

TRANSLATION
Federal Nature Conservation
Act*

of 25 March 2002

* This Act supports implementation of the following Directives:

1. Council Directive 92/ 43/ EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (EC OJ No L 206, page 7),
2. Council Directive 79/ 409/ EEC of 2 April 1979 on the conservation of wild birds (EC OJ No L 103, page 1),
3. 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 No L 91, page 30),
4. Council Directive 1999/ 22/ EC of 29 March 1999 on the keeping of wild animals in zoos (EC OJ No L 94, page 24).

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**Section One:
General Provisions**

Article 1

**Aims of Nature Conservation and Landscape Management,
(Naturschutz und Landschaftspflege*)**

In view of their own value and as a human life support, considering also our responsibility towards future generations, nature and landscape both inside and outside the areas of human settlement, shall be conserved, managed, developed and, where necessary, restored, in order to safeguard on a lasting basis

1. the functioning of the ecosystem and its services,
2. the regenerative capacity of the natural resources and their sustained availability for human use,
3. fauna and flora, including their natural habitats and sites,
4. the diversity, characteristic features and beauty of nature and landscapes, as well as their intrinsic value for human recreation.

Translator's note:

* 'Landschaftspflege' = landscape protection, management and enhancement

Article 2
Principles of Nature Conservation and Landscape
Management

(1) Implementation of the aims of nature conservation and landscape management shall be based in particular on the following principles, to the extent this is, in the individual case concerned, necessary for implementation, possible, and appropriate when weighing all requirements and demands arising from the aims and objectives of Article 1 of this Act against one another and against any other community claims vis-à-vis nature and landscapes.

1. The ecosystem at its delimited spatial scales shall be secured and protected in such a way that the biological functions, material and energy flows of the site in question as well as the characteristic features of the landscape are conserved, developed or restored.
2. Non-regenerating natural resources shall be used in a rational and sustainable manner. The use of regenerating natural resources deserves particular attention; they must only be used in such a way that their sustained availability is assured for the future.
3. Soil resources shall be preserved in a way which allows them to fulfil their relevant tasks and functions in the ecosystem. The natural vegetation and closed natural vegetation covers as well as littoral vegetation shall be secured and protected. In the case of land not used for agricultural, silvicultural or horticultural purposes the vegetation cover of which has been removed, the development of appropriately adjusted site-specific vegetation shall be allowed. Any soil erosion shall be prevented.
4. Natural, near-natural or semi-natural waters as well as their littoral zones and natural retention areas shall be preserved, developed or restored. Any

change in the existing groundwater table that might result in the destruction or lasting impairment of biotopes worthy of protection shall be avoided; any unavoidable impairment shall be compensated for by appropriate measures. Any water engineering and development measures taken should be geared to preserve natural conditions to the extent possible.

5. Adverse environmental impacts shall be minimized also by measures of nature conservation and landscape management; vulnerable components of the ecosystem must not be allowed to suffer any lasting damage.
6. Adverse impacts on the climate shall be prevented. In this respect, the development of a sustainable energy supply, particularly through increasing use of renewable energy resources, is of particular importance. The protection and improvement of climatic conditions, including local climate, shall also be striven for by measures of nature conservation and landscape management. Forest and other areas with favourable climatic effects as well as local air-exchange pathways shall be preserved, developed or restored.
7. The exploration and extraction of mineral resources, excavation and tipping shall be performed in such a way that any lasting damage to the ecosystem or the destruction of valuable parts and components of landscapes is prevented. Any unavoidable impairments of nature and landscape shall be compensated for or mitigated, in particular by encouraging the natural succession, as well as through restoration to a more natural state ('re-naturing'), semi-natural landscaping, rehabilitation, land reclamation or re-cultivation.
8. To safeguard the functioning of the ecosystem and its services, the biological diversity shall be preserved and developed. Biological diversity includes the diversity of habitats and biocoenoses, the diversity of species and genetic diversity at the species-scale.

9. Wild species of fauna and flora, including their biocoenoses, as an integral part of the ecosystem, shall be preserved in their natural and historically evolved diversity. Their biotopes as well as their other life supports and living conditions shall be conserved and protected, managed, developed or re-stored.
10. Within the areas of human settlement, too, still existing natural stocks such as forest stands, hedgerows, baulks and other ecotones, brooks and stream-lets, ponds and other ecologically significant smaller landscape structures shall be preserved and developed.
11. In view of their significance for the ecosystem and for recreation, non-built-up areas shall be preserved, the individual and overall expanse and the properties and functions of which enable them to fulfill their purpose in this context. Sealed surfaces which are not required any longer shall be restored to a more natural state ('re-natured') or, where de-sealing is not possible or excessively expensive^{*}, they shall be left to the natural development/ succession.
12. At the planning stage of stationary plants and structures, transport routes, power lines and similar projects, the natural landscape structures and their characteristic features shall be taken into account. Transport routes, power lines and similar projects are to be combined in such a way that the dissection and consumption of landscape are kept at the lowest possible rate.

Translator's note:
^{*} 'nicht zumutbar'

13. The diversity, characteristic features and beauty of landscapes shall be preserved also in view of the significance of landscape for fundamental human experience as well as for enjoyment and recreation. Characteristic landscape structures and components shall be preserved or developed. Any impairment of the values of landscape with regard to fundamental human experience, enjoyment and recreation shall be prevented. Appropriately located, suitable areas for recreation shall be safeguarded and protected and, where necessary, managed, appropriately designed or maintained, and kept or rendered accessible. Especially in areas close to human settlements, sufficient space shall be provided for recreation. Within the scope of the fourth sentence above, recreation also includes sporting activities in the open air that are compatible with nature and landscape.
 14. Historic cultural landscapes, or parts thereof, with specifically characteristic features, including those of particular significance for the characteristic features or beauty of cultural, architectural or ground monuments which are already under protection or worthy of protection, shall be preserved.
 15. A general awareness and understanding of the tasks and objectives of nature conservation and landscape management shall be promoted by appropriate means. In the case of measures planned for nature conservation and landscape management, the early exchange of information with the parties concerned and interested segments of the general public shall be safeguarded.
- (2) The Federal Government and the Federal Laender shall support the international efforts made and the implementation of the legal instruments of the European Communities in the field of nature conservation and landscape management. The establishment of the European ecological network "Natura 2000" shall be promoted. Its coherence shall be preserved and also improved via the maintenance, development and management of an interlinked system of biotopes. The conser-

vation status of biotopes of Community interest, and especially of the areas that are part of the "Natura 2000" network, as well as the conservation status of the species of community interest and European bird species, shall be subject to monitoring and surveillance. The specific functions and services of sites of Community interest and European bird sanctuaries within the "Natura 2000" network shall be maintained and preserved; they shall be restored to the extent possible in the event of any unavoidable impairments.

- (3) The Federal Laender may supplement the above principles and establish additional ones.

Article 3
Network of Interlinked Biotopes
(Biotopverbund)

- (1) The Federal Laender shall establish a network of interlinked biotopes (*Biotopverbund*) covering at least 10% of the total area of each Federal Land. The establishment of the network of interlinked biotopes shall be performed by the Federal Laender on an interregional basis. To this end, the Federal Laender shall consult with each other.
- (2) The network of interlinked biotopes is designed to safeguard on a lasting basis native fauna and flora species and their respective populations, as well as their habitats and biocoenoses, and to preserve, restore and develop functioning ecological interrelationships.
- (3) The network of interlinked biotopes consists of core areas (*Kernflächen*), connecting areas (*Verbindungsflächen*) and connecting elements (*Verbindungselemente*). The network of interlinked biotopes includes:
1. designated 'national parks' (*Nationalparke*)
 2. 'biotopes' (*Biotope*) protected under Article 30 of this Act
 3. 'nature conservation areas' (*Naturschutzgebiete*), areas under Article 32 of this Act and 'biosphere reserves' (*Biosphärenreservate*), or parts of such areas
 4. other areas and elements, including parts of 'landscape protection areas' (*Landschaftsschutzgebiete*) and 'nature parks' (*Naturparke*)
- if they are suitable for reaching the aim laid down in paragraph 2 above.
- (4) The required core areas, connecting areas and connecting elements shall be legally secured via the designation of appropriate areas pursuant to Article 22

paragraph 1, detailed planning in accordance with the provisions of planning law, long-term arrangements (contractual nature conservation) or other appropriate measures, so as to safeguard an interlinked network of biotopes on a lasting basis.

Article 4

Observance of Aims and Principles

All persons, natural or juridical, shall contribute to the best of their respective abilities to the implementation of the aims and principles of nature conservation and landscape management and conduct themselves in such a way that nature and landscapes will not be impaired beyond what is unavoidable under the respective circumstances.

Article 5

Agriculture, Forestry and Fishing

- (1) Measures of nature conservation and landscape management shall take account of the particular significance of agriculture, forestry and fishing geared to compatibility with nature and landscape for the preservation of cultural landscapes and open space for recreation.
- (2) The Federal Laender shall lay down rules and regulations on compensatory measures for utilization restrictions in the sectors of agriculture, forestry and fishing.
- (3) The Federal Laender shall determine a regional minimum density for the continuous linear elements and the circumscribed spots required for the interlinking of biotopes (boundary landscape structures/ ecotones, especially hedgerows and baulks, and 'stepping-stone' biotopes), and will take appropriate measures (targets and items fixed under planning law, long-term arrangements, promotional and funding programmes or any other appropriate measures) if the density ascertained is falling short of this minimum and relevant structures and elements of the landscapes concerned need to be established.
- (4) In addition to the requirements arising from provisions relating to agriculture and from Article 17 paragraph 2 of the Federal Act on the Conservation of Soils (*Bundes-Bodenschutzgesetz*), agriculture shall in particular comply with the principles of good agricultural practice outlined in the following:
 - Land used for agriculture must be appropriately managed in accordance with the requirements of the site in question, and the sustained fertility of the soil and long-term usability of the land must be ensured.
 - Any avoidable impairments of existing biotopes must not be incurred.

- The landscape components required for the interlinking of biotopes must be preserved and, where possible, increased.
 - Animal husbandry must be in a balanced relationship to cropping; any adverse impacts on the environment are to be avoided.
 - On erosion-prone slopes, in flood plains, at sites with elevated groundwater table and in boggy locations, farmers shall refrain from ploughing up grassland.
 - The natural features of the land concerned (soil, water, fauna, flora) must not be impaired beyond the extent required to achieve a sustainable yield.
 - Plot-specific recording and documentation of the use of fertilizers and plant protection agents in conformity with pertinent agricultural legislation is required.
- (5) When using woodland for silvicultural purposes, the aim shall be pursued to progressively establish near-natural forests and to manage these in a sustainable manner without any clearfelling. A sufficient proportion of locally adjusted site-specific forest plants shall be attained.
- (6) When utilizing surface waters for fishery purposes, these waters, including their littoral zones, shall be preserved and enhanced as habitats and sites for native species of fauna and flora. Stocking of such waters with non-native species of fauna shall be refrained from in principle. In pisciculture in inland waters and fish ponds any adverse impacts on the native species of fauna and flora shall be confined to what is necessary to attain a sustainable yield.

Article 6

Powers and Responsibilities of Public Authorities

- (1) Unless stipulated otherwise in other legal provisions, the implementation of this Act and of any legal provisions laid down within the framework and on the basis thereof shall be incumbent upon the authorities responsible for nature conservation and landscape management.

- (2) Authorities at the Federal level shall support the implementation of the aims and principles of nature conservation and landscape management within their respective scope of responsibility. They shall inform the authorities responsible for nature conservation and landscape management as early as at the preparatory stages of all public plannings or measures that relate to or may have an impact on interests of nature conservation and landscape management and give them the opportunity of prior comment.

- (3) The Federal Laender shall lay down corresponding legal provisions. They shall also regulate the involvement of other authorities in the framework of plannings and measures of the authorities in charge of nature conservation and landscape management. Furthermore the Federal Laender shall lay down rules and regulations requiring representatives of education and training as well as information media to inform their respective audiences at all levels on the significance of nature and landscape and the tasks of nature conservation, to arouse a sense of responsibility vis-à-vis nature and landscape and to promote the careful and responsible handling of our natural assets.

Article 7

Publicly–Owned Land

When managing land* in public ownership or possession, particular attention shall be given to the aims and principles of nature conservation and landscape management. Land of particular conservation value shall - to the extent this is appropriate and adequate** - not be altered in a way that will adversely affect its ecological quality and characteristics. The first and second sentences of this Article shall not preclude the implementation of certain purposes of public interest for which the land*** may have been earmarked.

Article 8

Contractual Arrangements

Federal Laender legislation shall ensure that in the case of measures intended to implement the legal provisions laid down within the framework of this Act it is examined whether the intended purpose can also be achieved by means of contractual arrangements. This shall not affect any other responsibilities and powers under this Act of the conservation authorities concerned.

Article 9

Obligation to tolerate

(1) The Federal Laender may provide that owners and authorized users of land*** are obliged to tolerate measures of nature conservation and landscape management ensuing from legal provisions laid down on the basis of or within the

Translator's note:

*'Grundflächen' = land/ premises

**'appropriate and adequate': German text: 'angemessen'

Translator's note:

*** 'Grundflächen' = land/ premises

framework of this Act, to the extent this will not unreasonably restrict utilization of the land concerned.

- (2) The Federal Laender may lay down more stringent or more extensive rules and regulations.

Article 10

Terms and Definitions

- (1) For the purpose of this Act:

1. ecosystem (*Naturhaushalt*) means

its elements and components soil, water, air, climate, fauna and flora as well as their complex interrelationships and dynamic interactions;

2. biotopes (*Biotope*) means

the natural habitats and sites of wild plant and animal species;

3. biotopes of community interest (*Biotope von gemeinschaftlichem Interesse*) means

the biotopes listed in Annex I of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ EC No L 206, page 7), last amended by Council Directive 97/62/EEC of 27 October 1997 (OJ EC No L 305, page 42);

4. priority biotopes (*prioritäre Biotope*) means

the biotopes listed in Annex I of Council Directive 92/43/EEC and marked with an asterisk (*);

5. Sites of Community Importance (*Gebiete von gemeinschaftlicher Bedeutung*) means

the areas entered in the list referred to in Article 4 paragraph 2 third subparagraph of Council Directive 92/43/EEC, including areas in this list that have not yet been designated as a protected area pursuant to the provisions of this Act.

6. European Bird Sanctuaries (*Europäische Vogelschutzgebiete*) means

sites under Article 4 paragraphs 1 and 2 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ EC No L 103, page 1), last amended by Council Directive 97/49/EC of 29 July 1997 (OJ EC No L 223, page 9);

7. concertation sites (*Konzertierungsgebiete*) means

sites subject to a consultation procedure under Article 5 of Council Directive 92/43/EEC, from initiation of the procedure by the Commission until decision by the Council;

8. European ecological network "Natura 2000" (*Europäisches Ökologisches Netz "Natura 2000"*) means

the coherent European ecological network "Natura 2000" pursuant to Article

3 of Council Directive 92/43/EEC which consists of the Sites of Community Importance and the European Bird Sanctuaries;

9. conservation objectives (*Erhaltungsziele*) means

restoring or maintaining at a favourable conservation status

- a) the natural habitat types listed in Annex I of Council Directive 92/43/EEC, and the fauna and flora species listed in Annex II of the Council Directive that occur in a specific Site of Community Importance
- b) the bird species listed in Annex I of Council Directive 79/409/EEC and those referred to in Article 4 paragraph 2 of the Council Directive, including their natural habitats, that occur in a European Bird Sanctuary;

10. protection purpose (*Schutzzweck*) means

the protection purpose arising from provisions on protected areas;

11. projects (*Projekte*) means

- a) projects and measures within a Site of Community Importance or within a European Bird Sanctuary, that require a decision taken by an authority, notification to an authority or are carried out by an authority;
- b) interventions in nature and landscape within the meaning of Article 18 that require a decision taken by an authority, notification to an authority or are carried out by an authority and

- c) facilities subject to authorization under the Federal Immission Control Act (*Bundesimmissionsschutzgesetz*) and water uses requiring a permit or licence under the Federal Water Act (*Wasserhaushaltsgesetz*);

if they are likely, either individually or in combination with other projects or plans, to have a significant effect on a Site of Community Importance or on a European Bird Sanctuary, with the exception of projects which are designed directly for the administration of Sites of Community Importance or European Bird Sanctuaries;

12. plans (*Pläne*) means

plans and decisions from prior procedures, that have to be complied with or taken into account in official decisions, if they are likely, either individually or in combination with other plans or projects, to have a significant effect on a Site of Community Importance or on a European Bird Sanctuary, with the exception of plans which are designed directly for the administration of Sites of Community Importance or European Bird Sanctuaries;

13. recreation (*Erholung*) means

nature and leisure experiences designed to be compatible with nature and landscape including sporting activities in the countryside that are compatible with nature and landscape which do not hamper the achievement of the other aims and principles of nature conservation and landscape management.

(2) For the purpose of this Act:

1. animals/ specimens of fauna species^{*}, means
 - a) live specimens of wild fauna species in the wild, or that have been captured, or bred in captivity, and which have not become ownerless; dead specimens of wild fauna species

Translator's note:
^{*}German text: 'Tiere'

- b) eggs (including already empty eggs), larvae, pupae or specimens of any other forms of the life cycle of wild fauna species
- c) readily recognizable parts of wild fauna species
- d) readily recognizable derivatives* of wild fauna species;

2. *plants/ specimens of flora species***, means

- a) in-situ specimens of wild flora, artificially propagated or dead specimens of wild flora species
- b) seeds, fruits or any other morphological forms of development of wild flora species
- c) readily recognizable parts of wild flora species
- d) readily recognizable derivatives of wild flora species;

3. *species* means

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

Translator's note:

* 'Erzeugnisse': derivatives, products

** German text: 'Pflanzen'

4. *population* means

a biologically differentiated or geographically delimited set of individuals;

5. *native species* means

any wild fauna or flora species whose range or regular migratory area partly or completely

- a) is, or at some historical times was, located within the country or
- b) extends into the country naturally;

wild fauna or flora species shall also be considered native if specimens of the species concerned that became wild, or were introduced through anthropogenic activities, gave rise to the establishment of a population in the wild, that has survived within the country over several generations without human assistance;

6. *non-native species* means

any wild species of fauna or flora which does not occur in the wild in the area concerned or has not occurred in the area concerned since more than 100 years;

7. *species of Community interest* means

the species of fauna and flora referred to in Annexes II, IV or V of Council Directive 92/43/EEC;

8. *priority species* means

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

9. *European bird species* means

European indigenous bird species as referred to in Article 1 of Council Directive 79/409/EEC;

10. *specially protected species* means

a) fauna and flora species listed in Annex A or Annex 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 No L 61, page 1, No L 100, page 72, No L 298, page 70), last amended by Council Regulation (EC) No 1579/ 2001 of 1 August 2001 (OJ EC No L 209, page 14) and,

b) where not already covered by letter a) above,

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

bb) "European bird species",

c) fauna and flora species listed in an *Ordinance* (Rechtsverordnung) pursuant to Article 52 paragraph 1;

11. *strictly protected species* means

specially protected species listed in

- a) Annex A of Council Regulation (EC) No 338/97,
- b) Annex IV of Council Directive 92/43/EEC,
- c) in an *Ordinance (Rechtsverordnung) pursuant to Article 52 paragraph 2;*

12. *animals bred* means

specimens of fauna born, or reproduced otherwise, in a controlled environment and whose parents have been acquired in a lawful manner;

13. *artificially propagated plants* means

specimens of flora produced under controlled conditions from seeds, tissue cultures, cuttings, division or separation;

14. *to offer* means

declaring a willingness to sell or to buy; any similar actions, including advertising, arranging for advertising or encouraging others to engage in negotiations for buying or selling;

15. *to circulate* means

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

16. *in a lawful manner*^{*}, means

Translator's note:

^{*} in a lawful manner, legally: 'rechtmäßig'

in compliance with the applicable legal provisions for the protection of the species concerned in the respective country, as well as with legal instruments of the European Communities relating to species conservation, and with the

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), within the framework of their relevant spatial and temporal scope or applicability;

17. *Member State* means

a country that is a member of the European Union;

18. *third country* means

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

19. "zoo" means

a permanent facility in which live specimens of wild animal species are kept for exhibition purposes during at least seven days in a year; the following shall not be classified as zoos within the meaning of the first sentence:

- a) circuses
- b) pet shops and
- c) enclosures for keeping not more than five species of native hoofed game under the scope of the Federal Hunting Act or facilities where not more than five specimens of other wild animal species are kept.

(3) Bartering and provision against payment, for the purpose of use or utilization, shall be equivalent to *sale* within the meaning of this Act.

(4) If the species referred to in paragraph 2 no 10 already enjoyed special protection under the provisions in force until 8 May 1998, the *date of placing under protection* shall be the date arising from such provisions. This shall apply *mutatis mutandis* to the species referred to in paragraph 2 no 11, if such species had been

termed "threatened with extinction" in accordance with the provisions in force until 8 May 1998.

- (5) The terms and definitions of Council Regulation (EC) No 338/97 remain unaffected. Where reference is made, in this Act, to Annexes of Council Regulation (EC) No 338/97, of Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the importation into the Community of pelts and derivatives 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 No L 308, page 1), or to Annexes of Council Directive 92/43/EEC, of Council Directive 79/409/EEC, and of 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 (OJ EC No L 91, page 30), last amended by Council Directive 89/370/EEC of 8 June 1989 (OJ EC No L 163, page 37), or where reference is made to provisions of the aforementioned legal instruments in which reference is made to Annexes, such reference shall be to the versions applicable in accordance with relevant publications in the Official Journal, Part L, of the European Communities.
- (6) The Federal Ministry for the Environment, Nature Conservation und Nuclear Safety shall publish in the Federal Gazette (*Bundesanzeiger*)
1. the sites of Community importance and the European Bird Sanctuaries as well as the 'concertation areas' (*Konzertierungsgebiete*);
 2. the names of specially protected species and strictly protected species, together with the respective date of placing under protection.

Article 11

Provisions concerning Laender Legislation

Except for the provisions in Article 6 paragraph 2, Article 10 paragraph 6, Article 20 paragraph 3, Article 21 and Article 22 paragraph 4 second sentence, Article 33 paragraph 1, second and third sentences, Article 35, first sentence, no 1, and second sentence, Article 36 and Article 37 paragraph 1, Article 38, Article 39 paragraph 2, Articles 42 to 50, Article 52 paragraphs 1 to 8, Articles 53 and 55, Article 57 paragraph 1, Articles 58 and 59 and Articles 61 to 70, the provisions of the present Act shall constitute framework provisions for corresponding legislation by the Federal *Laender*. Where Federal authorities take decisions on projects within the meaning of Article 10 paragraph 1 no 11 or carry out such projects, Article 34 shall, in derogation of the first sentence above, also apply directly.

**Section Two:
Environmental Monitoring and Surveillance, Landscape Planning**

**Article 12
Environmental Monitoring and Surveillance**

- (1) Environmental monitoring and surveillance is incumbent upon the Federation and the Federal *Laender* within the framework of their respective responsibilities.
- (2) It is the purpose of environmental monitoring to assess, evaluate and validate the status of the ecosystem and any changes thereof, the consequences of such changes, impacts on the ecosystem, and the effects of environmental protection measures on the ecosystem.
- (3) In environmental monitoring and surveillance, the Federal Government and the Federal *Laender* shall provide mutual support to one another. They shall harmonize and coordinate their respective monitoring and surveillance measures ensuing from paragraph 2 above.
- (4) The legal provisions governing confidentiality and data protection remain unaffected.
- (5) The Federal *Laender* may lay down additional rules and regulations to be applicable within their respective geographical scope.

Article 13
Tasks and Responsibilities of
Landscape Planning

- (1) It is the task of landscape planning to set out the requirements and measures of nature conservation and landscape management for the planning area concerned and to provide appropriate reasons for the measures planned. Landscape planning also serves to implement the aims and principles of nature conservation and landscape management in other plannings and administrative procedures the resultant decisions of which may have an impact on nature and landscape in the planning area concerned.

- (2) The Federal Laender shall lay down rules and regulations on landscape planning and the applicable procedure in conformity with the provisions of Articles 13 to 17.

Article 14

Contents of Landscape Planning

(1) The requirements and measures of nature conservation and landscape management shall be set out in landscape programmes (*Landschaftsprogramme*) or landscape master plans (*Landschaftsrahmenpläne*) and in landscape plans (*Landschaftspläne*). Such plans shall contain information about:

1. the existing and anticipated status of nature and landscape
2. the concretized aims and principles of nature conservation and landscape management
3. the assessment and evaluation of the existing and anticipated status of nature and landscape on the basis of these aims and principles, including any resultant conflicts
4. the requirements and measures needed
 - a) to avoid, reduce or eliminate adverse effects on nature and landscape
 - b) to protect, manage or develop certain parts or components of nature and landscapes in conformity with Section 4, as well as the biotopes and bio-coenoses of wild fauna and flora species
 - c) in areas which, by virtue of their status, location or natural development potential are particularly suitable for prospective measures of nature conservation and landscape management or for the development of a network of interlinked biotopes

- d) to develop and protect the European ecological network "Natura 2000"
- e) to protect, improve the quality of and allow regeneration of soils, water-bodies, air and climate
- f) to preserve and develop the diversity, characteristic features and beauty of nature and landscapes, also with a view to fundamental human experience, enjoyment and recreation.

The format of graphs, legends, maps or similar material from landscape planning shall allow their inclusion in spatial/ regional plans (*Raumordnungspläne*) and building master plans (*Bauleitpläne*).

- (2) Plannings and administrative procedures shall take account of the contents of landscape planning. In particular, the contents of landscape planning shall be taken into consideration in environmental assessments or when assessing compatibility within the scope of Article 34 paragraph 1. As far as relevant decisions cannot be geared to the contents of landscape planning, appropriate reasons shall be provided.

Article 15

Landschaftsprogramme ('landscape programmes') and Landschaftsrahmenpläne ('landscape master plans')

- (1) Supra-local requirements and measures of nature conservation and landscape management shall be set out in *Landschaftsprogramme* ('landscape programmes') covering the entire territory of a Federal Land, or in *Landschaftsrahmenpläne* ('landscape master plans'), each relating to a specific area of the Federal Land, to be drawn up for the entire territory of the Federal Land concerned. Such programmes and plans shall comply with the objectives of spatial planning and take account of the principles and other requirements of spatial planning.

- (2) The requirements and measures of relevance for spatial/ regional planning referred to in paragraph (1) above shall, after weighing them against the other plans and measures envisaged for a given area, be incorporated into the regional planning programmes (*Raumordnungspläne*) in conformity with relevant planning legislation of the Federal Land concerned.

Article 16
Landschaftspläne
(‘landscape plans’)

- (1) Local requirements and measures relating to nature conservation and landscape management shall be set out in detail for the entire area of the Federal Land concerned in *Landschaftspläne* (‘landscape plans’) drafted on the basis of the *Landschaftsprogramm* (‘landscape programme’) or the *Landschaftsrahmenpläne* (‘landscape master plans’). The ‘landscape plans’ shall be updated when any significant changes to landscape are envisaged, or to be expected. The objectives of spatial planning shall be complied with; the principles and other requirements of spatial planning shall be taken into account.

- (2) It is incumbent upon the Federal Laender to rule on the binding character of the *Landschaftspläne* (‘landscape plans’), particularly with regard to *Bauleitplanung* (municipal development planning). They may rule that contents of ‘landscape plans’ are included in *Bauleitpläne* (building master plans) for describing or stipulating specific features or requirements. They may furthermore provide that the requirement to prepare a ‘landscape plan’ may be waived for parts of municipal areas if the predominant use of the respective area is in conformity with the aims and principles of nature conservation and landscape management and if this has been assured and established in conformity with the provisions of relevant planning legislation.

- (3) If, in the Federal Laender of Berlin, Bremen and Hamburg, the local requirements and measures of nature conservation and landscape management are set out in the *Landschaftsprogramm* (‘landscape programme’) or in *Landschaftsrahmenpläne* (‘landscape master plans’), these plans shall be deemed to substitute the *Landschaftspläne* (‘landscape plans’).

Article 17
Co-operation among the Federal Laender in the
Field of Planning

- (1) When preparing programmes and plans pursuant to Articles 15 and 16, the Federal Laender shall take appropriately into consideration that the implementation of the aims and principles of nature conservation and landscape management in the territory of neighbouring Federal Laender and in the Federal Republic of Germany as a whole, and the interests of nature conservation and landscape management in neighbouring countries, should not be affected or hampered.

- (2) If planning going beyond the territory of a single Federal Land is necessary in view of the prevailing natural conditions, the neighbouring Laender concerned, when drawing up the programmes and plans under Articles 15 and 16, shall consult with each other to jointly define the requirements and measures for the area concerned.

**Section Three:
General Protection of Nature and Landscapes**

Article 18

Interventions in Nature and Landscape

- (1) *Interventions in nature and landscape* within the meaning of this Act are: changes to the shape and appearance or utilization of land* or changes to the groundwater table with its close correlations to inhabited soil compartments, that may significantly impair the ecosystem, or the natural scenery.
- (2) The use of land for agriculture, forestry and fishing is not deemed to be an 'intervention in nature and landscape' where it takes account of the aims and principles of nature conservation and landscape management. Land use for agriculture, forestry and fishing in compliance with Article 5 paragraphs 4 to 6 and the rules of good practice pursuant to relevant legislation for agriculture, forestry and fishing and Article 17 paragraph 2 of the Federal Act on the Conservation of Soils (*Bundes-Bodenschutzgesetz*) is, as a rule, not inconsistent with the aims and principles referred to in the first sentence above.
- (3) Resumption of the use of land for agriculture, forestry or fishing following temporal restrictions or interruption on the basis of contractual arrangements or due to participation in public programmes on utilization restrictions, shall not be deemed to constitute 'intervention in nature and landscape'. This shall be applicable with the proviso that, after the expiry of the utilization restrictions, the use of the respective land for agriculture, forestry or fishing is resumed within an appropriate period of time to be identified by the Federal Laender.
- (4) The Federal Laender may lay down more detailed rules and regulations under paragraphs 1 to 3 above. They may rule that certain changes referred to in

Translator's note:

* 'Grundflächen' = land/ premises

paragraph 1 that normally will not impair the functioning and services of the ecosystem, or the natural scenery, shall not be deemed to constitute an intervention. Similarly they may rule that specific types of change shall be deemed to constitute an intervention if they recurrently fall within the scope of paragraph 1.

- (5) The Federal *Laender* shall lay down further rules and regulations in conformity with the provisions of Articles 19 and 20 and for assuring the implementation of the measures to be taken within the framework of Article 19. Protection provisions concerning protected parts and components of nature and landscapes within the meaning of Section 4 remain unaffected.

Article 19
Obligations of the Intervening Party,
Inadmissibility of Intervention

- (1) The intervening party (*Verursacher*) shall be obligated to refrain from any avoidable impairment of nature and landscape.

- (2) The intervening party shall be obligated to primarily endeavour to offset any unavoidable impairment through measures of nature conservation and landscape management (compensatory measures), or to offset them in some other way (substitute remediation). An impairment shall be considered to have been compensated for (*Ausgleichsmaßnahme*, compensatory measures) as soon as the impaired functions of the ecosystem have been restored and the natural scenery has been restored or re-landscaped in a manner consistent with the landscape concerned. An impairment shall be considered to have been offset in some other way (*Ersatzmaßnahme*, substitute remediation) as soon as the impaired functions of the ecosystem have been substituted in an *equivalent* manner or the natural scenery has been re-landscaped in a manner that is consistent with the landscape. When determining type and scale of any such measures, the programmes and plans pursuant to Articles 15 and 16 shall be complied with.

- (3) The intervention shall not be permitted or carried out if the impairments cannot be avoided or cannot be compensated for within an adequate period of time, or cannot be offset in some other way, and the interests of nature conservation and landscape management take precedence over other interests when weighing all claims on nature and landscape against each other. If biotopes which are irreplaceable for strictly protected species of wild animals and plants they harbour, are destroyed as a consequence of the intervention concerned, the intervention shall only be admissible if justified by imperative reasons of overriding public interest.

- (4) The Federal Laender may lay down more stringent provisions within the framework of paragraphs 1 to 3 above; they may in particular regulate crediting of compensatory measures and stipulate that monetary compensation (monetary substitute remediation) must be provided for impairments that cannot be compensated for or offset in some other way in the case of interventions the Federal Laender may have to permit.

Article 20

Procedures

- (1) The pre-requisite for obligations pursuant to Article 19 is that the intervention concerned requires the decision of an authority, notification to an authority, or is carried out by an authority.
- (2) The authority responsible for the decision, receipt of notification or for carrying out the intervention concerned shall also make the decisions under Article 19 in consultation with the authority responsible for nature conservation and landscape management, unless a more extensive form of involvement and assistance is prescribed, or the authority responsible for nature conservation and landscape management makes the decision itself.
- (3) In cases of intervention in nature and landscape that are preceded by decisions under Article 19 made by Federal authorities or that are carried out by Federal authorities, where such interventions are in derogation of the opinion delivered by the authority responsible for nature conservation and landscape management, the matter shall be decided by the competent portfolio-related Federal authority in consultation with the supreme Land authority for nature conservation and landscape management, unless a more extensive form of involvement is prescribed.
- (4) If any intervention is planned to be carried out on the basis of a specialized plan (*Fachplan*), the measures required under Article 19 to prevent, compensate for or offset in some other way the intervention concerned shall be set out by the planning authority concerned, using both text and maps, in the specialized plan (*Fachplan*) or in an accompanying landscape conservation and management plan (*landschaftspflegerischer Begleitplan*). The accompanying landscape conservation and management plan shall be deemed to be an integral part of the specialized plan (*Fachplan*).

- (5) If the intervention concerned is a project that is subject to an environmental impact assessment in accordance with the Environmental Impact Assessment Act (*Gesetz über Umweltverträglichkeitsprüfung*), the procedure involving decisions under Article 19, paragraphs 1 to 3, must comply with the provisions of the aforementioned Act.

Article 21

Relationship to Building Law

- (1) If 'interventions in nature and landscape' are to be expected as a consequence of the establishment, modification, supplementing, cancelling or repeal of building master plans (*Bauleitpläne*) or municipal by-laws pursuant to Article 34 paragraph 4 first sentence no 3 of the Federal Building Code, decisions concerning avoidance/ prevention, compensation or substitute remediation shall be taken in accordance with the provisions of the Federal Building Code.
- (2) Articles 18 to 20 shall not be applied to projects in areas with *Bebauungspläne* ('development plans') complying with the provisions of Article 30 of the Federal Building Code, nor shall they be applied during any *Planaufstellungsverfahren* ('plan proposal procedure') complying with the provisions of Article 33 of the Federal Building Code, or to parts of built-up areas as specified in Article 34 of the Federal Building Code. The applicability of the provisions governing 'intervention in nature and landscape' remains unaffected in the case of projects planned in areas outside of built-up areas (governed by Article 35 of the Federal Building Code), and in the case of development plans (*Bebauungspläne*) substituting plan establishment procedures (*Planfeststellungsverfahren*).
- (3) Decisions on projects under Article 35 paragraphs 1 and 4 of the Federal Building Code, and on the construction of residential buildings and other structures under Article 34 of the Federal Building Code, shall be taken in consultation with the 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 a period of one month, 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 *Bebauungspläne* ('development plans') complying with Article 30 of the Federal Building Code, during any plan proposal procedure (*Planaufstellung*) complying with the provisions of Article 30 and 33 of the Federal Building Code and in areas governed by municipal by-laws on the basis of Article 34 paragraph 4 first sentence no 3 of the Federal Building Code.

**Section Four:
Protection, Management and Development of
Specific Parts of Nature and Landscapes**

Article 22

Designation as a Protected Area

- (1) The Federal Laender shall provide that parts and components of nature and landscapes may be designated as:
1. *Naturschutzgebiet* ('nature conservation area'), *Nationalpark* ('national park'), *Biosphärenreservat* ('biosphere reserve'), *Landschaftsschutzgebiet* ('landscape protection area'), *Naturpark* ('nature park'), or
 2. *Naturdenkmal* ('natural monument'), or *geschützter Landschaftsbestandteil* ('protected landscape component').
- (2) Such designation (*Schutzerklärung*) shall be based on a description of the area or object to be protected, including the protection purpose (*Schutzzweck*), the orders and prohibitions to be complied with to reach the protection purpose, and, where necessary, the respective management, development and restoration measures, or contain the necessary empowerments. Protected areas referred to in paragraph 1 no 1 above may be divided into zones classified in line with the respective protection purpose; the surrounding area needed for the protection of the respective area or object may be included.
- (3) The Federal Laender shall in particular lay down rules and regulations on:
1. interim protection of parts and components of nature and landscapes;
 2. registration of protected parts and components of nature and landscapes secured as well as those under interim protection;

3. marking of the protected parts and components of nature and landscapes.
- (4) The individual Federal Laender may lay down differing rules and regulations for their respective *Biosphärenreservate* ('biosphere reserves') and *Naturparke* ('nature parks'). Designation of an area as a *Nationalpark* ('national park') is subject to consultation with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, and the Federal Ministry of Transport, Housing and Construction (*Bundesministerium für Verkehr, Bau- und Wohnungswesen*).

Article 23
Naturschutzgebiete
(‘nature conservation areas’)

- (1) *Naturschutzgebiete* (‘nature conservation areas’) are areas designated on a legally binding basis as areas requiring special protection with regard to nature and landscape as a whole or with regard to components thereof
1. in order to preserve, develop or restore biotopes or biocoenoses of certain species of wild fauna and flora,
 2. for scientific reasons, for reasons relating to natural history or national heritage, or
 3. because of their rarity, specifically characteristic features or outstanding beauty.
- (2) Any activity or act that may lead to the destruction of, damage to, or alterations of a *Naturschutzgebiet* (‘nature conservation area’) or components thereof, or which may induce any lasting disturbance or disruption, shall be prohibited, in conformity with more specific rules and regulations. *Naturschutzgebiete* (‘nature conservation areas’) may be open to general access where this is compatible with their protection purpose (*Schutzzweck*).

Article 24
Nationalparke
(‘national parks’)

(1) *Nationalparke* (‘national parks’) are areas designated on a legally binding basis as areas to be protected on a uniform basis that meet the following criteria:

1. The area concerned is an entity of major size with specifically characteristic features;
2. the criteria defined for *Naturschutzgebiete* (‘nature conservation areas’) are met in the greater part of the area, and
3. the greater part of the area concerned is in a status characterized by no or little human impact; or the area concerned is suitable for developing/ being developed into a state which safeguards undisturbed ecosystemary interactions and their natural dynamic processes to the extent possible.

(2) The aim of *Nationalparke* (‘national parks’) is to safeguard, in the greater part of the area concerned, undisturbed ecosystemary interactions and their natural dynamic processes to the extent possible. Where and to the extent to which this is compatible with the protection purpose (*Schutzzweck*), *Nationalparke* should also serve the purposes of scientific monitoring and surveillance, education in the field of natural history, biology and related subjects, as well as enable the general public to experience nature.

(3) The Federal Laender shall ensure that *Nationalparke* receive the same level of protection as that afforded to *Naturschutzgebiete* (‘nature conservation areas’), taking into account their particular protection purpose (*Schutzzweck*) and allowing for exemptions required in view of the size of the area and its human settlements.

Article 25
Biosphärenreservate
(‘biosphere reserves’)

- (1) *Biosphärenreservate* (‘biosphere reserves’) are areas designated on a legally binding basis as areas to be protected and developed on a uniform basis, that meet the following criteria:
1. The area concerned is of major size and shows the characteristic features of specific landscape types,
 2. the criteria defined for *Naturschutzgebiete* (‘nature conservation areas’) are met in essential parts of the area concerned, and the greater part of the remaining area meets the criteria defined for *Landschaftsschutzgebiete* (‘landscape protection areas’),
 3. the area serves the primary purpose of preserving, developing or restoring landscape shaped by traditional, diverse forms of use, along with its historically evolved diversity of species and biotopes, including wild forms and formerly cultivated forms of commercially used or usable animal and plant species, and
 4. the area concerned serves as a model for the development, practical application and testing of particularly sustainable cultivation and management methods, taking account of vulnerable natural resources.
- (2) The Federal Laender shall ensure that biosphere reserves are developed progressively via core zones, management zones and development zones (*Kernzonen, Pflegezonen, Entwicklungszonen*), while allowing for the exemptions required in view of the size of the area and existing human settlements in the area, and that biosphere reserves receive the same level of protection as that afforded to

Naturschutzgebiete ('nature conservation areas') or *Landschaftsschutzgebiete* ('landscape protection areas').

Article 26
Landschaftsschutzgebiete
(‘landscape protection areas’)

- (1) *Landschaftsschutzgebiete* (‘landscape protection areas’) are areas designated on a legally binding basis that require special protection with regard to nature and landscape
1. in order to maintain, develop or restore the functioning of the ecosystem and its services, or the regenerative capacity and sustained usability of natural assets, or
 2. in view of the diversity, characteristic features and beauty of their natural scenery or because of the particular historical and cultural significance of the area concerned and its landscape or
 3. in view of the area’s special significance for human recreation.
- (2) Giving particular attention to Article 5 paragraph 1, and in conformity with more specific rules and regulations, any activities or acts that may change the character of the area concerned, or any activities or acts that are incompatible with the specific protection purpose (*Schutzzweck*), shall be prohibited.

Article 27
Naturparke
(‘nature parks’)

(1) *Naturparke* (‘nature parks’) are areas to be developed and managed on a uniform basis that meet the following criteria:

1. The area concerned is an entity of major size.
2. The area consists mainly of Landschaftsschutzgebiete (‘landscape protection areas’) and/ or Naturschutzgebiete (‘nature conservation areas’).
3. The area is particularly suitable for human recreation because of its landscape assets, and sustainable forms of tourism are striven for.
4. The area has been destined for recreation in accordance with the requirements of spatial planning.
5. The designated area serves the preservation, development or restoration of a landscape shaped by a diversity of different uses, as well as of the diversity of its species and biotopes, and to this end, it is endeavoured to implement the sustainable use of land in this area.
6. The area is particularly well-suited to promote sustainable regional development.

(2) ‘Nature parks’ shall be planned, structured, developed and improved in accordance with their purposes outlined in paragraph (1) above, taking account of the aims and principles of nature conservation and landscape management.

Article 28
Naturdenkmale
(‘natural monuments’)

- (1) Naturdenkmale (‘natural monuments’) are individual creations of nature or corresponding areas of up to 5 ha, designated on a legally binding basis and requiring special protection:
1. for scientific reasons or reasons related to natural history or national heritage
 2. because of their rarity, their characteristic features or their outstanding beauty.
- (2) The removal of a ‘natural monument’, as well as any activities or acts that may induce the destruction of, damage to, or changes to the natural monument, shall be prohibited in conformity with more specific rules and regulations.

Article 29
Geschützte Landschaftsbestandteile
(‘protected components of landscapes’)

(1) Geschützte Landschaftsbestandteile (‘protected components of landscapes’) are parts of nature and landscapes designated as protected components of nature and landscapes on a legally binding basis, that require special protection for the following reasons:

1. to maintain, develop or restore the functioning of the ecosystem and its services,
2. to enliven, structure, or maintain the scenery of a local community or landscape
3. to ward off any adverse impacts, or
4. because of their significance as habitats, sites or living quarters of certain wild species of fauna and flora.

In certain areas this protection may extend to the entire stocks of trees along roads, single rows of trees, individual trees, hedgerows or other landscape components.

(2) The removal of protected components of landscapes, as well as any activities or acts that may induce destruction of, damage to, or changes to ‘protected components of landscapes’, shall be prohibited in conformity with more specific rules and regulations. Any exemption shall only be admissible if the acts or activities referred to are carried out for imperative reasons of traffic safety, provided that

it was not possible to successfully conduct other measures to improve traffic safety. Where existing stocks are reduced in expanse or number, the Laender may rule that they shall be substituted where and to the extent to which this is appropriate, adequate and reasonable.

Article 30
Legally Protected Biotopes

- (1) The Federal Laender shall regulate the prohibition of measures that may lead to the destruction or any other significant or lasting adverse impact on the following biotopes:
1. Natural, near-natural or semi-natural zones of flowing and stagnant inland waters, including their banks and shores and the relevant natural or semi-natural littoral vegetation, as well as their natural or semi-natural silt-up and aggradation areas, bayous and periodically swept flood plains.
 2. Bogs, fens and mires, swamps, reeds, wet meadows with abundant communities of sedges and rushes, headwater areas, and inland habitats of halobionts and halophilous organisms.
 3. Open inland dunes, open natural boulder, scree or rubble slopes, clay and loess walls, shrublet, broom and juniper heathlands, mat-grass communities (Nardus grasslands), xeric grasslands, Calaminarian grasslands, wood- and shrubland of dry and warm locations.
 4. Fenwoods, marshy and alluvial woodland, forest stands of ravines as well as of boulder or rubble and scree slopes.
 5. Open rock formations, alpine grasslands, little perma-snow valleys and dwarf pine shrubland of alpine regions.

6. Rocky shores and cliffs, coastal dunes, spits or barrier beaches, coastal lakes, sea inlets (Bodden coast) with aggradation areas, salt meadows and tidal mud flats in the coastal region, *Zostera* mats and other marine macrophyte populations, reefs, sublittoral sandbanks in the Baltic Sea as well as gravel, coarse sand and shell areas with a large variety of species in the marine and coastal zones.

The Federal Laender may rule that specific other biotopes shall be deemed equivalent to those listed in the first sentence above. They shall take appropriate measures to safeguard the spatial extent and the ecological features of the biotopes concerned.

- (2) The Federal Laender may grant exceptions if adverse impacts on the biotopes can be offset or if the measures concerned are necessary for reasons of overriding public interest. The Federal Laender may also grant exceptions in the event a biotope within the scope of paragraph 1 has developed during the period covered by contractual arrangement or participation in public programmes on utilization restrictions. The provisions of Article 34 shall be observed.

Article 31

Protection of Waters and Littoral Zones

The Federal Laender shall ensure that surface waters, including their littoral zones and strips of vegetation cover alongside water courses, are preserved as habitats and sites for native species of fauna and flora and are further developed in such a way that they are able to fulfill their extensive interlinking functions to ensure connectivity and permeability on a lasting basis.

Article 32

The European "Natura 2000" Network

Articles 32 to 38 serve the implementation of the establishment and protection of the European ecological network "Natura 2000", in particular the protection of Sites of Community Importance and European Bird Sanctuaries. The Federal Laender shall meet their obligations under Council Directives 92/43/EEC and 79/409/EEC, in particular by laying down rules and regulations in conformity with Articles 33, 34, 35 first sentence no 2, and Article 37 paragraphs 2 and 3, of this Act.

Article 33

Protected Areas

- (1) The Federal Laender shall select the sites to be proposed to the EU Commission pursuant to Article 4 paragraph 1 of Council Directive 92/43/EEC and Article 4 paragraphs 1 and 2 of Council Directive 79/409/EEC, in accordance with the criteria specified therein. In this process, the Federal Laender shall consult with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety; the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety on its part shall involve the other Federal ministries concerned in view of their specific subject-related portfolio. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall notify the selected sites to the EU Commission. At the same time the Ministry shall provide the EU Commission with estimates of the Community co-financing needed to enable compliance with Article 6 paragraph 1 of Council Directive 92/43/EEC, including compensatory payments to farmers.

- (2) The Federal Laender shall designate the sites entered in the list of sites of Community importance in accordance with Article 4 paragraph 4 of Council Directive 92/43/EEC, and European Bird Sanctuaries, in line with the respective conservation objectives (*Erhaltungsziele*), as protected parts of nature and landscapes as laid down in Article 22 paragraph 1 of this Act.

- (3) The 'protection declaration' (*Schutzerklärung*) shall set out the protection purpose (*Schutzzweck*) in accordance with the conservation objectives (*Erhaltungsziele*) for the site concerned, as well as the necessary site boundary definitions. The declaration shall also set out whether any *priority biotopes* or *priority species* are to be protected. It shall be ensured through appropriate orders and prohibitions as well as management and development measures that the re-

quirements of Article 6 of Council Directive 92/43/EEC are met. More stringent or more extensive protection provisions shall remain unaffected.

(4) The requirement of placing under protection as set forth in paragraphs 2 and 3 may be waived if equivalent protection is guaranteed by other legal provisions, administrative provisions, powers of disposal held by a public or non-profit body or agency, or by contractual arrangements.

(5) Once a site has been published pursuant to Article 10 paragraph 6,

any plans and projects, measures, changes, disturbances or disruptions that may result in significant adverse effects on parts or components of the site that are of a critical interest for the conservation objectives concerned, shall be inadmissible

1. in a *site of Community importance*, in the interim period until formal legal protection of the site,
2. in a *European Bird Sanctuary*, subject to any special conservation regulations laid down in accordance with Article 22 paragraph 2 of this Act.

In *concertation sites*, any activities or acts referred to in the first sentence of this paragraph shall be inadmissible, where such activity or act could result in significant adverse impacts on any *priority biotope* or *priority species* in the site concerned.

Article 34

Impact Assessment, Inadmissible Projects, Exemptions

- (1) Before approving or carrying out a project, its compatibility with the conservation objectives (*Erhaltungsziele*) of a site of Community importance or a European bird sanctuary shall be assessed. In the case of protected areas pursuant to Article 22 paragraph 1, the compatibility criteria shall derive from the protection purpose (*Schutzzweck*) and the provisions laid down in this context.
- (2) If the assessment shows that the project may give rise to significant adverse effects on a site referred to in paragraph 1 above, affecting the components of the site that are of a critical interest for relevant conservation objectives (*Erhaltungsziele*) or the protection purpose (*Schutzzweck*) concerned, the project shall be deemed inadmissible.
- (3) Any project may only be approved or carried out in derogation of paragraph 2 above
 1. if this project is necessary for imperative reasons of overriding public interest, including those of a social or economic nature , and
 2. if there are no other reasonable* alternatives for achieving the project's purpose at a different location without any or with less serious adverse effects.
- (4) If the site affected by the project contains *priority biotopes* or hosts *priority species*, the only imperative reasons of overriding public interest eligible are reasons 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

* Translator's note:
German text: 'zumutbar'

paragraph 3 no 1 are only eligible for consideration if the competent authority has obtained a relevant prior opinion from the EU Commission, via the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

- (5) If a project under paragraph 3 above, also in conjunction with paragraph 4 above, is to be approved or carried out, the necessary measures to safeguard coherence of the "Natura 2000" European ecological network shall be provided for. The competent authority shall inform the EU Commission, via the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, of the measures taken.

Article 35

Plans

Article 34 shall be applicable *mutatis mutandis* in connection with

1. the determination of routes (*Linienbestimmungen*) pursuant to Article 16 of the Federal Highways Act (*Bundesfernstraßengesetz*), Article 13 of the Federal Waterways Act (*Bundeswasserstraßengesetz*), or Article 2 paragraph 1 of the Act on Acceleration of Traffic Infrastructure Planning (*Verkehrswegeplanungsbeschleunigungsgesetz*), as well as
2. other plans; in the case of spatial/ regional planning schemes (*Raumordnungspläne*) as referred to in Article 3 no 7 of the Federal Regional Planning Act (*Raumordnungsgesetz*): with the exception of Article 34 paragraph 1, first sentence.

Article 34 paragraph 1, second sentence and paragraphs 2 to 5 shall be applicable *mutatis mutandis* to 'building master plans' (*Bauleitpläne*) and municipal bye-laws (*Satzungen*) under Article 34 paragraph 4, first sentence no 3 of the Federal Building Code (*Baugesetzbuch*).

Article 36

Impacts from Emissions

If a facility subject to approval under the Federal Immission Control Act is expected to emanate emissions that, also in combination with other facilities or measures, will in the area affected by the facility have significant adverse impacts on a Site of Community Importance or on a European Bird Sanctuary, affecting components of this site that are of a critical interest for the respective conservation objectives (*Erhaltungsziele*) or the protection purpose (*Schutzzweck*), and if these adverse impacts cannot be compensated for in accordance with Article 19 paragraph 2, this shall be deemed to preclude the approval of the facility unless the prerequisites specified in Article 34 paragraph 3 in conjunction with paragraph 4 have been met. Article 34 paragraphs 1 and 5 shall apply *mutatis mutandis*. Relevant decisions shall be made in consultation with the authorities responsible for nature conservation and landscape management.

Article 37

Relationship to Other Legal Provisions

- (1) Article 34 shall not apply to projects under Article 29 of the Federal Building Code in areas with development plans (*Bebauungspläne*) under Article 30 of the Federal Building Code and during the plan proposal procedure (*Planaufstellung*) under Article 33 of the Federal Building Code. The applicability of Article 34 shall not be affected in the case of projects inside built-up community areas as referred to in Article 34 of the Federal Building Code, in the case of projects outside of built-up community areas under Article 35 of the Federal Building Code and where *Bebauungspläne* (development plans) substitute relevant *Planfeststellungsverfahren* (plan establishment procedures).
- (2) Articles 34 and 36 shall only be applicable to protected parts of nature and landscapes, and to biotopes (natural habitat types) protected under Article 30, in so far as relevant protection provisions, including provisions relating to exceptions and exemptions, do not provide more stringent project-related approval criteria. Obligations pursuant to Article 34 paragraph 4, second sentence, regarding EU Commission involvement, and pursuant to Article 34 paragraph 5, second sentence, regarding notification of the EU Commission, however, remain unaffected.
- (3) Where projects involve interventions in nature and landscape any rules and regulations laid down by the Federal Laender within the framework of Article 19, as well as Articles 20 and 21, shall remain unaffected.

Article 38
Protected Marine Areas
in the Exclusive Economic Zone
and on the Continental Shelf

- (1) Within the framework of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II, page 1799), the provisions of Articles 33 und 34 shall be applied *mutatis mutandis* to the protection of marine areas in the region of the Exclusive Economic Zone and the continental shelf, subject to the following reservations (nos 1 – 5):
1. Restrictions to air traffic, shipping, military uses permitted under international law and scientific marine research projects pursuant to Article 246 paragraph 3 of the United Nations Convention on the Law of the Sea, are not admissible. Article 211 paragraph 6a of the United Nations Convention on the Law of the Sea and other provisions under international law that relate to shipping remain unaffected.
 2. The reasons for refusing scientific marine research projects in conformity with Article 246 paragraph 5 of the United Nations Convention on the Law of the Sea remain unaffected, taking account of the Act on Scientific Marine Research (*Gesetz über die Durchführung wissenschaftlicher Meeresforschung*) of 6 June 1995 (Federal Law Gazette I, pages 778, 785), last amended by Article 24 of the Act of 15 December 2001 (Federal Law Gazette I, page 3762).
 3. Restrictions to fishing are only admissible in conformity with the law of the European Communities and in accordance with the provisions of the Marine Fishing Act (*Seefischereigesetz*) in the version promulgated on 6 July 1998 (Federal Law Gazette I, page 1791), last amended by Article 209 of the Ordinance of 29 October 2001 (Federal Law Gazette I, page 2785).

4. Restrictions on the laying of undersea cables and pipelines are only admissible in compliance with Article 34 and in conformity with Article 56 paragraph 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 only admissible in accordance with Article 34.
- (2) Within the context of paragraph 1 above, the Federal Agency for Nature Conservation shall perform the tasks resulting from the establishment and protection of the European "Natura 2000" network. The first sentence shall not apply to the tasks arising from Article 34 nor to the designation of areas as 'protected parts of nature and landscape' referred to in paragraph 3 of this Article. Protected marine areas shall be selected with the involvement of the general public and subject to the consent of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall involve the Federal Ministries concerned in view of their specific subject-related portfolio and shall arrange for consultation with the riparian Federal Laender to reach agreement.
- (3) Within the context of paragraphs 1 and 2 above the designation of areas as protected parts of nature and landscape pursuant to Article 33 paragraph 2 shall be implemented by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, with the involvement of the Federal Ministries concerned in view of their specific subject-related portfolio, by way of an *Ordinance (Rechtsverordnung)* not requiring the consent of the Bundesrat.

**Section Five:
Protection and Management of Wild Fauna and Flora
Species**

Article 39

Tasks of Species Conservation

- (1) The purpose of the provisions specified in this Section is to protect, conserve and manage the natural and historically evolved diversity of species of wild fauna and flora. Species conservation comprises the following tasks:
1. The protection of fauna and flora species, as well as of their biocoenoses, from adverse human impacts.
 2. The protection, management, development and restoration of the biotopes of wild fauna and flora species and the safeguarding of their other life supports and living conditions.
 3. The introduction and establishment of displaced species of wild fauna and flora in appropriate biotopes within their natural area of distribution.
- (2) The provisions of plant protection legislation, animal protection legislation, legislation on disease control and livestock epidemics as well as forestry, hunting and fishing legislation shall remain unaffected by the provisions of this Section or rules and regulations laid down on the basis of and within the framework of the provisions of this Section. Where within the framework of hunting and fishing legislation no particular provisions relating to the protection, conservation and management of the species concerned exist or are laid down, the provisions of this Section and rules and regulations laid down on the basis of and within the framework of this Section shall be applicable without prejudice to the rights of those who are licensed under hunting and fishing law to practice hunting or fishing.

Article 40
General Provisions
on the Conservation of Species and of their Biotopes (Natural Habitats)

- (1) For preparing, executing and supervising the tasks under Article 39 paragraph 1, the Federal Laender shall take appropriate action
1. to assess, describe, evaluate and validate populations, biocoenoses and biotopes of wild fauna and flora species of significance from the point of view of species conservation, including the species of Community interest, the 'European bird species' and the species that enjoy special protection or other species whose survival is endangered,
 2. to define and implement conservation, management and development objectives.
- (2) To implement the conservation of species and their biotopes (*natural habitats*), the Federal Laender shall lay down further rules and regulations, in particular on the conservation of biotopes of wild fauna and flora species.

Article 41
General Protection
of Wild Fauna and Flora

(1) The Federal Laender shall lay down rules and regulations for the protection of wild fauna and flora. In particular, compliance with the following requirements shall be assured thereby:

1. not to wilfully disturb specimens of wild fauna, or to capture, injure or kill them without good cause,
2. not to remove, without good cause, specimens of wild flora from their sites, or to use them, to fell them or to knock them down or destroy them in any other way,
3. not to damage or destroy, without good cause, the habitats and sites of wild fauna and flora species,

where Article 42 paragraph 1 does not provide for more stringent protection.

2) In compliance with Article 22 of Council Directive 92/43/EEC and Article 11 of Council Directive 79/409/EEC and Article 8, letter h of the Convention on Biological Diversity of 5 June 1992 (Federal Law Gazette 1993 II, page 1471), the Federal Laender shall take appropriate measures to preclude the risks involved in any adulteration of the fauna or flora of the Member States through the introduction, establishment and spread of non-native fauna or flora. They shall in particular lay down rules and regulations on permits that may be granted for the introduction of specimens

1. of non-native species of fauna and
2. non-native species of flora

in the wild. Any permit shall not be granted if the risk of adulterating the fauna or flora of the Member States, or any endangerment of the survival or abundance of wild fauna or flora species of the Member States, or of populations of such species, cannot be excluded. The following shall be exempt from the requirement to obtain a permit:

1. Cropping in agriculture and forestry
 2. The introduction and use of specimens of
 - a) native fauna species
 - b) non-native fauna species, if their introduction and use requires authorization under plant protection legislation, taking account of the requirements of species conservation,
for biological methods of plant protection.
 3. The introduction of specimens of native fauna species that are subject to the provisions of hunting and fishing legislation.
- (3) The Federal Laender may lay down further rules and regulations; in particular they may determine the requirements under which taking in the wild of specimens of wild fauna or flora *not* subject to special protection, is admissible.

Article 42
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 any wild specimen of specially protected fauna species, or to remove from the wild, damage, or destroy any forms of their life-cycle, their nesting or breeding sites, other living quarters or inhabited sites or any other places of refuge;
2. to cut, pick, uproot or tear off, dig up, damage or destroy any wild specimen of specially protected flora species, or parts or morphological forms of development thereof;
3. to disturb any wild specimen of strictly protected wild fauna species or 'European bird species' at their nesting or breeding sites, other living quarters or inhabited sites or any other places of refuge, by searching for them, photographing or filming them, or by any similar action;
4. to impair or destroy the sites of strictly protected wild flora species by searching for such specimens, photographing or filming them, or by any similar action.

(2) It is furthermore prohibited:

1. to gain possession of, or take in custody, have possession of or keep in custody, handle, work or process any specimen of specially protected fauna and flora species
(prohibitions on possession);

2. a) to sell, buy, offer for purposes of sale or purchase, keep in stock or transport for purposes of sale
- b) to acquire, display to the public or use in some other way for commercial purposes
(prohibitions on marketing)

specimens of the specially protected fauna and flora species referred to in Article 10 paragraph 2 no 10 letters b and c.

Article 9 of Council Regulation (EC) 338/97 remains unaffected.

(3) The prohibitions on possession and marketing shall also be applicable to

1. goods covered by the Annex of Council Directive 83/129/EEC that, in contravention of Articles 1 and 3 of this Directive, entered the Community after 30 September 1983,
2. fauna and flora species designated by way of *Ordinance (Rechtsverordnung)* pursuant to Article 52 paragraph 4.

Article 43

Exceptions and Exemptions

(1) Unless otherwise specified in an *Ordinance (Rechtsverordnung) pursuant to Article 52 paragraph 5*, the following shall be exempt from the prohibitions on possession:

1. specimens of specially protected fauna or flora species that were legally
 - a) bred within the territory of the Community and have not become ownerless; produced through artificial propagation, or taken in the wild;
 - b) transferred into the Community from third countries;
2. specimens of fauna or flora species referred to in Article 42 paragraph 3 no 2 that were legally acquired within the Community before inclusion of the species in an *Ordinance (Rechtsverordnung) pursuant to Article 52 paragraph 4*.

The first sentence no 1 letter b shall not apply to specimens of fauna and flora species referred to in Article 10 paragraph 2 no 10 letter b that were directly transferred to the country, from a third country, *without* any exception authorization (*Ausnahmegenehmigung*) pursuant to paragraph 8, second sentence, or exemption (*Befreiung*) pursuant to Article 62, after 3 April 2002. In derogation of the second sentence, dead specimens of European bird species referred to in Article 10 paragraph 2 no 10 letters b sub-letter bb, provided that they are subject to hunting legislation in accordance with Article 2 paragraph 1 of the Federal Hunting Act (*Bundesjagdgesetz*), may be brought directly into the country from a third country as personal or household effects without requiring any exception authorization (*Ausnahmegenehmigung*) or exemption (*Befreiung*).

(2) Where, pursuant to paragraph 1 above, specimens of specially protected fauna or flora species are not subject to prohibitions on possession, they shall also be exempt from the prohibitions on marketing. Without prejudice to any *Ordinance (Rechtsverordnung) pursuant to Article 52 paragraph 5*, this shall not apply to

1. specimens of strictly protected fauna and flora species
2. 'European bird species'

taken from the wild.

(3) In derogation of paragraph 2 second sentence, the following specimens shall be exempted from prohibitions on marketing:

1. specimens of strictly protected fauna or flora species that were legally acquired before the date of their placing under protection as 'species threatened with extinction' or 'strictly protected species',
2. specimens of 'European bird species' that were legally acquired before 6 April 1981 or that are listed in Annex III Part 1 of Council Directive 79/409/EEC,
3. specimens of fauna or flora species under Council Directive 92/43/EEC and Council Directive 79/409/EEC that have been approved in a Member State, in compliance with the Council Directives, for actions referred to in Article 42 paragraph 2 first sentence no 2.

(4) The prohibitions specified in Article 42 paragraphs 1 and 2 shall not apply if the actions are associated with

the use of land for agricultural, forestry and fishery purposes in the framework of

and in line with the terms of good practice* and in accordance with the requirements set forth in Article 5 paragraphs 4 to 6, and for recovery of the products obtained in this way, or

in the case of an intervention that has been permitted pursuant to Article 19, or with an environmental impact assessment carried out in accordance with the Environmental Impact Assessment Act (*Gesetz über die Umweltverträglichkeitsprüfung*), or in the case of a measure that has been permitted in conformity with Article 30,

as far as these actions do not imply any intentional impairment to specimens of specially protected fauna species, including their nesting and breeding sites, other living quarters or inhabited sites, or any other places of refuge, or to specimens of specially protected flora species.

More stringent protection provisions of the Federal Laender shall remain unaffected.

- (5) In derogation of the prohibitions on possession and marketing, it is admissible, subject to relevant provisions of hunting and fishing legislation, to remove from the wild animals or plants that have been found dead, and to deliver them to the institution designated by the competent authority of the Federal Land concerned, or, provided they do not belong to the strictly protected species of fauna or flora, to use them for purposes of research or teaching or for preserving/ preparing them for such purposes.
- (6) In derogation of the prohibitions specified in Article 42 paragraph 1 no 1 and of prohibitions on possession, it is also admissible, subject to relevant provisions of hunting legislation, to take in injured, helpless or sick animals in order to restore

Translator's note:

* German text: 'gute fachliche Praxis'

them to health. Such specimens shall be released back into the wild without delay as soon as they are able to survive there without human assistance. In other cases, they shall be delivered to the institution designated by the competent authority of the Federal Land concerned. In the case of specimens of strictly protected fauna species, the person who takes in the specimen shall notify the competent authority of the Federal Land concerned of this fact. The competent authority of the Federal Land concerned may demand the surrender of the specimen in question.

- (7) The competent authorities pursuant to Article 44 and Article 45 paragraph 1 or pursuant to the legislation of the Federal Land concerned may grant exceptions to the prohibitions on possession or marketing, where this is necessary for the utilization of confiscated or impounded specimens of fauna or flora and does not conflict with legal instruments of the European Communities.
- (8) Further exceptions to the prohibitions specified in Article 42 may be granted by the competent authorities of the Federal Land concerned where this is necessary for any of the following reasons:
1. to avert significant damage in the sectors of agriculture, forestry, fishery, water management or other public-benefit sectors;
 2. to protect native fauna and flora, or
 3. for purposes of research, teaching, re-introduction, or for measures of breeding or artificial propagation that support such purposes.

In cases of transfer from third countries, the Federal Agency for Nature Conservation may in individual cases grant further exceptions to the prohibitions specified in Article

42, in order to enable reasonable use^{*}, under controlled conditions, of specimens of certain fauna and flora species under Article 10 paragraph 2 no 10 letter b, and of bred or artificially propagated specimens of such species. Exceptions pursuant to the first and second sentences of this paragraph may only be granted where this does not imply adverse effects on the survival and abundance of the population or species concerned, where this

is in compliance with Article 16 paragraph 1 of Council Directive 92/43/EEC and Article 9 paragraphs 1 and 2 of Council Directive 79/409/EEC and

where this is not in conflict with the provisions of any *Ordinance pursuant to Article 52 paragraph 5*, or with other species conservation interests, or obligations arising from international conventions relating to species conservation. The Governments of the Federal Laender may generally permit the exceptions referred to in the first sentence above, by way of ordinance (*Rechtsverordnung*), provided that the fauna and flora species concerned do not belong to the strictly protected species. The Governments of the Federal Laender may transfer their authority pursuant to the third sentence above to other Land authorities, by way of ordinance (*Rechtsverordnung*).

Translator's note:

* German text: 'vernünftige Nutzung'

Article 44

Competencies

(1) The following authorities shall act as the *management authorities* referred to in Article 13 paragraph 1 of Council Regulation (EC) No 338/97 and of Article IX of the Convention on International Trade in Endangered Species of Wild Fauna and Flora:

1. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety,
with respect to dealings with other Parties to the Convention and with the Secretariat (Article IX paragraph 2 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora), with the exception of the tasks specified in no 2, letters a and c, and no 4,
and in connection with the tasks specified in Article 12 paragraphs 1, 3 and 5, Article 13 and Article 15 paragraphs 1 and 5, and Article 20 of Council Regulation (EC) No 338/97, while
2. the Federal Agency for Nature Conservation
shall be responsible for
 - a) granting import and export permits and re-export certificates under Article 4 paragraphs 1 and 2 and Article 5 paragraphs 1 and 4 of Council Regulation (EC) No 338/97 as well as other documents as laid down in Article IX paragraph 1 letter a of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and for dealings with the Secretariat, the Commission of the European Communities and with authorities of other Parties and non-Parties to the Convention in the context of applications for permits or in the prosecution of violations of

import or export regulations as well as for the tasks specified in Article 15 paragraph 4 letters a and c;

- b) approval of exemptions pursuant to Article 8 paragraph 3 of Council Regulation (EC) No 338/97 in cases of imports;
 - c) the registration of operations in which specimens are bred or artificially propagated for commercial purposes, as specified in Article VII paragraph 4 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and for notification to the Secretariat of the registration procedure referred to in Article 7 paragraph 1 no 4 of Council Regulation (EC) No 338/97 (in conformity with Article IX paragraph 2 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora);
3. the customs offices published in accordance with Article 45 paragraph 3 shall be responsible for monitoring transboundary goods traffic with *third countries*;
 4. the Federal Customs Administration shall be responsible for the exchange of information with the Secretariat on matters related to the combating of crime in the field of species protection;
 5. the competent authorities of each Federal Land concerned: for all other responsibilities under Council Regulation (EC) No 338/97.

(2) The Federal Agency for Nature Conservation shall act as the *scientific authority* referred to in Article 13 paragraph 2 of Council Regulation (EC) No 338/97.

Article 45

Assistance from Customs Authorities

- (1) The Federal Ministry of Finance, and the customs offices designated by it, shall participate in monitoring the importation and exportation of specimens of fauna and flora species that are subject to import and export regulations under legal instruments of the European Communities and in monitoring with respect to the prohibitions on possession and marketing applicable pursuant to this Section in goods traffic with third countries.
- (2) The Federal Ministry of Finance shall have authority to regulate, in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, the details of the procedure arising from paragraph 1 above by way of *Ordinance not requiring the consent of the Bundesrat*; where necessary, it may also provide for obligations to notify, register, provide information or assistance, as well as the obligation to tolerate inspections of business papers and of other documents, or of premises, and to tolerate the removal of non-payable samples and specimens.
- (3) The names of the customs offices clearing specimens of fauna and flora species for importation or exportation shall be provided by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, in agreement with the Federal Ministry of Finance, for publication in the *Bundesanzeiger* (Federal Gazette). Special reference shall be made to offices attending to the customs clearance of live specimens of plants or animals.

Article 46

Import and Export Procedures

- (1) Any person who imports or exports specimens of fauna or flora species that are subject to import or export regulations pursuant to legal instruments of the European Communities shall register such specimens of fauna and flora with a customs office published in accordance with Article 45 paragraph 3, present to the relevant customs office any permits or other documents required for such imports or exports and shall furthermore, upon request, present such specimens of fauna or flora for inspection.

- (2) In the case of live animals, the importer or exporter shall communicate the expected time of arrival to the customs office responsible for customs clearance not later than 18 hours prior to their arrival, indicating the type/ species and number of such specimens.

Article 47

Confiscation and Impounding by Customs Offices

- (1) In cases where customs offices are in doubt as to whether specimens of fauna or flora belong to species or populations that are subject to import or export restrictions pursuant to legal instruments of the European Communities or to prohibitions on possession or marketing pursuant to the provisions of this Section, they may take such specimens of fauna or flora into their own custody, or place them in the custody of third parties, at the expense of the person authorized to dispose of them, until such doubts have been removed; they may also leave them in the custody of the person authorized to dispose of them, on condition that they shall not dispose of them. To clarify the doubts, the customs offices may request the person authorized to dispose of such specimens, to submit a certificate issued by an independent expert institution or person, recognized as such by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, confirming that the specimens of fauna or flora concerned do not belong to any species or populations that are subject to import or export restrictions pursuant to legal instruments of the European Communities or to prohibitions on possession or marketing pursuant to the provisions of this Section. Where the doubts prove to be unfounded, the Federal Government shall reimburse any expenses incurred in acquiring certificates and the additional costs of placing in custody.

- (2) In cases where it is found during the customs controls that specimens of fauna or flora are being imported or exported without the prescribed permits or other documents, the specimens of fauna or flora concerned shall be confiscated by the customs office. Confiscated specimens of fauna or flora may be left in the custody of the person authorized to dispose of them, on condition that they shall 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 specimens of fauna or flora to be impounded; the customs office may grant a

reasonable extension not exceeding a total of six months. In cases where the specimens of fauna or flora concerned are found to belong to a category for which the granting of any import or export permits is inadmissible, they shall be impounded immediately.

- (3) In cases where it is found during the customs controls that import or export of the specimens of fauna or flora concerned conflicts with the prohibitions on possession and marketing, paragraph 2 above shall apply *mutatis mutandis*.
- (4) In cases where specimens of confiscated or impounded fauna or flora are sold, the proceeds shall be paid to the owners if they can prove that, through no fault of their own, they were unaware of the facts and circumstances that gave rise to confiscation or impounding. Third parties whose rights are extinguished by impounding or sale shall receive compensation from the proceeds under the conditions mentioned in the first sentence above.
- (5) In cases where specimens of fauna or flora are confiscated or impounded, the costs thus incurred, in particular for care, housing or storing, transport, return or utilization/processing shall be paid by the importers or exporters; where their identity cannot be established, such costs shall be paid by the senders, carriers or recipients if these were aware, or should have been aware, of the facts and circumstances that gave rise to confiscation or impounding.
- (6) Article 8 paragraph 6 and Article 16 paragraphs 3 and 4 of Council Regulation (EC) No 338/97 remain unaffected.

Article 48

Charges

- (1) The Federal Agency for Nature Conservation shall collect charges (fees and expenses) for its official acts performed in accordance with the provisions of this Section.

- (2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority to establish regulations by way of *Ordinance not requiring the consent of the Bundesrat*, subject to prior agreement with the Federal Ministry of Finance, the Federal Ministry of Consumer Protection, Food and Agriculture and the Federal Ministry of Economics and Technology^{*}, specifying the facts on which to base the fees, as well as specific fixed rates or rates varying between certain limits. The costs to be paid may be regulated in derogation of the Administrative Expenses Act (*Verwaltungskostengesetz*).

Translator's note:

^{*}Now: Federal Ministry of Economics and Labour (Bundesministerium für Wirtschaft und Arbeit)

Article 49

Obligation to Furnish Proof, Confiscation

(1) Persons who possess, or have actual control over:

1. live specimens of specially protected fauna or flora species, their living or dead morphological forms of development, or essentially intact dead specimens of specially protected fauna or flora species, or
2. readily recognizable parts of specimens of strictly protected fauna or flora species, or readily recognizable derivatives thereof, or
3. living specimens of fauna or flora species specified in Article 42 paragraph 3 no 2,

may claim to have a right to such possession or control vis-à-vis the competent authorities of the Federal Land concerned only if they are able upon request to produce conclusive evidence substantiating their claim, or if they can prove that they or third parties were in possession of the specimens of fauna or flora concerned before the date of placing under protection as specially protected species or prior to their inclusion in an *Ordinance pursuant to Article 52 paragraph 4*.

(2) Paragraph 1 above shall not apply if the derivatives referred to in paragraph 1 no 2 are serving as personal or household effects. Where plants or animals were acquired before the date of placing under protection as specially protected species or prior to their inclusion in an *Ordinance pursuant to Article 52 paragraph 4* and serve as personal or household effects, it shall be sufficient to furnish prima facie evidence instead of submitting proof as specified in paragraph 1. Prima facie evidence may only be requested if there are facts justifying the assumption that relevant claims are unjustified.

- (3) Where, pursuant to Articles 8 and 9 of Council Regulation (EC) No 338/97, proof of authorization for actions mentioned in these Articles is required, or such proof requires provision of certain documents, such proof shall be provided in the manner prescribed in the aforementioned Regulation.
- (4) Specimens of fauna or flora for which holders can neither produce substantiating evidence, nor furnish prima facie evidence, may be confiscated by the competent authorities of the Federal Land concerned. Article 47 shall apply *mutatis mutandis*; Article 47 paragraph 1 second sentence shall be applicable with the proviso that the submission of certification from a different independent expert agency or individual may also be requested.

Article 50

Rights of Information and of Access

- (1) Upon request, individuals, legal entities and unincorporated associations shall provide the competent authorities pursuant to Article 44 of this Act or pursuant to provisions in effect in the Federal Land concerned, with the information required for the implementation of legal instruments of the European Communities, or provisions contained in this Section, or any legal provisions laid down for the purpose of their implementation.
- (2) Where necessary, persons appointed by the authorities referred to in paragraph 1, may, within the framework of paragraph 1 above, during operating times and business hours enter the premises, buildings, rooms, vehicles and other means of conveyance, used for business or other operations by persons obliged to furnish information, and inspect cases, containers and business documents. Persons obliged to furnish information shall assist the inspectors in their work as far as necessary and present their business documents upon request.
- (3) Persons obliged to furnish information may refuse to answer questions which would make them, or any of their relatives as specified in Article 383 paragraph 1 nos. 1 to 3 of the Code of Civil Procedure (*Zivilprozeßordnung*), liable to criminal prosecution or to proceedings under the Administrative Offences Act (*Gesetz über Ordnungswidrigkeiten*).

Article 51

Zoos

The Federal Laender shall meet the obligations arising from Council Directive 1999/22/EEC of 29 March 1999 on the keeping of wild animals in zoos (OJ EC No L 94, page 24), in particular by laying down rules and regulations where these obligations have not already been met by the Federal Animal Protection Act (*Tierschutzgesetz*) or by rules and regulations laid down on the basis of the Federal Animal Protection Act . In this context the Federal Laender shall assure that the zoos implement the conservation measures referred to in Article 3 of the Directive. The Federal Laender may provide that a licence for the establishment and operation of a zoo required under Land legislation to meet the obligations referred to in the first sentence, includes the authorization pursuant to Article 11 paragraph 1 no 2a of the Federal Animal Protection Act. Where animal protection legislation at Federal level does not provide any more specific requirements for the keeping of animals in zoos, the Federal Laender may lay down rules and regulations on relevant requirements, applying Article 2a paragraph 1 of the Federal Animal Protection Act *mutatis mutandis*.

Article 52
Authorizations

- (1) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority to place fauna and flora species not falling under Article 10 paragraph 2 no 10, letter a or b, or populations of such species, under special protection by way of *Ordinance with the consent of the Bundesrat* provided that the species concerned are native species whose survival in Germany is endangered due to human acts or activities, or species that may be confused with such endangered species or with species referred to in Article 10 paragraph 2 no 10 letter b.
- (2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority to place the following under strict protection by way of *Ordinance with the consent of the Bundesrat*:
1. certain
 - a) fauna and flora species listed in Annex B of Regulation (EC) 338/97
 - b) European bird specieswhich enjoy special protection in accordance with Article 10 paragraph 2 no 10, letter a or b
 2. certain other fauna or flora species referred to in paragraph 1 above,

provided that the species concerned are native species at risk of extinction in Germany.
- (3) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority

1. to specify in greater detail what parts or derivatives of specimens of specially protected fauna or flora species shall be considered readily recognizable within the context of Article 10 paragraph 2 no 1, letters c and d or no 2, letters c and d,
2. to exempt certain specially protected species or specific origins of specially protected fauna or flora species, as well as bred or artificially propagated specimens of specially protected fauna or flora species, entirely, in part or under certain conditions from the prohibitions of Article 42, provided that this does not endanger the purpose of protection (*Schutzzweck*) and does not conflict with Articles 12, 13 and 16 of Council Directive 92/43/EEC, Articles 5 to 7 and 9 of Council Directive 92/409/EEC, other legal instruments of the European Communities, or obligations arising from international conventions relating to species conservation,

by way of *Ordinance* with *the consent of the Bundesrat*.

- (4) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority to designate, by way of *Ordinance* with *the consent of the Bundesrat*, non-native fauna and flora species not subject to special protection to which the prohibitions of Article 42 paragraph 2 are applicable on the basis of Article 42 paragraph 3 no 2, where this is necessary in view of the risk of adulteration of the fauna or flora in the Member States or because of the endangerment of the survival or abundance of wild fauna or flora species of the Member States, or of populations of such species.
- (5) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority, where necessary for reasons of species conservation and not in conflict with legal instruments of the European Communities, to prohibit or restrict:

1. the keeping or breeding of specimens of fauna

2. the circulation of specimens of fauna or flora

of certain specially protected species and of specimens of the fauna or flora species designated by way of *Ordinance pursuant to Article 52 paragraph 4*.

(6) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority where necessary for reasons of species conservation, in particular in order to meet the obligations arising from Article 15 of Council Directive 92/43/EEC, Article 8 of Council Directive 79/409/EEC, or from international conventions relating to species conservation, to restrict or prohibit, by way of *Ordinance with the consent of the Bundesrat*,

1. the production, circulation or use of certain equipment, agents, tools or devices by which specimens of wild fauna or flora species may be killed, fought, captured or destroyed in major quantities or on a non-selective basis;

2. actions or methods that may lead to the disappearance or other significant adverse impacts on populations of wild fauna or flora species,

The first sentence no 1 shall not apply to equipment, agents, tools or devices requiring a licence on the basis of other legal provisions, provided that the interests of species conservation are to be taken into account in relevant licensing.

(7) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall also have authority to lay down provisions, by way of *Ordinance with the consent of the Bundesrat*, concerning

1. record-keeping obligations for those who handle, work or process, buy, sell or acquire from others specimens of specially protected fauna or flora spe-

cies for commercial purposes, specifying in particular what persons are obliged to keep records, subject matter and scope of the data requested, period of obligation to preserve these data and their review by the competent authorities of the Federal Land concerned;

2. marking of specimens of specially protected fauna and flora species for the purpose of supplying evidence pursuant to Article 49;
3. certification of legal acquisition of specimens of fauna and flora for the purpose of supplying evidence in accordance with Article 49;
4. obligations to notify possession of
 - a) specimens of specially protected fauna or flora species,
 - b) specimens of fauna or flora species designated by way of *Ordinance pursuant to Article 52, paragraph 4*,

in order to facilitate monitoring and surveillance with regard to prohibitions of possession and marketing.

(8) Any Ordinance pursuant to paragraphs 1 to 7 requires prior agreement with the Federal Ministry of Consumer Protection, Food and Agriculture in so far as it relates

1. to species of fauna that are subject to hunting or fishing legislation
2. to species of fauna used for biological plant protection, or
3. to plants obtained by artificial propagation, or to plants suitable for silvicultural use.

Any ordinance pursuant to paragraph 6 first sentence no 1 and paragraph 7, nos 1, 2 and 4 requires agreement with the Federal Ministry of Economics and Technology*.

- (9) Where the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety chooses not to exercise its authority pursuant to paragraphs 4 to 7, the Federal Laender may lay down corresponding rules and regulations.

Translator's note:

* Now: 'Federal Ministry of Economics and Labour' (Bundesministerium für Wirtschaft und Arbeit)

Article 53
Overhead Power Lines
and
Bird Protection

To protect bird species, all newly constructed power poles and technical components of medium-voltage power lines shall be designed in such a way that birds are protected from electrocution. On existing power poles and technical components of medium-voltage power lines that pose a high risk to birds, the necessary measures to protect birds against electrocution shall be implemented within a period of ten years. The first and second sentences above shall not apply to the overhead power lines of the railways.

Article 54

Further Provisions at Laender Level

The Federal Laender may lay down rules and regulations on the special protection of other wild native species of fauna and flora, in particular with respect to species listed in Annex V of Council Directive 92/43/EEC, where this is necessary in view of the risks posed by human acts or activities to the survival of the species concerned, or in order to safeguard the purposes outlined in Article 14 paragraph 1 of the Council Directive, in the respective Federal Land. The first sentence above shall not apply to species of fauna that are subject to hunting legislation in accordance with Article 2 paragraph 1 of the Federal Hunting Act (*Bundesjagdgesetz*).

Article 55

General Administrative Provisions

It is incumbent upon the Federal Government, with the consent of the *Bundesrat*, to issue the general administrative provisions needed to implement legal instruments of the European Communities, the provisions of Article 42 paragraphs 2 and 3, Articles 43 and 49, or any *Ordinance pursuant to Article 52 paragraphs 5 and 7*. Approval by the *Bundesrat* is not required where the general administrative provisions concern Federal Government authorities.

**Section Six:
Access to Nature and Landscapes
for the Purpose of Recreation**

**Article 56
Access of the General Public**

For purposes of recreation the Federal Laender shall permit access, on roads and trails, to land used for agriculture and forestry, as well as to plots of land which are not in use, at the individual's own risk. The Federal Laender may provide more extensive rules and regulations. They may also restrict access to areas where there are important reasons, in particular in order to protect nature and landscape, fields and farming, the interests of persons seeking rest and relaxation, or in order to prevent significant damage, or to protect other interests of landowners deserving protection; the Federal Laender may also deem other uses to be equivalent to access either entirely or in part. Any permit-free use of surface waters is governed by Articles 23 and 24 of the Federal Water Act (*Wasserhaushaltsgesetz*) and the water laws enacted by the Federal Laender.

Article 57
Allocation of Public Land
for Purposes of Recreation

(1) The Federation (*Bund*) shall earmark adequate portions of appropriate land in its ownership or possession which because of its particular features is suitable for the general public's recreation, such as

1. land on river banks and at lake and sea shores
2. land with beautiful parts or components of landscape
3. land facilitating access to otherwise inaccessible, or not adequately accessible, forests, lakes and beaches

and make it available for purposes of recreation if and to the extent to which this is compatible with sustainable use and the other aims and objectives of nature conservation and landscape management and does not conflict with any other public purpose for which it may have been earmarked already.

(2) The Federal Laender shall lay down rules and regulations on the allocation of public land for recreational purposes within their own area of responsibility as well as for application at the levels of municipalities, associations of local governments and other persons under public law, by applying paragraph 1 above *mutatis mutandis*.

**Section Seven:
Participation of Associations**

Article 58

**Associations Recognized by the Federal Ministry for the Environment,
Nature Conservation and Nuclear Safety**

(1) Incorporated associations recognized by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be given the opportunity to express their views and to have access to the pertinent expert opinions

1. during the preparation of ordinances (*Verordnungen*), and other legal instruments 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;
2. during plan establishment procedures (*Planfeststellungsverfahren*) conducted by Federal authorities where these relate to projects involving intervention in nature and landscape and where the association's scope of activity covers the territory of the Federal Laender to which the procedure relates;
3. in the case of plan approvals (*Plangenehmigungen*) issued by Federal authorities that substitute any plan establishment procedure (*Planfeststellungsverfahren*) referred to in no 2 above, and for which the involvement of the general public has been provided for,

where the project relates to the association's scope of activities as defined in its Articles of Association.

(2) Article 28 paragraph 2 nos 1 and 2, paragraph 3 and Article 29 paragraph 2 of the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*) shall apply *mu-*

tatis mutandis. Relevant similar, or more extensive, forms of participation and involvement prescribed in other legal provisions shall remain unaffected.

- (3) Paragraph 1 nos 2 and 3 shall also apply to associations recognized by the Federal Laender in conformity with Article 60 where the issue concerned relates to their respective scope of activity.

Article 59

Recognition by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety

(1) Recognition is subject to prior application. It shall be granted if the association* concerned meets the following criteria:

1. The main purpose of the association, as defined in its Articles of Association is to promote, for non-pecuniary purposes and not merely for a limited period of time, the causes of nature conservation and landscape management.
2. The scope of activity of the association extends beyond the territory of one Federal Land.
3. At the time of recognition, it has existed for at least three years, and has been active within the scope defined in no 1 during this period.
4. There is sufficient evidence confirming that the association will do appropriate work within the relevant scope; the assessment shall, inter alia, take into account the type and scope of the association's past activities as well as composition and active potential of its membership community.
5. Because of its non-profit character, the association is exempt from corporate income tax pursuant to Article 5 paragraph 1 no 9 of the Corporate Income Tax Act (*Körperschaftsteuergesetz*).
6. Membership associated with full voting rights in the general assembly of members is open to anyone who supports the association's objectives. In the case of associations merely consisting of juridical persons, the requirement

Translator's note:

* German text: 'Verein'

mentioned in the first sentence may be waived provided that the *majority* of the juridical persons concerned meet this requirement.

The recognition document shall identify the field of activities, as specified in the Articles of Association, to which the recognition relates.

- (2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall be the agency delivering recognition.

Article 60
Associations Recognized by the Federal
Laender

- (1) The Federal Laender shall lay down rules and regulations concerning the involvement and recognition of incorporated associations*, in conformity with the provisions set forth in paragraphs 2 and 3.
- (2) Associations that have been granted recognition by Federal Laender shall be given the opportunity to express their views and to inspect and examine pertinent expert opinions
1. during the preparation of ordinances (*Verordnungen*), and other legal instruments ranking below laws, by the Laender authorities responsible for nature conservation and landscape management,
 2. during the preparation of the plans and programmes referred to in Articles 15 and 16,
 3. during the preparation of plans as referred to in Article 35, first sentence no 2,

Translator's note:

* German text: 'Vereine'

'incorporated associations': 'rechtsfähige Vereine'

4. during the preparation of programmes drafted by government authorities and other public institutions for the re-establishment of displaced wild species of fauna and flora in the wild,
5. prior to the granting of exemptions from prohibitions and orders relating to the protection of *Naturschutzgebiete* ('nature conservation areas'), *Nationalparke* ('national parks'), *Biosphärenreservate* ('biosphere reserves') and other protected areas and parts thereof referred to in Article 33 paragraph 2,
6. during plan establishment procedures (*Planfeststellungsverfahren*) carried out by authorities of the Federal Laender, where these relate to projects associated with intervention in nature and landscape
7. during plan approvals (*Plangenehmigungen*) granted by authorities of the Federal Laender, that substitute any plan establishment procedure (*Planfeststellungsverfahren*) as referred to in no 6 above, where the involvement of the public has been provided for in accordance with Article 17 paragraph 1 letter b of the Federal Highways Act (*Bundesfernstraßengesetz*).

The individual Federal Laender may provide for more extensive forms of involvement. Furthermore, they may also

1. provide for the involvement of recognized associations in other procedures where such involvement is based on respective provisions of Laender legislation, as well as
2. provide that in cases where any impacts on nature and landscape are either not to be expected at all or only to a minor degree or scale, the involvement of recognized associations may be deemed not to be a binding requirement.

- (3) With regard to recognition, Article 59 paragraph 1 second sentence nos 1 and 4 to 6 shall apply *mutatis mutandis*.

Article 61

Legal Remedies available to Associations

- (1) Without having been subject to any violation of its rights, an association recognized in accordance with Article 59 or on the basis of respective provisions of Laender legislation within the framework of Article 60, may lodge a legal remedy in conformity with the Rules of Administrative Courts (*Verwaltungsgerichtsordnung*) against
1. exemptions from prohibitions and orders relating to the protection of 'nature conservation areas' (*Naturschutzgebiete*), 'national parks' (*Nationalparke*) and other protected areas referred to in Article 33 paragraph 2 as well as against
 2. decisions of 'plan establishment procedures' (*Planfeststellungsbeschlüsse*) relating to projects involving intervention in nature and landscape as well as 'plan approvals' (*Plangenehmigungen*) where the involvement of the general public has been provided for in relevant provisions.

The first sentence above shall not apply where the decision on an administrative act referred to therein has been taken on the basis of an Administrative Court decision within the framework of corresponding legal proceedings.

- (2) Legal remedies pursuant to paragraph 1 above are only admissible if the association concerned
1. asserts that the adoption of an administrative act referred to in paragraph 1 first sentence is conflicting with provisions of this Act, legal provisions laid down on the basis of or within the framework of this Act or which continue to be applicable on the basis of or within the framework of this Act, or with

any other legal provisions to be complied with/to be taken into consideration when adopting the administrative act concerned and which are at least also intended to serve the interests of nature conservation and landscape management,

2. is affected within the scope of activities set forth in its Articles of Association, to the extent this is covered by the recognition granted, and
3. was entitled to involvement in accordance with Article 58 paragraph 1 nos 2 and 3 or in accordance with respective provisions of Laender legislation within the framework of Article 60 paragraph 2 nos 5 to 6 and has expressed its views on the matter in this context, or, contrary to Article 58 paragraph 1 or to rules and regulations of the respective Federal Land laid down in conformity with Article 60 paragraph 2, was given no opportunity to express its views.

(3) If the association was given the opportunity to express its views within the framework of the respective administrative procedure, the procedure based on a legal remedy lodged by the association shall preclude objections* raised which it had failed to put forward in the respective administrative procedure despite the fact that it would have been able to do so on the grounds of the documentation transmitted to it or inspected by it.

(4) If the association was not notified of the administrative act concerned the objection** to be raised and the action to be filed must be transmitted within one year from the date the association had knowledge or ought reasonably to have had knowledge of the respective administrative act.

Translator's note:

* German text: 'Einwendungen'

** German text: 'Widerspruch'

- (5) The Federal Laender may also admit legal remedies lodged by associations in other cases where Article 60 paragraph 2 provides for the involvement of relevant associations concerned. The Federal Laender may provide further detail on applicable procedure.

**Section Eight:
Supplementary Provisions**

**Article 62
Exemptions**

(1) Upon application, exemption from prohibitions set forth in Article 42, or from the provisions of an *Ordinance pursuant to Article 52 paragraph 7*, may be granted if

1. the implementation of the provisions concerned would, in the case concerned,
 - a) entail unintended hardship, and the respective derogation is compatible with the interests of nature conservation and landscape management;
or
 - b) have unintended adverse impacts on nature and landscape

or

2. if imperative reasons of overriding public interest demand such exemption,

and where this is not in conflict with Articles 12, 13 and 16 of Council Directive 92/43/EEC or with Articles 5 to 7 and 9 of Council Directive 79/409/EEC. The Federal Laender may lay down provisions on the granting of exemptions from orders and prohibitions set forth in respective Laender legislation.

(2) Exemptions shall be granted by the authorities responsible for nature conservation and landscape management and, in the case of transportation from third countries, by the Federal Agency for Nature Conservation.

Article 63
Safeguarding of the Functions
of Specific Areas and Premises

In the case of areas and premises that are either exclusively or predominantly used for any of the following purposes:

1. Defence, including compliance with international obligations and protection of the civilian population
2. Tasks of Federal Border Protection (*Bundesgrenzschutz*)
3. Public transport (major traffic routes)
4. Sea and inland navigation
5. Supply of public utilities, including areas designated as requiring protection for this purpose, and waste disposal
6. Protection against floods and inundation
7. Supply of telecommunication services

or that have been designated for any of the above purposes in a binding plan, measures of nature conservation and landscape management shall be appropriately designed to safeguard utilization of the areas or premises for the purpose in question. The aims and principles of nature conservation and landscape management shall be taken into account.

Article 64
Implementation of Community Legislation and
International Law

- (1) *Ordinances (Rechtsverordnungen) pursuant to Article 52* may also be adopted to implement legal instruments of the Council or Commission of the European Communities in the field of species conservation, or to comply with international conventions on species conservation.

- (2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall have authority to amend references to provisions of legal instruments of the European Communities in this Act or in *Ordinances pursuant to Article 52*, by way of *Ordinance requiring the consent of the Bundesrat*, where amendments to such legal instruments so require.

**Section Nine:
Administrative Fines and
Penalties**

**Article 65
Administrative Fines**

- (1) An administrative offence shall be deemed to be committed by any person who, wilfully or by negligence,
1. contravenes Article 42 paragraph 1 no 1 of this Act, by pursuing, capturing, injuring or killing any specimen of wild fauna species concerned, or by removing from the wild, damaging or destroying any of the morphological forms of their life cycles, their nesting or breeding sites, other living quarters or inhabited sites or places of refuge,
 2. contravenes Article 42 paragraph 1 no 2 by cutting off, picking, uprooting, tearing off, digging out, damaging or destroying any specimen of the wild flora species concerned, or parts or morphological forms of development thereof,
 3. contravenes Article 42 paragraph 2 first sentence no 2 of this Act, also in conjunction with paragraph 3 first sentence no 1 or no 2, no 2 in conjunction with an *Ordinance pursuant to Article 52 paragraph 4*, by selling, buying, offering for purposes of sale or purchase, keeping in stock or transporting for purposes of sale,

acquiring, displaying to the public or using in some other way for commercial purposes,
any specimen of the fauna or flora concerned or any derivative* thereof.

(2) Furthermore, an administrative offence shall be deemed to be committed by any person who, wilfully or by negligence,

1. contravenes any *Ordinance (Rechtsverordnung)* pursuant to

a) Article 45 paragraph 2

b) Article 52 paragraph 5 or

c) Article 52 paragraph 6 first sentence, or Article 52 paragraph 7,

or contravenes any enforceable rules or instructions based on such ordinance, where the ordinance refers, with respect to the offence concerned, to the present provision on administrative fines,

2. contravenes Article 42 paragraph 1 no 3 by disturbing any specimen of wild fauna species,

3. contravenes Article 42 paragraph 1 no 4 by impairing or destroying any relevant sites,

Translator's note:

* 'Ware': derivative, merchandise, goods

4. contravenes Article 42 paragraph 2 first sentence no 1, also in conjunction with paragraph 3 first sentence no 1 or no 2, no 2 in conjunction with an *Ordinance (Rechtsverordnung) pursuant to Article 52 paragraph 4*, by gaining possession of, taking in custody, having in possession or in custody, handling, working or processing any specimen of certain fauna or flora species, or derivatives* thereof,

Translator's note:
* see page 116

5. contravenes Article 46 paragraph 1 by failing to register any specimen of the fauna or flora species concerned for import or export, failing to register such specimens of fauna or flora correctly, or by failing to present such specimens on time,
 6. contravenes Article 46 paragraph 2 by failing to provide information, failing to provide correct or complete information, or failing to provide the information on time, or
 7. contravenes Article 50 paragraph 1 by failing to provide information, failing to provide correct or complete information, or failing to provide the information on time, or
 8. contravenes Article 50 paragraph 2 second sentence by failing to assist the person appointed, or to submit business documents, or to submit them completely or on time.
- (3) An administrative offence shall be deemed to be committed by any person who violates Council Regulation (EC) No 338/97 by, wilfully or by negligence,
1. contravening Article 4 paragraph 1 first sentence, or paragraph 2 first sentence, or Article 5 paragraph 1 or paragraph 4, first sentence, by importing, exporting or re-exporting a specimen of a species referred to therein,
 2. contravening Article 4 paragraphs 3 or 4 by failing to register the import, or by failing to register the import correctly, completely or on time,
 3. contravening Article 8 paragraph 1, also in conjunction with Article 5, by buying a specimen of a species referred to therein, offering for sale, acquiring, displaying or using such a specimen for commercial purposes, or by sell-

ing such a specimen, or keeping, offering or transporting such a specimen for the purpose of sale, or

4. contravening any enforceable requirement under Article 11 paragraph 3 first sentence.

(4) An administrative offence shall be deemed to be committed by any person who violates Council Regulation (EEC) No 3254/91 by, wilfully or by negligence,

1. contravening Article 2 by using leghold traps, or
2. contravening Article 3 paragraph 1 first sentence by transferring the pelt or fur of an animal species referred to therein, or a *good*^{*} referred to therein, into the Community.

(5) In the cases referred to in paragraph 1 and paragraph 2 no 1, letter b, and no 4, in paragraph 3 nos 1 and 3 and in paragraph 4 above, administrative offences may be punished by a fine of up to EUR fifty thousand; in other cases, such offences may be punished by a fine of up to EUR ten thousand.

(6) The administrative authority referred to in Article 36 paragraph 1 no 1 of the Administrative Offences Act (*Gesetz über Ordnungswidrigkeiten*) shall be:

1. The Federal Agency for Nature Conservation in the cases referred to
 - a) in paragraph 1 no 3, in paragraph 2 no 4 and in paragraph 3 no 3 with regard to actions associated with imports into and exports out of the Community,

Translator's note:

* 'Ware': good, derivative, merchandise

- b) in paragraph 2 no 7 with regard to contraventions of obligations to inform the Federal Agency for Nature Conservation,
 - c) in paragraph 2 no 8 and paragraph 3 no 4 with regard to measures taken by the Federal Agency for Nature Conservation,
 - d) in paragraph 3 no 1 and paragraph 4 no 2,
2. the competent principal customs office* in the cases referred to in paragraph 2 no 1 letter a and no 5 and in paragraph 3 no 2, and
 3. in all other cases: the respective competent authority of the Federal Land concerned.

Translator's note:

* German text: 'Hauptzollamt'

Article 66

Penal Provisions

- (1) Any person who, habitually or for commercial purposes, commits any of the wilful acts mentioned in Article 65 paragraph 1, paragraph 3, nos 1 or 3, or paragraph 4 shall be liable to a term of imprisonment of up to three years, or a fine.
- (2) Any person who commits any of the wilful acts mentioned in Article 65 paragraph 1, paragraph 3 nos 1 or 3, or paragraph 4, with regard to any specimen of fauna or flora of strictly protected species shall be liable to a term of imprisonment of up to five years, or a fine.
- (3) Any person who commits any of the acts referred to in paragraph 2 above habitually or for commercial purposes shall be liable to a term of imprisonment ranging from three months to five years.
- (4) In cases where the perpetrator commits any act referred to in paragraph 2 above by negligence, he or she shall be liable to a term of imprisonment of up to six months, or a fine of up to one hundred and eighty per diems.

Article 67
Confiscation

In cases where an administrative offence as defined in Article 65 or a criminal offence as defined in Article 66 above has been committed,

1. the objects to which the administrative or criminal offence relates,
2. any objects used, or intended to be used, when committing the offence or during the preparation thereof,

may be confiscated. Article 23 of the Administrative Offences Act and Article 74 (a) of the Penal Code shall be applicable.

Article 68

Powers of the Customs Authorities

In cases where administrative or penal offences under the present Act are committed in connection with the importation or exportation of specimens of fauna or flora, the competent administrative authorities and the Public Prosecutor's Office may also entrust the respective principal customs offices (*Hauptzollämter*) or the customs investigation offices (*Zollfahndungsämter*) with conducting investigations (Article 161, first sentence, of the Code of Criminal Procedure). Article 37 paragraphs 2 to 5 of the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*) shall apply *mutatis mutandis*.

**Section Ten:
Interim Regulation**

**Article 69
Interim Provisions**

- (1) In derogation of Article 11, Article 33 paragraph 5, Article 34 and Article 35 first sentence no 2 shall be *directly* applicable until 8 May 2003. Where, prior to the date specified in the first sentence, a Federal Land lays down rules and regulations pertaining to the provisions referred to therein, in order to comply with obligations arising from Article 75 paragraph 3 of the Basic Law (*Grundgesetz*), the applicability of the first sentence of this paragraph shall expire on the effective date of the respective rules and regulations of the Federal Land concerned. The first and second sentences above shall not apply where a Federal Land has laid down corresponding rules and regulations *prior to* the entry into force of this Act.
- (2) Articles 30 and 30 a in the version applicable until 8 May 1998 shall be applied to administrative and criminal offences relating to specimens of specially protected fauna or flora species under Council Regulation (EEC) No 3626/82 if these offences were committed before 1 June 1997. Article 4 paragraph 3 of the Administrative Offences Act (*Gesetz über Ordnungswidrigkeiten*) and Article 2 paragraph 3 of the Penal Code (*Strafgesetzbuch*) shall not apply within this scope.
- (3) Article 58 shall be applicable to the participation of associations within the framework of administrative procedures that commenced after 3 April 2002. Administrative procedures that commenced before 3 April 2002 shall be completed in accordance with Article 29 of the Federal Nature Conservation Act in the version applicable until 3 April 2002.
- (4) Article 59 shall be applicable to procedures for the recognition of associations by the Federal Ministry for the Environment, Nature Conservation and Nuclear

Safety that commenced after 3 April 2002. Administrative procedures that commenced before 3 April 2002 shall be completed in accordance with Article 59.

(5) Article 61 shall be applicable to

1. administrative acts for which an application was filed after 3 April 2002 and
2. administrative acts adopted after 1 July 2000 if these can still be legally challenged and if, in the preceding administrative procedure, participation of the associations recognized by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety or by the respective Federal Laender was prescribed by law.

(6) Paragraph 5 and Articles 58 and 61 shall apply *mutatis mutandis* to associations recognized by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety in accordance with Article 29 of the version of the Federal Nature Conservation Act applicable until 3 April 2002.

(7) For associations recognized by Federal Laender in accordance with Article 29 of the Federal Nature Conservation Act in the version applicable until 3 April 2002, paragraph 5 and Article 61 shall be applicable *mutatis mutandis* until 3 April 2005, where the associations are entitled to involvement on the basis of Article 29, paragraph 1 nos 3 and 4 of the Federal Nature Conservation Act in the version applicable until 3 April 2002 or on the basis of the rules and regulations under Laender law within the framework of Article 60 paragraph 2 nos 5 and 6. In the case of administrative acts based on administrative procedures that commenced before 3 April 2002 and are not referred to in Article 61 paragraph 1, the respective Laender provisions applicable until that date which govern legal remedies filed by associations shall continue to apply. Where the Federal Laender, prior to the expiry of the date specified in the first sentence, lay down rules and regulations implementing Article 60 paragraph 2 nos 5 and 6 to meet

obligations arising from Article 75 paragraph 3 of the Basic Law (*Grundgesetz*), the first and second sentences shall cease to be applicable from the date at which the respective rules and regulations under the law of the Land concerned come into force.

Article 70
Applicability of Provisions
of the Previous Version of
the Act

- (1) As long as a Federal Land has not yet laid down any provisions in the framework of Article 60 to implement obligations arising from Article 75 paragraph 3 of the Basic Law (*Grundgesetz*), Article 29 in the version applicable until 3 April 2002 shall continue to be applied until 3 April 2005 to associations recognized or to be recognized by the Federal Land concerned.

- (2) Where, prior to the expiry of the date specified in paragraph 1 above, a Federal Land will lay down provisions within the framework of Article 60 to implement obligations arising from Article 75 paragraph 3 of the Basic Law (*Grundgesetz*), Article 29 of the Federal Nature Conservation Act in the version referred to in paragraph 1 above shall cease to be applicable from the date at which the respective provisions of the Federal Land concerned enter into force.

Article 71

Adaptation of Laender Law

The obligations of the Federal Laender arising from Article 75 paragraph 3 of the Basic Law (*Grundgesetz*) shall be met by 8 May 2003 with respect to Articles 32 to 35 and Article 37 paragraphs 2 and 3, and within a period of three years from the entry into force of this Act with respect to all other issues.