagated plants shall not be deemed alien if their genetic origins are found in the relevant area. Such a permit shall be denied if a threat to Member States' ecosystems, biotopes or species cannot be ruled out. The following shall be exempt from the permit requirement:

1. the cultivation of plants in agriculture and forestry,

2. the release of animals

a) of non-alien species,

b) of alien species, provided their release requires a permit under plant protection legislation which makes allowance for the interests of species conservation,

for the purposes of biological plant protection,

3. the introduction of animals of non-alien species that are subject to laws on hunting or fishing,

4. the planting of woody plants and seeds outside of their natural ranges, through

1. March 2020; until that time, preference should be given to planting woody plants and seeds, in natural surroundings, only within their natural ranges.

Article 22 of Directive 92/43/EEC must be observed.

(5) With regard to species not yet occurring within the boundaries of the national territory, permits pursuant to (4) shall be issued by the Federal Agency for Nature Conservation (BfN).

(6) The competent authority may order the elimination of animals or plants that have been placed in natural surroundings without relevant permits, of plants spreading unintentionally in natural surroundings or of animals that have escaped into natural surroundings, if such elimination is needed to ward off threats to ecosystems, biotopes or species.

Article 41

Bird protection in connection with overhead power lines

With the aim of protecting bird species, all newly constructed utility poles and technical components of medium-voltage lines shall be designed in such a way that birds are protected from electric shock. On existing utility poles and technical components of medium-voltage lines which pose a high risk to birds, the necessary measures to protect against electric shock shall be implemented by 31 December 2012. Sentence 2 shall not apply to overhead line systems of railways.

Article 42

Zoos

(1) Zoos are permanent facilities in which living animals of species that live in the wild are kept, for purposes of display, for a period of at least seven days of the year. The following are not considered zoos:

1. circuses,

2. pet shops, and

3. enclosures for keeping no more than five species of hoofed game listed in the Federal Hunting Act (Bundesjagdgesetz) or facilities in which no more than 20 animals of other wild species are kept.

(2) The establishment, expansion, substantial modification and operation of a zoo are subject to licensing. In each case, such a license shall be oriented to a particular facility, to particular operators, to a particular number of individuals of each animal species and to a particular type of operation.

(3) Zoos must be constructed and operated in such a manner that

1. animals are kept in accordance with the biological and conservation requirements pertaining to the species in question; in particular, the relevant enclosures, in terms of their location, size, design and internal furnishings, must be appropriate for the species in question and fulfil animal-welfare criteria,
2. animals are cared for on the basis of a programme, set forth in writing, meeting the standards of good veterinary medical practice and relative to veterinary prevention and treatment and to animal nutrition,
3. measures are taken to prevent the entry of harmful organisms and the escape of the animals being kept,
4. the requirements of animal welfare and species protection are observed,
5. a registry is kept of the zoo's animal population, in a form appropriate with regard to the animals listed in it, and is kept continually up-to-date,
6. public awareness is promoted with regard to conservation of biological diversity, especially via provision of information about the species displayed and about their natural biotopes,
7. the zoo participates in
  - a) research that contributes to conservation of the relevant species, including exchange of information about species conservation, or
  - b) breeding in captivity, renewal of populations and reintroduction of species into their biotopes, or
  - c) training in knowledge and skills relative to conservation.

(4) The licence pursuant to (2) shall be issued if

1. it is assured that the obligations pursuant to (3) are fulfilled,
2. the proofs required pursuant to this Chapter are provided,
3. no facts have been presented that could provide grounds for concern regarding the reliability of the operator or of the persons responsible for directing the zoo, and
4. no other public-law provisions pertaining to construction and operation of the zoo present obstacles.

Collateral clauses may be attached to the licence; in particular, security for the proper closure of the zoo and restoration of the relevant former condition may be required.

(5) The Länder may provide for the licence set forth in (2) Sentence 1 to include the permit pursuant to Article 11 (1) Sentence 1 Nos 2a and 3 Letter d of the Animal Welfare Act (Tierschutzgesetz).

(6) The competent authority shall monitor compliance with the requirements arising via (3) and (4) and shall do so, inter alia, by carrying out regular reviews and inspections. Article 52 shall apply mutatis mutandis.

(7) Where a zoo is constructed, expanded, substantially modified or operated without the necessary licence, or in conflict with the requirements arising via (3) and (4), the competent authority may issue the orders necessary to ensure that the applicable requirements are complied with within a reasonable period. In addition, it may require the zoo to be closed to the public, either completely or in part. If requirements pertaining to keeping of animals in zoos change, as a result of the latest scientific findings, the competent authority shall issue relevant subsequent orders if the changed requirements are not met by other means.

(8) If the operator does not fulfil orders pursuant to (7), the zoo is to be closed, either completely or in part, within a period of no more than two years after the orders have been issued, and the relevant licence is to be revoked, either completely or in part. It must then be ensured, via order, that the animals affected by the closure are properly treated and sheltered in accordance with the purposes and the provisions of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ EC L 94 of 9 April 1999, p. 24), at the operator's expense, and in a manner appropriate for the species and animals in question. Elimination of the animals is permissible only where such elimination conforms to provisions on species conservation and animal welfare and no other reasonable alternative for sheltering the animals is available.

## Article 43

### Animal enclosures

(1) Animal enclosures are permanent facilities in which animals of wild species are kept, outside of residential and commercial buildings, and for a period of at least seven days of the year, and that are not zoos within the meaning of Article 42 (1).

(2) Animal enclosures must be constructed and operated in such a manner that

1. the requirements arising via Article 42 (3) Nos 1 through 4 are fulfilled,
2. neither the natural balance nor landscape appearance are impaired, and
3. access to woods and meadows, and to water bodies, is not restricted in an unreasonable manner.

(3) The construction, expansion, substantial modification and operation of an animal enclosure must be notified to the competent authority at least one month in advance. That authority may issue the orders necessary to ensure compliance with the requirements arising via (2). It may order the removal of an animal enclosure if a

legally conformal state cannot be established by other means. In such a case, Article 42 (8) Sentences 2 and 3 shall apply mutatis mutandis.

(4) The Länder may ordain that the requirements pursuant to (2) shall not apply to enclosures

1. that are under state supervision,
2. that are established for only short periods of time or that take up only small areas, or
3. in which only small numbers of animals, or only animals whose keeping presents minimal requirements, are kept.

(5) More extensive provisions of the Länder shall not be affected.

### Section 3

#### Special protection of species

#### Article 44

#### Provisions for specially protected fauna and flora species and certain other fauna and flora species

(1) It is prohibited:

1. to pursue, capture, injure or kill wild animals of specially protected species, or to take from the wild, damage or destroy their developmental stages,
2. to significantly disturb wild animals of strictly protected species and of European bird species during their breeding, rearing, moulting, hibernation and migration periods; a disturbance shall be deemed significant if it causes the conservation status of the local population of a species to worsen,
3. to take from the wild, damage or destroy breeding or resting sites of wild animals,
4. to take from the wild wild plants of specially protected species, or their developmental stages, or to damage or destroy them or their sites,

(prohibitions on taking).

(2) It is furthermore prohibited:

1. to gain possession or take custody of, have possession or custody of, handle or process animals or plants of specially protected species,

(prohibitions on possession),

2. with regard to animals and plants of specially protected species within the meaning Article 7 (2) No 13 Letters b and c,

a) to sell, purchase, offer to sell or purchase, keep in stock or ship for purposes of sale, exchange or loan, for a fee, for purposes of use, such animals and plants,

b) to acquire, display to the public or use in some other manner for commercial purposes, such animals and plants,

(prohibitions on marketing).

Article 9 of Council Regulation (EC) No. 338/97 shall not be affected.

(3) The prohibitions on possession and marketing shall also apply to:

1. goods within the meaning of the Annex to Council Directive 83/129/EEC that, in contravention of Articles 1 and 3 of this Directive, entered the Community after 30 September 1983,

2. animals and plants designated by an ordinance pursuant to Article 54 (4).

(4) If use of soil for agricultural, forestry and fishing purposes, and use of the products obtained in the process, fulfils the requirements specified in Article 5 (2) to (4) of this Act, and the rules of good practice as defined in Article 17 (2) of the Federal Soil Conservation Act and in laws on agriculture, forestry and fishing, it shall not be deemed to violate the prohibitions on taking, possession and marketing. Where species listed in Annex IV of Directive 92/43/EEC, European bird species or species listed in an ordinance pursuant to Article 54 (1) No 2 are affected, this shall apply only to the extent that the conservation status of the local population of a species does not worsen as a result of the relevant cultivation or management. Where such is not assured by means of other protection measures, especially area protection measures, species protection programmes, contractual agreements or targeted awareness measures, the competent authority shall specify, to the farmers, forest managers or fish farmers responsible for such worsening, the necessary applicable cultivation or management requirements. Authorisations pursuant to the legislation of the Länder to ordain or issue relevant provisions, via general decree or ordinance, shall not be affected.

(5) The taking, possession and marketing prohibitions pursuant to Sentences 2 through 5 shall apply with regard to permissible interventions in nature and landscape pursuant to Article 15, and to projects within the meaning of Article 18 (2) Sentence 1, that are permissible under the provisions of the Federal Building Code. If animal species listed in Annex IV Letter a of Directive 92/43/EEC, European bird species or species listed in an ordinance pursuant to Article 54 (1) No 2 are affected, the prohibition of (1) No 3 and, with regard to pertinent unavoidable adverse effects on wild animals, the prohibition of (1) No 1, shall not be deemed to have been violated if the ecological function of the breeding or resting sites affected by the intervention or project continues to be fulfilled within a spatial context. Where necessary, advance compensation measures may be ordained. Sentences 2 and 3

shall apply mutatis mutandis with regard to sites of wild plants of the species listed in Annex IV Letter b of Directive 92/43/EEC. If other specially protected species are affected, actions for the implementation of an intervention or project shall not be deemed to violate prohibitions on taking, possession and marketing.

(6) The prohibitions on taking and possession shall not apply with regard to actions for preparation of legally required inspections carried out, to the necessary extent, by competent persons who take the greatest possible care not to harm or damage the specimens studied or the other animals and plants in the relevant area. The numbers of specimens of European bird species, and of individuals of the animal species listed in Annex IV Letter a of Directive 92/43/EEC, that are injured or killed are to be communicated by such competent persons to the competent authority for nature conservation and landscape management.

#### Article 45

Exceptions; authorisation to issue statutory ordinances

(1) Except where an ordinance pursuant to Article 54 (5) provides otherwise, the following shall be excepted from the prohibitions on possession:

1. animals and plants of specially protected species that were legally

a) bred in captivity within the Community and that have not been abandoned, and were not produced through artificial propagation or removed from the wild,

b) imported into the Community from third countries,

2. animals and plants of species listed in an ordinance pursuant to Article 54 (4) that, prior to the species' inclusion in the relevant ordinance, were legally acquired within the Community.

Sentence 1 No 1 Letter b shall not apply with regard to animals and plants of species within the meaning of Article 7 (2) No 13 Letter b that, after 3 April 2002, arrived in the country directly from a third country, without an exception or exemption pursuant to Article 43 (8) Sentence 2 or Article 62 of the Federal Nature Conservation Act in the version applicable until 1 March 2010, or that, after 1 March 2010, arrived in the country directly from a third country without an exception pursuant to (8). In derogation from Sentence 2, dead birds of European bird species within the meaning Article 7 (2) No 13 Letter b Double Letter bb, where such birds, pursuant to Article 2 (1) of the Federal Hunting Act, are subject to laws on hunting, may be transported into the country directly from a third country, without an exception or exemption, for purposes of personal use or as household effects.

(2) Where fauna and flora of specially protected species are not subject to the prohibitions on possession pursuant to (1), they shall also be exempt from the

prohibitions on marketing. Subject to an ordinance pursuant to Article 54 (5), this shall not apply to the following taken from the wild:

1. fauna and flora of strictly protected species, and
2. individuals of European bird species.

(3) The following shall also be exempted from prohibitions on marketing:

1. fauna and flora of strictly protected species which, prior to being placed under protection as species threatened with extinction or strictly protected species, were legally acquired,
2. birds of European species that were legally acquired prior to 6 April 1981 or that are listed in Annex III Part 1 of Directive 79/409/EEC,
3. animals and plants of species that are subject to Directives 92/43/EEC and 79/409/EEC and that, in a Member State, and in accordance with the Directives, have been approved for the actions mentioned in Article 44 (2) Sentence 1 No 2.

(4) In derogation from the prohibitions on possession and marketing, it shall be permissible, subject to the provisions of laws on hunting and fishing, to take from the wild fauna and flora that have been found dead and to deliver them to a place designated by the competent authority for nature conservation and landscape management, or, provided they do not belong to a strictly protected species, to use them for purposes of research and teaching or for preparation for such purposes.

(5) In derogation from the prohibitions of Article 44 (1) No 1, and from prohibitions on possession, it shall also be permissible, subject to the provisions of laws on hunting, to take in injured, helpless or sick animals in order to restore them to health. Such animals are to be released immediately as soon as they are able to survive on their own. Otherwise, they are to be delivered to a place designated by the competent authority for nature conservation and landscape management. Where the animals concerned are members of a strictly protected species, the person who takes in the animal must notify the competent authority for nature conservation and landscape management of this fact. That authority may require the surrender of the animal taken in.

(6) The authorities responsible for impounding or confiscation may grant exemptions from prohibitions on possession and marketing, where this is necessary for the utilisation of confiscated or impounded fauna and flora and provided this does not conflict with legal instruments of the European Communities.

(7) The competent authorities for nature conservation and landscape management, pursuant to the legislation of the Länder, and, in the case of introduction from other countries, the Federal Agency for Nature Conservation (BfN), may grant further exceptions from the prohibitions of Article 44, in individual cases,

1. in order to prevent considerable damage to agriculture, forestry, fisheries, water resources or other considerable economic damage,
2. in order to protect naturally occurring animals and plants,
3. for purposes of research, teaching, education, or reintroduction, or for the breeding operations or artificial propagation measures necessary for these purposes.
4. in the interest of public health, public safety, including defence and protection of the civilian population, or of beneficial consequences of primary importance for the environment, or
5. for other imperative reasons of overriding public interest, including those of a social or economic nature.

An exception may be granted only if no reasonable alternatives exist and the conservation status of a species' population is not worsened, except where Article 16 (1) of Directive 92/43/EEC contains more extensive provisions. Article 16 (3) of Directive 92/43/EEC and Article 9 (2) of Directive 79/409/EEC shall be observed. The Länder governments may also grant exceptions on a general basis, via statutory ordinance. Via statutory ordinance, they may transfer the authorisation pursuant to Sentence 4 to other Land authorities.

(8) In the case of introduction from other countries, the Federal Agency for Nature Conservation (BfN) may grant additional exceptions, in individual cases, to the prohibitions of Article 44, if the conditions specified in (7) Sentences 2 and 3 are fulfilled, in order to facilitate prudent use, under controlled conditions and to a limited extent, of animals and plants of certain species within the meaning Article 7 (2) No 13 Letter b and of bred and artificially propagated animals or plants of such species.

## Article 46

### Obligation to provide evidence

(1) Any person who possesses or has actual control over

1. living animals or plants of specially protected species, or developmental stages thereof, whether dead or alive, or largely intact dead animals or plants of specially protected species,
2. readily recognisable parts of animals or plants of strictly protected species, or products that are readily recognisable as having been derived from such parts, or
3. living animals and plants of species listed in an ordinance pursuant to Article 54 (4),

may claim to have a right to such possession or control vis-à-vis the competent authorities for nature conservation and landscape management only if they are able, upon request, to produce conclusive evidence substantiating their claim or where

they can prove that they or third parties were in possession of the animals or plants in question prior to their being placed under protection as specially protected species or prior to their inclusion in a statutory ordinance pursuant to Article 54 (4).

(2) Where products within the meaning of (1) No 2 are personal or household effects, (1) shall not apply. With regard to animals and plants that were acquired prior to their being placed under protection as specially protected species or prior to their inclusion in an ordinance pursuant to Article 54 (4) and that are personal or household effects, furnishing of prima facie evidence, rather than production of evidence pursuant to (1), shall suffice. Prima facie evidence may be requested only in cases where there are facts justifying the assumption that no such right exists.

(3) Where, pursuant to Articles 8 or 9 of Council Regulation (EC) No. 338/97, proof of authorisation for actions mentioned therein is required, or such proof must consist of certain documents, such proof shall be provided in the manner mandated by the aforementioned Regulation.

#### Article 47

##### Confiscation

Animals or plants for which their holders can neither produce substantiating evidence nor furnish required prima facie evidence may be confiscated by the competent authorities for nature conservation and landscape management. Article 51 shall apply mutatis mutandis; Article 51 (1) Sentence 2 shall apply subject to the proviso that submission of certification from a different independent expert agency or individual may be required.

#### Section 4

##### Competent authorities; introduction of plants and animals

#### Article 48

##### Competent authorities

(1) The following bodies shall be the management authorities within the meaning of Article 13 (1) of Council Regulation (EC) No. 338/97 and Article IX of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

1. the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), for communication with other Convention parties and with the Secretariat (Article IX (2) of CITES), with the exception of the tasks mentioned in No 2 Letters a and c and No 4, and for the tasks mentioned in Article 12 (1), (3) and (5), Articles 13 and 15 (1) and (5) and Article 20 of Council Regulation (EC) No 338/97,
2. the Federal Agency for Nature Conservation (BfN)

a) for issuing of import and export permits and re-export certificates within the meaning of Article 4 (1) and (2) and of Article 5 (1) and (4) of Council Regulation (EC) No 338/97, and of other documents within the meaning of Article IX (1) Letter a of CITES, and for communication with the Secretariat, with the Commission of the European Communities and with authorities of other Convention parties and non-Convention parties in connection with processing of permit applications or in prosecution of import and export violations, and for the tasks mentioned in Article 15 (4) Letters a and c of Council Regulation (EC) No 338/97,

b) for granting of exceptions pursuant to Article 8 (3) of Council Regulation (EC) No 338/97 in the case of imports,

c) for recognition of enterprises in which specimens are bred, or artificially propagated, for commercial purposes, within the meaning of Article VII (4) of CITES, and for notification of the registration procedure mentioned in Article 7 (1) No 4 of Council Regulation (EC) No 338/97 to the Secretariat (Article IX (2) of CITES),

d) for issuing of certificates pursuant to Articles 30, 37 and 44a of Commission Regulation (EC) No 865/2006 of 4 May 2006 with execution provisions with regard to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ EC L 166, of 19 June 2006, p. 1), amended by Regulation (EC) No 100/2008 (OJ EC L 31 of 5 February 2008, p. 3), in the case of imports and exports,

e) for registration of caviar-packaging plants pursuant to Article 66 of Regulation (EC) No 865/2006,

f) for utilisation of the living animals and plants confiscated by customs agencies pursuant to Article 51, and for utilisation of the dead animals and plants, and parts thereof and products made therefrom, confiscated by customs authorities pursuant to Article 51, where such products originate from strictly protected species,

3. the Federal Customs Administration with respect to the exchange of information with the Secretariat on matters aimed at combating crime in the field of species protection,

4. the competent authorities for nature conservation and landscape management pursuant to the legislation of the Länder for all other tasks within the meaning of Council Regulation (EC) No. 338/97.

(2) The scientific authority within the meaning of Article 13 (2) of Council Regulation (EC) No 338/97 is the Federal Agency for Nature Conservation (BfN).

#### Article 49

Involvement of customs authorities;

authorisation to issue statutory ordinances

(1) The Federal Ministry of Finance (Bundesministerium der Finanzen, BMF), and the customs authorities designated by it, shall be involved in supervising the import and export of fauna and flora covered by the import and export regulations pursuant to legal instruments of the European Communities, as well as in monitoring compliance with prohibitions on possession and marketing, pursuant to this Chapter, in goods traffic with third countries. The customs authorities may forward documents presented in the framework of supervision to the competent authorities pursuant to Article 48, where there are adequate, actual indications that animals or plants are being introduced in violation of regulations or prohibitions within the meaning of Sentence 1.

(2) The Federal Ministry of Finance (BMF) shall be authorised to regulate, in consultation with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the details of the procedure pursuant to (1), by way of a statutory ordinance not requiring the approval of the Bundesrat; where necessary, it may also provide for obligations relating to reporting, notification, provision of information and provision of assistance, tolerance of inspections of business papers and of other documents, tolerance of inspections of premises and tolerance of the taking of unpaid samples and specimens.

(3) The customs offices which are to be notified of animals and plants destined for import, transit and export pursuant to this Chapter shall be announced by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), by agreement with the Federal Ministry of Finance (BMF), in the Federal Gazette. Special reference shall be made to those customs offices which carry out customs formalities for live animals and plants.

## Article 50

Registration obligations in connection with imports, transit, exports or with introduction from third countries

(1) Anyone who introduces animals or plants subject to an import or export regulation issued by the European Community, or whose introduction from a third country requires an exception issued by the Federal Agency for Nature Conservation (BfN), directly from a third country into, or through, the area for which this Act is valid (import or transit), or to a third country from the area for which this Act is valid (export), must register such animals or plants for import, transit or export, and present the permits or other documents required for such import, transit or export, with a customs office promulgated pursuant to Article 49 (3), and must present such animals or plants upon request. The Federal Agency for Nature Conservation (BfN) may, upon application and for a good reason, designate a customs office other than the one referred to in Sentence 1 as the office to be responsible for customs clearance, if such customs office has given its consent to such designation and no statutory provisions conflict with such designation.

(2) The person carrying out the relevant import, transit or export shall notify the customs office responsible for customs clearance of the anticipated arrival time of live animals, giving details of the species and number of such animals, at least 18 hours prior to their arrival.

## Article 51

### Taking into custody, confiscation and impoundment by customs authorities

(1) If, in the framework of supervision by customs officials, doubts arise as to whether introduction of animals or plants is subject to regulations or prohibitions within the meaning of Article 49 (1), the customs authority may, at the expense of the person authorised to dispose, take the relevant animals or plants into custody, or commission a third party to take them into custody, until such time as the doubts have been clarified; it may also leave the animals or plants in the possession of the person authorised to dispose, with imposition of a prohibition on disposal. In order to clarify the doubts, the customs authority may request the person authorised to dispose to submit a certificate, issued by an independent expert institution or individual recognised as such by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), stating that the animals and plants involved do not belong to any species or populations which are subject to import or export restrictions under legal instruments of the European Communities, or subject to prohibitions on possession or marketing pursuant to this Chapter. Should such doubts prove to be unfounded, the Federal Government shall reimburse to the person authorised to dispose any expenses incurred in obtaining the certificate and the additional costs of taking the animals or plants into custody.

(2) If, in customs controls, it is determined that import, transit or export of animals or plants is being carried out without the prescribed permits or other documents, the animals or plants involved shall be confiscated by the customs office. Confiscated animals or plants may be left in the custody of the person authorised to dispose on the condition that such person does not dispose of them. If the prescribed permits or other documents are not submitted within one month of confiscation, the customs office shall order the animals or plants to be impounded; the customs office may grant a reasonable extension, not exceeding a total of six months, to this deadline. In cases where the animals or plants involved are found to be of a species for which the granting of import or export permits is inadmissible, they shall be impounded immediately.

(3) (2) shall apply mutatis mutandis if, in customs controls pursuant to Article 50 (1), it is determined that prohibitions on possession and marketing conflict with the relevant introduction.

(4) In cases where confiscated or impounded plants or animals are sold, the proceeds shall be paid to the owners if they are able to prove that, through no fault of

their own, they were unaware of the circumstances that led to the confiscation or impoundment. Third parties whose rights are extinguished by the impoundment or sale shall receive compensation from the proceeds under the conditions referred to in Sentence 1.

(5) In cases where animals or plants are confiscated or impounded, the costs thereby incurred, in particular for care, accommodation, transport, return or utilisation, shall be paid by the person responsible for the relevant introduction; in cases where the identity of such person cannot be established, such costs shall be paid by the relevant sender, carrier or recipient if such person was aware, or should have been aware, of the circumstances that led to the confiscation or impoundment.

## Section 5

Rights of information and of access; fees and expenses

### Article 52

Rights of information and of access

(1) Upon request, individuals, legal entities and unincorporated associations shall provide the competent authorities for nature conservation and landscape management, or the involved authorities pursuant to Article 49, with the information required in order to implement the legal instruments of the European Communities, the provisions of this Chapter, or the statutory regulations adopted for the purpose of the implementation of such instruments and provisions.

(2) Where necessary, persons appointed by the authorities referred to in (1) may enter sites, buildings, rooms, marine facilities, ships and means of transportation used for business or trade by persons obliged to furnish information, during business hours, in order to inspect containers and business documents. The persons obliged to furnish information shall assist the appointed inspectors in their work, as necessary, and submit their business documents upon request.

(3) Article 55 of the Code of Criminal Procedure (Strafprozessordnung) shall apply mutatis mutandis to the persons required to provide information.

### Article 53

Fees and expenses; authorisation to issue statutory ordinances

(1) The Federal Agency for Nature Conservation (BfN) shall levy fees and expense reimbursements for its official actions in accordance with the provisions of this Chapter and pursuant to the provisions of Regulation (EC) No 338/97.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall have the authority to adopt regulations, by agreement with the Federal Ministry of Finance (BMF), the Federal Ministry of Food, Agriculture and

Consumer Protection (BMELV) and the Federal Ministry of Economics and Technology (BMWV), and without the approval of the Bundesrat, specifying which acts shall be subject to fees, specifying the fee rates and expense-reimbursement rates and providing for fixed or flat rates. The expenses to be reimbursed may be settled in derogation from the Administrative Expenses Act (Verwaltungskostengesetz).

## Section 6

### Authorisations

#### Article 54

##### Authorisation to issue statutory ordinances

(1) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised to place under special protection, via statutory ordinance with the consent of the Bundesrat, certain fauna and flora species not falling under Article 7 (2) No 13 Letter a or Letter b, or populations of such species, where the species concerned are naturally occurring species that

1. are endangered, with regard to their populations, within the country as a result of human taking, or that are species that could be confused with such endangered species or with species within the meaning of Article 7 (2) No 13 Letter b, or
2. are endangered, with regard to their populations, and for which the Federal Republic of Germany has a high degree of responsibility.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised, by way of statutory ordinance with the consent of the Bundesrat, to place under strict protection

1. certain species that are specially protected pursuant to Article 7 (2) No 13 Letter a or Letter b:

- a) animal and plant species listed in Annex B of Regulation (EC) No. 338/97,
- b) European bird species,

2. certain other fauna and flora species within the meaning of (1),

where the species concerned are naturally occurring species that are under threat of extinction within the country and for which the Federal Republic of Germany has an especially high degree of responsibility.

(3) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised, by way of statutory ordinance with the consent of the Bundesrat:

1. to specify in greater detail which parts of animals or plants of specially protected species, or products produced from such animals and plants, shall be considered

easily recognizable within the meaning of Article 7 (2) No 1 Letters c and d or No 2 Letters c and d,

2. to wholly, partially or under certain conditions exempt certain specially protected species or origins of plants or animals of certain specially protected species, as well as certain bred or artificially propagated plants or animals of specially protected species, from the prohibitions cited under Article 44, provided this does not endanger the purpose of protection and does not contradict Articles 12, 13 and 16 of Directive 92/43/EEC, Articles 5 through 7 and 9 of Directive 79/409/EEC, other legal instruments of the European Communities, or obligations arising under international conventions on species protection.

(4) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised, via statutory ordinance with the consent of the Bundesrat, to designate invasive fauna and flora species for which, pursuant to Article 44 (3) No 2, the prohibitions of Article 44 (2) apply, where such designation is required to counter threats to ecosystems, biotopes or species.

(5) Where necessary for reasons of species protection, and provided this does not contradict legal instruments of the European Communities, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised, by way of statutory ordinance with the consent of the Bundesrat, to prohibit or restrict:

1. the keeping or breeding of animals
2. the marketing of animals and plants

of certain specially protected species, and of animals and plants of species designated by statutory ordinance pursuant to Article 54 (4).

(6) Where necessary for reasons of species protection, in particular in order to meet the obligations arising from Article 15 of Directive 92/43/EEC, Article 8 of Directive 79/409/EEC or obligations arising from international conventions on species protection, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised, by way of statutory ordinance with the consent of the Bundesrat, to restrict or prohibit:

1. the production, possession, placing on the market or use of certain devices, means or facilities with which wild animals can be killed, combated or captured, in large numbers or indiscriminately, or which could cause populations of the affected animal or plant species to disappear locally or suffer significant adverse effects,
2. actions or procedures which may lead to the local disappearance of or other significant adverse effects on populations of wild fauna or flora species.

Sentence 1 No 1 shall not apply to devices, means or facilities for which permits are required, on the basis of other statutory ordinances, if species-protection criteria have to be taken into account in issuing of such permits.

(7) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised, via statutory ordinance with the consent of the Bundesrat, to issue regulations for protection of nest sites of bird species whose populations are endangered and that are particularly sensitive to disturbances and, in particular, for prohibition of actions, during certain time periods and within certain intervals, that could impair such birds' breeding or rearing. More extensive protection provisions, including provisions regarding exceptions and exemptions, shall not be affected.

(8) In order to facilitate monitoring of compliance with prohibitions on possession and marketing, the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised to issue regulations, via statutory ordinance with the consent of the Bundesrat, regarding

1. record-keeping obligations for those who handle, process, buy, sell or acquire from others animals or plants of specially protected species for commercial purposes; in particular, such regulations shall specify which groups of individuals are obliged to keep records, the subject matter and scope of the compulsory record-keeping and how long such records must be retained, and shall provide for their review by the competent authorities for nature conservation and landscape management,

2. the marking of animals and plants of specially protected species for the purposes of supplying evidence pursuant to Article 46,

3. the issue of certificates verifying the legal acquisition of animals and plants for the purposes of supplying evidence in accordance with Article 46,

4. Obligations to notify the possession of

a) fauna and flora of specially protected species,

b) animals and plants of species designated by statutory ordinance pursuant to Article 54 (4).

(9) Statutory ordinances pursuant to (1) No 2 shall be subject to the consent of the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV), the Federal Ministry of Transport, Building and Urban Affairs (BMVBS) and the Federal Ministry of Economics and Technology (BMWt). Statutory ordinances pursuant to (6) Sentence 1 No 1 and (8) Nos 1, 2 and 4 shall be subject to the consent of the Federal Ministry for Economics and Technology. Otherwise, the statutory ordinances pursuant to (1) through (8) shall be subject to the consent of the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV); in cases referred to by (1)

through (6) and (8), however, such consent shall be required only insofar as such statutory ordinances refer to

1. fauna species falling under the scope of laws on hunting and fishing,
2. fauna species used for the purposes of biological plant protection, or
3. plants that are obtained via artificial propagation or that are of use in forestry.

(10) The Länder governments shall be authorised to define, by statutory ordinance, general requirements pertaining to management specifications for soil uses for agricultural, forestry and fishing purposes within the meaning of Article 44 (4). Via statutory ordinances, they may transfer the authorisation pursuant to Sentence 1 to other Länder authorities.

## Article 55

Execution of provisions under Community or international law; authorisation to issue statutory ordinances

(1) Statutory ordinances pursuant to Article 54 may also be adopted in order to implement legal instruments of the Council or Commission of the European Communities in the field of species protection, or to comply with international conventions on species protection.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) is authorised to amend, by way of statutory ordinance with the consent of the Bundesrat, references to provisions in legal instruments of the European Community in this Act or in statutory ordinances on the basis of Article 54, where amendments to such legal instruments so require.

## Chapter 6

### Marine nature conservation

#### Article 56

Area of validity and of application

(1) The provisions of this Act shall also apply in the area of coastal waters and, with the exception of Chapter 2, in accordance with the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette. 1994 II p. 1798, 1799; 1995 II p. 602) and subsequent relevant provisions, shall also apply in the area of the German exclusive economic zone and on the continental shelf.

(2) Article 15 shall not apply to construction and operation of wind turbines, in the German exclusive economic zone, for which a permit is issued by 1 January 2017.

## Article 57

Marine protected areas in the area of Germany's exclusive economic zone and continental shelf; authorisation to issue statutory ordinances

(1) Selection of marine protected areas in the area of the German exclusive economic zone and on the continental shelf shall be carried out by the Federal Agency for Nature Conservation (BfN), with public participation, and subject to the consent of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU). The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall involve those Federal Ministries whose areas of competence are affected and shall arrange consultation with neighbouring countries.

(2) Declaration of marine areas as protected parts of nature and landscape within the meaning of Article 20 (2) shall be carried out by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), with the participation those Federal Ministries whose areas of competence are affected, by statutory ordinance that is not subject to the consent of the Bundesrat.

(3) In selection of areas within the meaning of Article 32 (1) Sentence 1, and declaration of areas within the meaning of Article 32 (2), as protected parts of nature and landscape within the meaning Article of 20 (2), in the area of the German exclusive economic zone and on the continental shelf, Article 32 shall be applied *mutatis mutandis*, subject to the provisions of the following Nos 1 through 5:

1. restrictions of air traffic, ship traffic, military uses permitted under international law and marine scientific research projects within the meaning of Article 246 (3) of the United Nations Convention on the Law of the Sea are not permissible; Article 211 (6) of the United Nations Convention on the Law of the Sea, and other international-law provisions affecting navigation, shall not be affected.

2. the reasons, within the meaning of Article 246 (5) of the United Nations Convention on the Law of the Sea, for withholding consent for marine scientific research projects shall not be affected, subject to the provisions of the Act on execution of marine scientific research (Gesetz über die Durchführung wissenschaftlicher Meeresforschung) of 6 June 1995 (Federal Law Gazette I, p. 778, 785), last amended by Article 321 of the Ordinance of 31 October 2006 (Federal Law Gazette I p. 2407).

3. restrictions on fishing are only permissible in conformity with the law of the European Community and in accordance with the provisions of the Deep-Sea Fishing Act (Seefischereigesetz) in the version promulgated on 6 July 1998 (Federal Law Gazette I, p. 1791), last amended by Article 217 of the Ordinance of 31 October 2006 (Federal Law Gazette I p. 2407).

4. restrictions in connection with laying of undersea cables and pipelines are permissible only pursuant to Article 34 and in accordance with Article 56 (3) in conjunction with Article 79 of the United Nations Convention on the Law of the Sea.

5. restrictions on the generation of power from water, current and wind, and on the prospecting and extraction of mineral resources, are permissible only pursuant to Article 34.

## Article 58

Competent authorities; fees and expenses; authorisation to issue ordinances

(1) In the area of the German exclusive economic zone and on the continental shelf, execution of the provisions of this Act, of provisions issued on the basis of this Act and of provisions of the Environmental Damages Act, with regard to damage to species and natural habitats, and to the immediate risk of such damage, shall be the responsibility of the Federal Agency for Nature Conservation (BfN), except as provided by other provisions. If an intervention in nature and landscape, that is to be carried out in the area of the German exclusive economic zone or on the continental shelf, requires a regulatory permit or notification of an authority, or is carried out by an authority, the relevant authority shall take its decision in consultation with the Federal Agency for Nature Conservation (BfN).

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) may, via statutory ordinance without the consent of the Bundesrat, transfer tasks for which the Federal Agency for Nature Conservation (BfN) is responsible, pursuant to (1), to the national headquarters of the Federal Police, in consultation with the Federal Ministry of the Interior (Bundesministerium des Innern, BMI), and to the Federal Agency for Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung, BLE), in consultation with the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV), for purposes of execution.

(3) The Federal Agency for Nature Conservation (BfN) levies fees and expense reimbursements for its official actions, pursuant to the provisions set forth in (1) Sentence 1, in the German exclusive economic zone and on the continental shelf. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) shall be authorised to determine, by agreement with the Federal Ministry of Finance (BMF), and via statutory ordinance without the consent of the Bundesrat, which acts shall be subject to fees and, in the same context, shall be authorised to specify the relevant fee rates and expense-reimbursement rates and to provide for fixed or flat rates. The expenses to be reimbursed may be settled in derogation from the Administrative Expenses Act. Art. 53 shall not be affected.

## Chapter 7

### Access to nature and landscape for the purposes of recreation

#### Article 59

##### Access to open landscape

(1) All persons shall be permitted to enter the open landscape on roads and pathways and on unused land areas, for purposes of recreation (general principle).

(2) Access to forests shall be in accordance with the Federal Forest Act, the forest acts of the Länder and, otherwise, other Land laws. In particular, that Act may treat other types of use as equal to access, fully or in part, and restrict access for important reasons, particularly for the purposes of nature conservation and landscape management, to protect fields, to facilitate agriculture and silviculture, to protect persons seeking rest and relaxation, to prevent major damage, or to safeguard other viable interests of landowners.

#### Article 60

##### Liability

Those who access the open landscape do so at their own risk. Rights of access do not establish any additional legal duties to take due care or to maintain safety. In particular, no liability shall be recognised for the typical dangers that can arise in nature.

#### Article 61

##### Maintenance of openness of water bodies and shoreline zones

(1) In undeveloped outskirts areas, no structures may be constructed or significantly modified along Federal waterways and "1st-order streams" (Gewässer erster Ordnung), and along standing water bodies with an area of more than 1 hectare, at a distance of up to 50 meters from the shoreline. In derogation of Sentence 1, for coastal water bodies, a relevant distance of at least 150 meters from the mean high-water line must be complied with in the North Sea, and a relevant distance of at least 150 meters from the mean water line must be complied with in the Baltic Sea. More extensive provisions of the Länder shall not be affected.

(2) (1) shall not apply for

1. structures that had been legally constructed or permitted at the time this Act entered into force,
2. structures that are constructed or modified in execution of permits or approvals under laws relating to water, or for purposes of monitoring, management, maintenance or widening of a surface water body,

3. structures of the public transport infrastructure, including auxiliary facilities and relevant equipment, of emergency response forces, for coastal protection and flood protection and for defence.

More extensive provisions of the Länder regarding exceptions shall not be affected.

(3) An exception to the prohibition of (1) may be granted, upon application, if

1. the adverse effects on the natural balance or landscape appearance resulting from the structure, especially with regard to the proper function of water bodies and their shore zones, are minor, or such can be ensured via relevant measures, or

2. such is necessary for imperative reasons of overriding public interest, including such interests that are of a social or economic nature; in such cases, Article 15 shall apply *mutatis mutandis*.

Article 62

Appropriation of land

The Federal Government, the Länder and other legal entities under public law shall make available, for recreational purposes, and to a reasonable extent, pieces of land under their ownership or in their possession that are naturally suited for public recreation or that make possible or facilitate public access to such pieces of land, to the extent such is compatible with sustainable use and other objectives of nature conservation and landscape management and does not conflict with an established public purpose.

## **Chapter 8**

### **Participation of recognised nature conservation associations**

Article 63

Rights of participation

(1) An association recognised by the Federal Government pursuant to Article 3 of the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz) that, pursuant to the tasks defined in its statutes, focuses primarily on promoting purposes of nature conservation and landscape management (recognised nature conservation association), shall be given the opportunity to respond to and examine relevant expert opinions

1. during the preparation of regulations, and other statutory ordinances ranking after laws, in the field of nature conservation and landscape management, by the Federal Government or the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU),

2. prior to granting of exemptions from requirements and prohibitions for protection of marine protected areas within the meaning of Article 57 (2), even if such marine areas are included or replaced by a different decision,

3. in plan approval procedures that are carried out by Federal authorities or, in the German exclusive economic zone and on the continental shelf, are carried out by Länder authorities, if the projects in question are projects that involve interventions in nature and landscape,

4. in connection with plan adoptions that are issued by Federal authorities and that supplant a plan approval within the meaning of No 3, if public participation is provided for,

and insofar as their task area, as defined by their statutes, is affected.

(2) A nature conservation association that is recognised by a Land pursuant to Article 3 of the Environmental Appeals Act and that, pursuant to its statutes, operates throughout the relevant Land, shall be given the opportunity to respond to and examine the relevant expert opinions

1. during the preparation of regulations and other statutory ordinances ranking below laws by the Länder authorities responsible for nature conservation and landscape management,

2. during the preparation of programmes and plans within the meaning of Articles 10 and 11,

3. during the preparation of plans within the meaning of Article 36 Sentence 1 No 2,

4. during the preparation of programmes by government and other public agencies for the re-establishment of displaced wild species of fauna and flora in the wild,

5. prior to granting of exemptions from requirements and prohibitions for protection of areas within the meaning of Article 32 (2), Natura 2000 sites, nature conservation areas, national parks, national nature monuments and biosphere reserves, even if such areas are included or replaced by a different decision,

6. in plan approval procedures, if the projects concerned are projects within the territory of the recognising Land that involve interventions in nature and landscape,

7. in plan adoptions that supplant plan approval within the meaning of No 6, if public participation is provided for,

8. in other procedures for execution of provisions under the legislation of the Länder, if the law of the relevant Land provides for this,

insofar as their task area, as defined by their statutes, is affected by the project.

(3) Article 28 (2) Nos 1 und 2, (3) and Article 29 (2) of the Administrative Procedures Act (Verwaltungsverfahrensgesetz) shall apply mutatis mutandis. Other forms of participation, as set forth in other Federal or Länder statutory provisions, that are either of equivalent substance or more extensive, shall not be affected.

(4) The Länder may determine that, in cases in which no impacts on nature and landscape, or only impacts of a minor extent or scope, are anticipated, the involvement of associations may be waived.

## Article 64

### Appeals

(1) In addition to having recourse to the appeals pursuant to Article 2 of the Environmental Appeals Act, and without its own rights having been injured, a recognised nature conservation association may, in keeping with the Administrative Court Procedures Code (Verwaltungsgerichtsordnung), challenge decisions pursuant to Article 63 (1) Nos 2 through 4 and (2) Nos 5 through 7, if the association

1. avers that the decision contradicts provisions of this Act, legal provisions issued or remaining in force on the basis of this Act, nature conservation laws of the Länder or other statutory provisions that are to be observed in connection with the decision and that at least are intended to also serve the interests of nature conservation and landscape management,

2. is affected in its scope of tasks and activities as set forth in its statutes, provided the relevant recognition refers to that scope, and

3. was entitled to participation pursuant to Article 63 (1) Nos 2 through 4 or (2) Nos 5 through 7 and the association expressed an opinion in the matter or was given no opportunity to express an opinion.

(2) Article 1 (1) Sentence 4, Article 2 (3) and (4) Sentence 1 of the Environmental Appeals Act shall apply mutatis mutandis.

(3) The Länder may also permit appeals by recognised nature conservation associations in other cases in which, pursuant to Article 63 (2) No 8, participation is provided for.

## Chapter 9

### Obligations pertaining to property; exemptions

#### Article 65

##### Compulsory tolerance

(1) Owners of pieces of land, and other holders of rights of use to pieces of land, shall tolerate measures of nature conservation and landscape management carried

out on the basis of provisions of this Act, legal provisions issued or remaining in force on the basis of this Act, or nature conservation laws of the Länder, insofar as such measures do not unreasonably hamper use of a piece of land. More extensive provisions of the Länder shall not be affected.

(2) Prior to execution of measures, the relevant entitled parties are to be informed by suitable means.

(3) The rights of employees and representatives of nature conservation authorities to have access to pieces of land, in order to fulfil their tasks, shall be determined pursuant to the legislation of the Länder.

## Article 66

### Right of pre-emption

(1) The Länder shall have rights of pre-emption to pieces of land

1. located in national parks, national nature monuments, nature conservation areas or areas temporarily secured as such areas,

2. on which natural monuments, or objects temporarily secured as such monuments, are located,

3. on which surface water bodies are located.

If the characteristics referred to in Sentence 1 Nos 1 through 3 are found on only part of the relevant piece of land, then the right of pre-emption shall apply only to the part in question. The owner may require the pre-emption to apply to the entire piece of land, if continued ownership would impose an unreasonable economic burden.

(2) The right of pre-emption may be exerted only if this is required for reasons of nature conservation and landscape management, including preparations for recreational purposes.

(3) The right of pre-emption does not have to be entered into the land register (Grundbuch). It shall take precedence over rights of pre-emption justified by way of legal transaction and via Land law, with the exception of rights of pre-emption in the areas of property dealings and settlements. In the case of property acquisition on the basis of exertion of a right of pre-emption, rights of pre-emption justified via legal transactions shall expire. Articles 463 through 469, 471, 1098 (2) and Articles 1099 through 1102 of the German Civil Code shall apply. The right of pre-emption shall not apply to sale to a spouse, registered life partner or first-grade relative.

(4) The right of pre-emption may also be exerted by the Länder, upon application, in behalf of public-law entities and foundations and recognised nature conservation associations.

(5) Deviating provisions of the Länder shall not be affected.

## Article 67

### Exemptions

(1) An exemption from the requirements and prohibitions of this Act, in a statutory ordinance on the basis of Article 57 and pursuant to the nature conservation laws of the Länder may be granted, upon application, if

1. this is necessary for reasons of overriding public interest, including those of a social or economic nature, or
2. execution of the provisions, in an individual case, would lead to an unreasonable burden and the deviation is reconcilable with the interests of nature conservation and landscape management.

In the framework of Chapter 5, Sentence 1 shall apply only for Articles 39 and 40, 42 and 43.

(2) An exemption from the prohibitions of Article 33 (1) Sentence 1 and Article 44, and from requirements and prohibitions within the meaning of Article 32 (3), may be granted, upon application, if execution of the provisions, in an individual case, would lead to an unreasonable burden. In the case of introduction of animals or plants from other countries, the exemption is granted by the Federal Agency for Nature Conservation (BfN).

(3) Collateral clauses may be attached to the exemption. Article 15 (1) through (4) and (6), and Article 17 (5) and (7) shall also apply if no intervention in nature and landscape within the meaning of Article 14 has occurred.

## Article 68

### Restrictions pertaining to property; compensation and adjustment

(1) If restrictions pertaining to property, arising on the basis of provisions of this Act, of legal provisions that are issued or that remain in force on the basis of this Act, or of nature conservation laws of the Länder, lead to an unreasonable burden, in an individual case, that cannot be redressed via other measures, especially via the granting of an exception or exemption, then suitable compensation shall be provided.

(2) Such compensation shall be provided as monetary compensation. It may consist of recurring payments. The owner may require the transfer of a piece of land if continued ownership would impose an unreasonable economic burden on him. Further relevant details shall be determined pursuant to the legislation of the Länder.

(3) Expropriation of pieces of land for the public good, and for reasons of nature conservation and landscape management, shall be determined pursuant to the legislation of the Länder.

(4) The Länder may provide for a suitable adjustment, in keeping with the relevant budgetary law, to be paid, upon application, to owners and holders of rights of use for whom, on the basis of provisions of this Act, legal provisions that are issued or that remain in force on the basis of this Act, or nature conservation laws of the Länder, use of pieces of land especially for agricultural, forestry and fishing purposes is significantly hampered, without compensation pursuant to (1) to (3) having to be paid.

## **Chapter 10**

### **Provisions pertaining to fines and penalties**

#### Article 69

##### Provisions concerning fines

(1) Anyone who, in contravention of Article 39 (1) No 1, knowingly disturbs an animal living in the wild, shall be deemed to have committed an administrative offence.

(2) Anyone who carries out one of the following actions shall be deemed to have committed an administrative offence:

1. in contravention of Article 44 (1) No 1, pursues, captures, injures or kills a wild animal, or takes from the wild, damages or destroys its developmental stages,
2. in contravention of Article 44 (1) No 2, significantly disturbs a wild animal,
3. in contravention of Article 44 (1) No 3, takes from the wild, damages or destroys a breeding or resting site, or
4. in contravention of Article 44 (1) No 4, takes from the wild a wild plant, or its developmental stages, or damages or destroys it or its site.

(3) An administrative offence shall be deemed to have been committed by anyone who wilfully or negligently

1. carries out an intervention in nature and landscape, without a permit pursuant to Article 17 (3) Sentence 1,
2. contravenes an enforceable order pursuant to Article 17 (8) Sentence 1 or Sentence 2, Article 34 (6) Sentence 4 or Sentence 5, Article 42 (7) or (8) Sentence 1 or Sentence 2, also in conjunction with Article 43 (3) Sentence 4, or Article 43 (3) Sentence 2 or Sentence 3,
3. in contravention of Article 22 (3) Sentence 3, carries out an action or measure mentioned therein,
4. in contravention of Article 23 (2) Sentence 1, in conjunction with a statutory ordinance pursuant to Article 57 (2), carries out an action or measure mentioned therein in a marine area that is protected as a nature conservation area,

5. in contravention of Article 30 (2) Sentence 1, destroys or otherwise significantly impairs a biotope mentioned therein,
6. in contravention of Article 33 (1) Sentence 1, also in conjunction with (2) Sentence 1, causes a change or disturbance,
7. in contravention of Article 39 (1) No 1, captures, injures or kills a wild animal without good reason,
8. in contravention of Article 39 (1) No 2, removes, without good reason, a wild plant from its location, or uses it, cuts down its populations, or destroys them in some other way,
9. in contravention of Article 39 (1) No 3, significantly impairs or destroys, without good reason, a living site of wild animals or plants,
10. in contravention of Article 39 (2) Sentence 1, removes a wild animal or wild plant from the wild,
11. without a permit pursuant to Article 39 (4) Sentence 1, removes, or treats or processes, a wild plant for commercial purposes,
12. in contravention of Article 39 (5) Sentence 1 No 1, burns off the soil cover or treats an area mentioned therein,
13. in contravention of Article 39 (5) Sentence 1 No 2, cuts or grafts a tree, a hedge, a living fence, a shrub or another woody plant,
14. in contravention of Article 39 (5) Sentence 1 No 3, cuts back reeds,
15. in contravention of Article 39 (5) Sentence 1 No 4, clears one of the ditches mentioned therein,
16. in contravention of Article 39 (6), visits a cave, a mine tunnel, an earth cellar or a similar space,
17. without a permit pursuant to 40 (4) Sentence 1, plants a plant of an alien species or releases an animal,
18. without a licence pursuant to 42 (2) Sentence 1, constructs, enlarges, substantially modifies or operates a zoo,
19. in contravention of Article 43 (3) Sentence 1, fails to provide a notification, or fails to provide a notification correctly, completely, or on time,
20. in contravention of 44 (2) Sentence 1 No 1, also in conjunction with Article 44 (3) No 1 or No 2, with the latter provision in conjunction with a statutory ordinance pursuant to Article 54 (4), gains possession or custody of an animal, a plant or a good, has possession or custody of an animal, a plant or a good, or handles or processes an animal, a plant or a good,

21. in contravention of Article 44 (2) Sentence 1 No 2, also in conjunction with Article 44 (3) No 1 or No 2, with the latter provision in conjunction with a statutory ordinance pursuant to Article 54 (4), sells or purchases, offers to buy or sell, stocks or transports for purposes of sale, exchanges or makes available for use for a fee, acquires for commercial purposes, displays or otherwise uses an animal, a plant or a good,

22. in contravention of Article 50 (1) Sentence 1, fails to declare an animal or plant for import or export, or fails to do so correctly or on time, or fails to present such an animal or plant for inspection by the customs authorities, or fails to do so on time,

23. in contravention of Article 50 (2), fails to give notification, or fails to do so correctly, or completely, or on time,

24. in contravention of Article 52 (1), fails to provide information, or fails to provide information correctly, completely, or on time,

25. in contravention of Article 52 (2) Sentence 2, fails to provide support to authorised individuals or fails to submit business documents, or fails to submit business documents correctly, completely, or on time,

26. in contravention of Article 61 (1) Sentence 1 or Sentence 2, constructs or significantly modifies a structure along a water body, or

27. contravenes a statutory ordinance pursuant to

a) Article 49 (2),

b) Article 54 (5),

c) Article 54 (6) Sentence 1, (7) or (8)

or an enforceable order issued on the basis of such a statutory ordinance, to the extent the statutory ordinance refers to this provision concerning fines with regard to a certain violation.

(4) Anyone who violates Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ EC. L 61 of 3 March 1997, p. 1, L 100 of 17 April 1997, p. 72, L 298 of 1 November 1997, p. 70, L 113 of 27 April 2006, p. 26), last amended by Regulation (EC) No 318/2008 (OJ EC L 95 of 8 April 2008, p. 3), by wilfully or negligently doing any of the following shall be deemed to have committed an administrative offence:

1. in contravention of Article 4 (1) Sentence 1 or (2) Sentence 1 or Article 5 (1) or (4) Sentence 1, fails to present an import permit, an export permit or a re-export certificate, or fails to present such a permit or certificate correctly, completely or on time,

2. in contravention of Article 4 (3) Half-Sentence 1 or (4), fails to present an import notification, or fails to present such a notification correctly, completely or on time,
3. in contravention of Article 8 (1), also in conjunction with (5), purchases, offers to purchase, acquires for commercial purposes, displays to the public or uses a specimen of the species mentioned therein, or sells, keeps for sale, offers for sale or transports for sale purposes such a specimen, or
4. contravenes an enforceable condition or requirement pursuant to Article 11 (3) Sentence 1.

(5) Anyone who violates Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards (OJ EC L 308 of 9 November 1991, p. 1), by wilfully or negligently doing any of the following shall be deemed to have committed an administrative offence:

1. in contravention of Article 2, uses a leghold trap, or
2. in contravention of Article 3 (1) Sentence 1, introduces a pelt of an animal species mentioned therein, or a good mentioned therein, into the Community

(6) In the cases referred to in (1) and (2), (3) Nos 1 through 6, 18, 20, 21, 26 and 27 Letter b, (4) Nos 1 and 3 and (5), the administrative offences may be punished with a fine of up to EUR 50,000; in the other cases referred to, the administrative offences may be punished with a fine of up to EUR 10,000.

(7) The Länder may determine by law that other unlawful and accusable offences that violate provisions of this Act, or legal provisions that are issued or that remain in force on the basis of this Act, may be punished as administrative offences.

## Article 70

### Administrative authority

The administrative authority within the meaning of Article 36 (1) No 1 of the Administrative Offences Act (Gesetz über Ordnungswidrigkeiten) shall be

1. the Federal Agency for Nature Conservation (BfN) in the cases referred to
  - a) in Article 69 (3) Nos 20 and 21 and (4) No 3 in the case of actions in connection with import into, or export from, the Community, or introduction into, or transport out of, the Federal Republic of Germany,
  - b) in Article 69 (3) No 24 in the case of violations of obligations to provide information to the Federal Agency,

c) in Article 69 (3) No 25 and (4) No 4 in the case of measures of the Federal authority,

d) in Article 69 (4) No 1 and (5) No 2,

e) involving other administrative offences pursuant to Article 69 (1) through (5) that have been committed in the area of the German exclusive economic zone or on the continental shelf,

2. the responsible main customs office (Hauptzollamt) in the cases referred to in Article 69 (3) Nos 22, 23 and 27 Letter a and (4) No 2,

3. in all other cases, the competent authority pursuant to the legislation of the Länder.

## Article 71

### Penal provisions

(1) Anyone who intentionally, and for commercial purposes or habitually, carries out an action referred to in Article 69 (2), (3) No 21, (4) No 1 or No 3 or (5) shall be punished with a term of imprisonment of up to three years or with a fine.

(2) Anyone who intentionally carries out an action, oriented to an animal or plant of a strictly protected species, referred to in Article 69 (2), (3) No 21, (4) No 1 or No 3 or (5) shall be punished with a term of imprisonment of up to five years or with a fine.

(3) Anyone who commercially or habitually commits any of the offences outlined in (2) shall be liable to a term of imprisonment ranging from three months to five years.

(4) If, in the cases referred to in (2), the offender negligently fails to recognise that the relevant action is oriented to an animal or plant of a strictly protected species, the penalty shall be a term of imprisonment of up to one year or a fine.

## Article 72

### Confiscation

In cases where an administrative offence pursuant to Article 69 (1) through (5), or a criminal offence pursuant to Article 71, has been committed, the competent authority may confiscate:

1. the objects to which the administrative or criminal offence refers, and
2. any objects used, or intended to be used, in commission of the offence or during the preparation thereof.

Article 23 of the Administrative Offences Act and Article 74a of the Penal Code (Strafgesetzbuch) shall apply.

## Article 73

## Powers of the customs authorities

The competent administrative authorities and the public prosecutor's office may, in the framework of their responsibilities to solve criminal offences or administrative offences pursuant to this Act, have investigations also be conducted by main customs offices, or by authorities of the customs investigation service (Zollfahndungsdienst), and the officials of such customs organisations. Article 37 (2) through (4) of the Foreign Trade Act (Außenwirtschaftsgesetz) shall apply mutatis mutandis.

## Chapter 11

### Transitional provisions

#### Article 74

#### Transitional provisions

(1) Procedures commenced prior to 1 March 2010 for recognition of associations shall be completed

1. by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), pursuant to Article 59 of the Federal Nature Conservation Act in the version applicable until 28 February 2010,

2. by the competent Länder authorities pursuant to provisions of the legislation of the Länder issued in the framework of Article 60 (1) and (3) of the Federal Nature Conservation Act in the version applicable until 28 February 2010.

(2) Administrative procedures commenced prior to 3 April 2002 shall be completed pursuant to Article 29 of the Federal Nature Conservation Act in the version applicable until that day. Administrative procedures commenced prior to 1 March 2010 shall be completed pursuant to Article 58 of the Federal Nature Conservation Act in the version applicable until that day.

(3) Articles 63 and 64 shall also apply in the case of associations that have been recognised by the Federal Government or the Länder pursuant to Article 29 of the Federal Nature Conservation Act in the version applicable until 3 April 2002, or pursuant to Article 59, or in the framework of Article 60 (1) and (3), of the Federal Nature Conservation Act in the version applicable until 1 March 2010.