



Bundesministerium  
für Umwelt, Naturschutz  
und Reaktorsicherheit

**Transboundary access to justice by the public and NGO's**

**Judgment of the European Court of Justice  
of 12 May 2011 — Case C-115/09 Trianel**

Matthias Sauer

Federal Ministry for the Environment,  
Nature Conservation and Nuclear Safety,  
Berlin



**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on the assessment of the effects of certain public and private projects on the environment  
(Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC)**

**Article 10a**

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

- (a) having a sufficient interest, or alternatively,
- (b) maintaining the impairment of a right, where administrative

procedural law of a Member State requires this as a precondition, have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.



## German Environmental Remedies Act of 2006

### Article 2 Appeals by associations

(1) A German or foreign association that is recognized pursuant to Article 3 may, without having to assert that its own rights have been violated, file appeals in accordance with the Rules of Procedure of the Administrative Courts against a decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision if the association:

1. Asserts that a decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision violates statutory provisions that protect the environment, establish individual rights, and could be of importance for the decision;
2. Asserts that promotion of the objectives of environmental protection in accordance with its field of activity as defined in its bylaws is affected by the decision pursuant to Article 1 paragraph (1), first sentence or failure to take such a decision; and
3. Was entitled to participate in a procedure under Article 1 paragraph (1) and expressed itself in that matter according to the applicable statutory provisions or, contrary to the applicable statutory provisions, was not given an opportunity to express itself.

(...)

(5) Appeals in accordance with paragraph (1) shall be justified:

1. If the decision pursuant to Article 1 paragraph (1), or the failure to take such a decision, violates statutory provisions that protect the environment, establish individual rights, and are of importance for the decision, and the violation involves issues of environmental protection that are among the objectives that are to be promoted by the association according to its bylaws;
2. In reference to land-use plans, if the determinations of the land-use plan that establish the admissibility of a project subject to an environmental impact assessment violate statutory provisions that protect the environment and establish individual rights, and the violation involves issues of environmental protection that are among the objectives that are to be promoted by the association according to its bylaws.

In the case of decisions pursuant to Article 1 paragraph (1) number 1, there must also be an obligation to conduct an environmental impact assessment.



**Operative part of the judgment**  
**of the Court (Fourth Chamber) of 12 May 2011— Bund für Umwelt und Naturschutz**  
**Deutschland, Landesverband Nordrhein- Westfalen e.V. v Bezirksregierung Amsberg**  
**Case C-115/09**

1. Article 10a of Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, precludes legislation which does not permit a non-governmental organisation promoting environmental protection, referred to in Article 1(2) of Directive 85/337, to challenge before the courts, in the context of an action brought against a decision authorising projects ‘likely to have significant effects on the environment’ within the meaning of Article 1(1) of Directive 85/337, as amended by Directive 2003/35, the infringement of a rule flowing from EU environment law and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals.
2. Such an non-governmental organisation can derive, from the final sentence of the third paragraph of Article 10a of Directive 85/337, as amended by Directive 2003/35, the right to challenge before the courts, in the context of an action brought against a decision authorising projects ‘likely to have significant effects on the environment’ within the meaning of Article 1(1) of Directive 85/337, as amended, the infringement of the national rules flowing from Article 6 of Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2006/105/EC of 20 November 2006, although national procedural law does not permit such a challenge, on the ground that the rules relied on protect only the interests of the general public and not the interests of individuals.



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**Thank you for your attention!**

contact:

Matthias Sauer

phone: + 49 30 18 305 2253

e-mail: [matthias.sauer@bmu.bund.de](mailto:matthias.sauer@bmu.bund.de)