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## Environment - Switzerland

### Federal Act on the Protection of the Environment Revised

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#### Reasons for Revision Content of Revision

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The Federal Act on the Protection of the Environment came into force on January 1 1985. Article 9 provides a legal basis for environmental impact assessments. Since 1985 various minor revisions to the act have been made. The most recent became effective on July 1 2007, introducing Articles 10(a) to 10(d). Although the act has not been disputed in principle since then, minor issues have arisen, particularly concerning the right of particular organizations to appeal against certain projects.<sup>(1)</sup> Non-governmental organizations (NGOs) are entitled to object to decisions regarding building projects that require an environmental impact assessment. This right has existed since the introduction of the act.

In some politically and economically controversial cases, the NGOs' right to appeal can result in delays and additional costs to building projects. Furthermore, one cantonal section of the Swiss Traffic Association is especially active and frequently challenges parking facilities of large shopping malls. During the past few years, various cases have become public in which builders agreed to comply with certain building and utilization restrictions that hardly could have been ordered by a public authority. For example, by accepting a number of parking spaces that was significantly lower than public authorities could have ordered or by accepting control systems that require strict surveillance of traffic flow: if the agreed maximum amount of annual vehicle movement is exceeded, penalties in favour of the traffic association become due.

A recent appeal by a different NGO was particularly controversial and was widely debated politically. The organization is entitled to appeal against projects, especially in the field of preservation of Alpine regions. It appealed against a new soccer stadium in Zurich. Although the relevant delays were ultimately not caused by that particular organization, the stadium is now unavailable for the European soccer championship co-hosted by Switzerland this summer.

Occurrences like these made the issue political. In particular, the federal government requested a detailed report about whether the NGOs' right to appeal has a positive effect on the environment.<sup>(2)</sup> As a result, both the act and the organizations' right to appeal have been subject to a thorough revision. Although implementing ordinances have yet to be issued, the modifications to statute are detailed enough to allow immediate application of the new rules.

In addition, the Federal Parliament recently discussed excluding the organizations' right to appeal in all cases where decisions are based on democratic polls. The federal government supports this initiative, as it is supposed to prevent private organizations from undertaking public authorities' functions in democratically approved projects. Even though this might help prevent delays, Parliament recommends that voters reject this initiative.

#### Content of Revision

The latest revision covers the following points:

- Performing an environmental impact assessment will be faster and easier. The list of projects for which an assessment must be made will be tightened and the relevant thresholds will be examined. If a preliminary assessment provides satisfactory results, no key report will be necessary (Articles 10(a) and 10(b) of the act).
- Organizations that are authorized to appeal must have non-profit-making objectives. If they conduct

commercial activities, the revenues must be used to benefit their non-profit-making objectives (Article 55 (1)).

- An organization may appeal a decision only if it relates to something that has been part of the organization's statutory purpose for at least 10 years. The federal government will publish a list of the organizations which will be authorized to appeal (Article 55(2)).
- The supreme executive body of an organization must decide whether to file an appeal. Organizations will be entitled to delegate this right to an individual subsidiary (Article 55(4)).
- The most important modification concerns the legal ban on contracts among private builders and NGOs which are agreed without involving the public authorities (Article 55(c)). After the revision, public law concerns must be filed with the public authorities as collective proposals. Whether and how such jointly proposed rules will enter into the public authority's decision shall be decided by the authority.
- Such agreements may not involve payments for the implementation of public restrictions or for measures for which the law does not provide in connection with the specific project. Also, no payments are allowed for an organization's waiver to appeal (Article 55(c)). In case of an infringement of these rules, or if an appeal is abusive and especially if the organization should have brought forward its arguments in an earlier approval procedure, the objection does need not be heard.
- Since questions regarding environment protection often play a role early in the land use planning process, organizations will be required to raise their concerns then (Article 55(b)).
- To the extent that the concerns of an organization are realizable after the start of construction works, an appeal cannot ban the start of construction works (Article 55(d)).
- So far, organizations have almost never had to pay procedural costs. Under the revised law, organizations will have to pay procedural costs in case of a defeat, as any other litigant would (Article 55 (e)).

It is not yet clear whether the revised law will result in an acceleration of proceedings which are subject to an environmental impact assessment or where organizations are entitled to appeal against certain points.

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## Endnotes

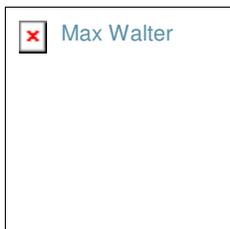
(1) Revisions as of July 1 1997 (Article 9 of the act), January 1 2004 and February 1 1996 (Article 55 of the act).

(2) This expert opinion from 2000 about the consequences of the organizations' right to appeal and statistics about the success of organizations' right to object before the Federal Supreme Court is available at [www.bafu.admin.ch/php/modules/shop/files/pdf/phpiog7BF.pdf](http://www.bafu.admin.ch/php/modules/shop/files/pdf/phpiog7BF.pdf). See also the Federal Council's report dated February 18 2004 (BBI 2004, p 1611) and other parliamentary and Federal Council's reports issued in Summer 2005 (BBI 2005, p 5351ff and 5391ff).

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