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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ICELAND

**DRAFT AMENDMENT TO THE CONSTITUTION
OF THE REPUBLIC OF ICELAND NO. 33/1933,
WITH SUBSEQUENT AMENDMENTS
(ENVIRONMENTAL PROTECTION)**

**151th legislative assembly 2020-2021.
Parliamentary document**

Constitutional Bill

**on an Amendment to the Constitution of the Republic of Iceland No. 33/1933,
with subsequent amendments (environmental protection).**

Proposer:

Article 1

A new article shall be added to the Act that reads as follows:

Iceland's nature is the foundation of all life in the country. Responsibility for protecting nature and the environment is shared collectively by all and that protection shall be based on precaution and long-term vision guided by sustainable development. The maintenance of natural diversity shall be promoted and the growth and development of the biota ensured.

Everyone has the right to a healthy environment. The public may roam freely and stay on the land for legitimate purposes. Nature shall be well treated and the interests of landowners and other right holders respected. More detailed provisions on the content and extent of the right to roam shall be provided for by law.

The right of the public to access information on the environment and the effects of any developments thereon, and to participate in the preparation of decisions affecting the environment, shall be provided for by law.

Article 2

This Act shall enter into force immediately.

Explanatory memorandum.

1. Introduction.

Since the beginning of 2018, all political parties seated in Althingi have collaborated on reviewing the Constitution. Work is scheduled according to a plan suggested by the Prime Minister at the outset, *cf.* the government's coalition agreement where it is stated that a comprehensive cross-political review of the Constitution with the participation of the nation will be continued. Pursuant to the plan, a comprehensive review shall be completed in a period equal to two elective terms. In the current elective term the following subject matters have been addressed: Public ownership of natural resources, environmental protection and nature conservation, referendums instigated by a certain percentage of voters, delegation of state power for reasons of international cooperation, Chapter II of the Constitution on the President of the Republic and the exercise of executive power, provisions on the Icelandic language and, finally, provisions on a procedure for amendments to the Constitution. The idea for this review arrangement is the notion that the direct involvement of chairpersons of the political parties would be auspicious to process the material created in recent years with a view to developing joint proposals on reforms to the Constitution. Great emphasis has been placed on consultation with the public. Proposals have been published without delay in the government consultation portal and care taken to process any observations submitted, a detailed survey was carried out on the views of Icelanders of the Constitution, and a debate organised concerning selected issues which is a novelty in public policy-making in Iceland. Further, constitutional law experts have been consulted in regard to the more detailed elaboration of the proposals.

This Bill on environmental protection is close to identical to the Bill submitted by the Constitutional Council to the Prime Minister in July 2016 (*cf.* the Bill submitted by Sigurður Ingi Jóhannsson, parliamentary document 1577, item 841, 145th legislative assembly, 2015-2016). The Bill is a step in the direction of updating the Constitution as it is tacit about some of the most significant issues of modern society. Provisions on nature and the environment have been introduced into the constitutions of many States in recent years and decades. This is in keeping with the awareness raising that has taken place concerning various pressing environmental issues, both

globally and within the jurisdiction of individual States. This development reflects the view that action must be taken to address this, not only through increased cooperation of nations on the basis of international agreements, but also on the basis of clear and results-based legislation at national level. Constitutional provisions on nature and the environment form a basis for general legislation in this policy area, and establish the community's policy on interaction between humans and the environment.

On the one hand, the Bill addresses Iceland's nature and its protection, more specifically its value, responsibility for its protection, and general views and emphases regarding nature conservation. On the other hand, the Bill focuses on quality and rights to be afforded to the general population. Pursuant to the Bill, all shall be accorded the right to a healthy environment and it provides that the public may roam freely and stay on the land. Furthermore, it addresses the public's right to information on the environment and the right to participate in the preparation of decisions that have an impact on the environment.

2. Occasion, necessity and purpose of the legislation.

As mentioned before, many States have introduced provisions on the protection of nature and the environment into their constitutions in recent years. The environmental provisions are diverse but in the majority of cases they stipulate the right of humans to a healthy environment. The notion is that a healthy environment is a prerequisite for the quality of life and must accordingly be considered part of human rights. The environmental provisions are also based on long-term thinking and entail the obligation of each generation to respect the right of future generations to a viable environment. They oblige the state authority to promote effective environmental protection and some also provide for the responsibility of every individual in this regard, *cf.* Chapter 5 below. In addition to providing for the right to a healthy environment, the necessity for public's easy access to environmental information is emphasised, as well as the opportunity to participate in the preparation of decisions concerning the environment and nature. The public is only able to guard this right on the basis of these considerations.

Changes in views as to the protection of the environment and nature not only include emphasis on man-made environment and direct human interests. In recent decades, people have increasingly come to realise that nature is a complex system that sustains life and ensures its development. For this reason, ever-growing emphasis has been placed on comprehensive thinking and respect for the complex interactions involved in Earth's ecosystems. Accordingly, views on the intrinsic value of nature have gained momentum and these are now present *inter alia* in international agreements on the protection of the environment and nature. As an example, in the preamble to the UN Convention on Biological Diversity from 1992, to which Iceland is a party, reference is made to the intrinsic value of biodiversity, as well as to its other diverse values, such as societal, economic and cultural values. Also, it could be mentioned that the constitutions of Norway and Finland refer especially to the protection of nature's diversity.

As will be further discussed below, the aforementioned views on the quality of the environment and nature conservation are clearly present in the work being undertaken on the Constitution in recent years in Iceland, and now the time has come to introduce a special provision on the environment and nature into the Constitution of the Republic of Iceland. The Bill is to ensure that certain basic values related to the protection of the environment and nature are reflected in legislation and jurisprudence. Moreover, a survey carried out by the University of Iceland's Faculty of Social Sciences on behalf of the Prime Minister's Office in 2019, revealed that 84% believed that there was a fairly great or very great need to include a provision on environmental protection in the Constitution.

3. Key features of the Bill.

A. Nature conservation.

Paragraph 1 of that Article of the Bill addresses Iceland's nature and its protection, more specifically its value, responsibility for its protection, and general views and emphases regarding nature conservation.

a. Value of nature.

First sentence of the first paragraph of Article 1 of the Bill states that Iceland's nature is the foundation of all life in the country. These words emphasise the importance of nature as the foundation of the biota, human life and economy in Iceland and a prerequisite for settlement in Iceland. The basis shall be that nature holds intrinsic value as well as *inter alia* economic and societal value for present and future generations.

b. Responsibility for the protection of the environment and nature.

Paragraph 1, second sentence, sets out a general rule of responsibility. It reaffirms the joint responsibility of all in regard to the protection of the environment and nature. The responsibility does not rest solely with the authorities but also with natural and legal persons. The legislature has then the role to adopt more detailed provisions on the obligations conferred on individual persons on the basis of the provision. Note the fact that the Nature Conservation Act No. 60/2013, Article 6, provides for a general duty of care and the obligation of every individual to respect the natural environment of Iceland and to show extreme care so that no damage is caused to nature.

c. Basis for protection of the environment and nature.

Paragraph 1, second sentence, stipulates that the protecting of nature and the environment shall be based on precaution and long-term vision guided by sustainable development. Reference in the provision to these considerations reflects the focus on the right of future generations to a viable and healthy environment. Reference to precautionary views entails the general criteria that before any decision is made, e.g. regarding the utilisation of natural resources which could potentially have a significant impact on the environment, best available information on the impact shall be obtained and in case of any doubt in this respect the environment and nature shall be given the benefit of the doubt. Furthermore, the reference includes that every effort shall be made to prevent any significant negative impact on the environment.

The term sustainable development was defined in the Brundtland Report from 1987 as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. By and large, the notion of sustainable development entails the protection of the environment and nature and that utilisation of natural resources should be based on long-term vision that takes account of the interests of both present and future generations. In this way, nature reserves or individual natural resources should for example not be overly exploited. The use of renewable resources must allow for the regeneration of these resources and effort should be made to maintain nature's diversity and its ability to develop on its own terms. Sustainable development aims at equality within each generation as well as between generations in terms of being able to enjoy natural resources in a wide sense. Also, the notion of sustainable development means that economic, social and environmental interests must be weighed comprehensively when decisions are made which have an impact on nature and the environment.

Paragraph 1, third sentence, describes the main emphasis of nature conservation such that the maintenance of natural diversity shall be promoted and the productivity and prosperity of ecosystems ensured. Nature's diversity refers to biological and geological diversity, as well as terrain diversity. The protection of biodiversity and global ecosystems is the prerequisite for securing viable living conditions for future generations. Emphasis on the protection of biodiversity and sustainable use of its components is reflected in international agreements to which Iceland is a party, in particular the Convention on Biological Diversity.

B. Environmental quality and access to nature.

Paragraph 2 of Article 1 recounts two points. On the one side, the first sentence declares that everyone shall enjoy a healthy environment and on the other side the second sentence addresses the right of the public to roam freely in the countryside.

a. The right to a healthy environment.

The right to a healthy environment must entail at least maintenance of the natural processes that make Earth habitable, e.g. processes that affect climate, biodiversity and water. The provision focuses on certain basic rights of individuals as a healthy environment is a necessary prerequisite

for the person to live a healthy life. The provision obliges the authorities to guarantee that the environmental quality for the inhabitants does not come under threat, neither in the long-term nor short-term perspectives. In this respect, the basic views of paragraph 1 to take precaution and look to the future shall apply.

The right to a healthy environment relates to other important individual rights that are *inter alia* protected under Article 2 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *cf.* Article 71 of Constitution. This is further discussed in the commentary regarding paragraph 2 of the Article of the Bill below.

b. The right to roam in the countryside.

Paragraph 2, second sentence, provides for the principle that the public is free to roam and stay in the countryside for legitimate reasons. This refers to a right called the “right of public access”. A general definition of the term “right of public access” is not codified in Icelandic law. In broad terms, right of public access entails the right to roam in the countryside, stay there and use certain resources, irrespective of property rights of landowners, although it is also recognised that this must not cause landowners undue inconvenience. The provision aims at making sure everyone can enjoy the natural environment of Iceland. The right of public access can be traced back to the old law books *Grágás* and *Jónsbók*, and it first became a statutory right when the first general Nature Conservation Act was adopted in 1956, Act No 48/1956. Provisions pertaining to the right of public access have been part of the legislation on nature conservation ever since. Such provisions can also be found in the Inland Waters Act No. 15/1923. The current Bill provides that the aspects of the right of public access that concern roaming and staying in the countryside be constitutionally protected.

The provision of paragraph 2, second sentence, includes the recognition of certain rights as defined in legislation at any given time, and an express declaration stating that these should continue to be protected by law. Paragraph 2, third sentence, states that the right of public access is subject to certain conditions. On the one hand, these concern the proper treatment of nature and, on the other hand, respect for the interests of landowners and other holders of right. Paragraph 2, fourth sentence, reaffirms that the content and limitations of the right of public access are further provided for by law. In this context, it may be noted that the Nature Conservation Act No. 60/2013 contains quite extensive provisions on this issue.

C. Right to information and participation in decision-making.

Paragraph 3 of Article 1 addresses the right of the public to access information on the environment and the impact of any developments thereon, and to participate in the preparation of decisions that have an impact on the environment. These rights are the premise for the public to guard its right to a healthy environment. Also, the rights are of great importance in terms of the public’s responsibility in regard to the protection of the environment and nature, *cf.* paragraph 1 of Article 1, second sentence, of the Bill.

Paragraph 3 is based on securing the rights to information and participation through legislation which will further prescribe their content and protection. In recent years, Icelandic legislation has been amended, in particular on grounds of obligations pursuant to the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998), which was ratified on behalf of Iceland in October 2011, and of the rules of the European Economic Area on the rights to information and participation. Therefore, the rights provided for in paragraph 3 have been introduced into Icelandic legislation, *cf.* Chapter VII of the Information Act, Planning Act, Environmental Impact Assessment Act and the Strategic Environmental Assessment Act (SEA).

4. Earlier proposals of constitutional provisions on nature and the environment.

A. A Bill presented by Dr Gunnar Thoroddsen 1983.

In work on the Constitution over recent years and decades, the views have been presented that it would be appropriate to add to the Constitution provisions on nature and the environment. Such constitutional provision was first introduced by Dr Gunnar Thoroddsen, former Prime Minister and Chairman of the Constitutional Committee 1978-1983, in a Constitutional Bill on the Constitution of the Republic of Iceland in 1983 (see parliamentary document 537, issue 243, 105th legislative assembly, 1982-1983). The Bill was not cleared. Article 80 of that Bill stated:

“The country’s nature and its natural resources shall be protected so as not to damage life or land without cause.

Every inhabitant shall be guaranteed the right to the reasonable use of the land for the purpose of outdoor activities. This right shall be further provided for by law.”

Among other things, it is stated in the commentary to the Article of the Bill that the protection of the country’s nature and its natural resources, both in present times and the future, would be of such importance as to merit a placement in the Constitution. It was emphasised that the obligation to protect rested both with the State and individuals.

B. The National Assembly on the Constitution of Iceland 2010 and a report by the Constitutional Commission.

The National Assembly on the Constitution of Iceland 2010 addressed environmental issues and subsequently the Constitutional Commission discussed the Assembly’s proposals. In a report by the Commission 2011, the following idea was presented for an article on the environment in the human rights chapter of the Constitution:

“Everyone shall have the right to a healthy environment and nature where biodiversity is maintained, as further provided for by law. The public may roam freely and stay on the land for legitimate purposes, but must treat nature well and respectfully.

The public’s right to information on the state of the environment and the impact of any developments thereon, as well as opportunities to participate in the preparation of decisions that have environmental impact, shall be guaranteed by law.”

In the discussions of the Constitutional Commission (pp. 80-81, vol. 1 of the Report of the Constitutional Commission, 2011) it is noted that the proposal provides for rights that are primarily collective rights. Similarly, that the Article entails important political goal setting significant to law interpretation. In the commentary to the first sentence of paragraph 1 of the Article it is stated that environmental quality has increasingly been recognised as part of fundamental rights and a precondition to certain qualities of life and therefore as a key factor in human rights. As with sustainable development, nature’s biodiversity is a precondition to securing environment conducive to the health and well-being of future generations. The provisions of the first sentence of Article 1 entail important goal setting for the legislature for law-making concerning environmental issues. It furthermore states that it is proposed that the legislature prescribe further by law how the targets of the provision should be achieved.

C. The Constitutional Council 2011.

In the preamble to the Bill presented by the Constitutional Council in 2011, reference is made to the shared responsibility of the nation for the heritage of generations, the country and its history, nature, language and culture. Also, mention is made of the obligation of the government to strengthen the welfare of the country’s inhabitants, encourage their culture and respect the diversity of the life of the people and its biosphere.

The Chapter on Human Rights of the Bill discusses Iceland’s nature and its environment, *cf.* Article 33 thereof. The Article reads as follows:

“Iceland’s nature constitutes the basis for life in the country. All shall respect and protect it.

All shall by law be accorded the right to a healthy environment, fresh water, unpolluted air and unspoiled nature. This means that the diversity of life and land must be maintained and natural sites, uninhabited areas, vegetation and soil shall enjoy protection. Earlier damages shall be repaired as possible.

The use of natural resources shall be such that their depletion will be minimised in the long term and that the right of nature and coming generations be respected.

The right of the public to travel in the country for lawful purposes with respect for nature and the environment shall be ensured by law.”

The Constitutional Council’s proposal is based on the discussions of the Constitutional Commission but entails several changes and additions. The provisions of paragraph 1 of the Article was a novelty where it is declared that Iceland’s nature is the foundation of all life in the country. In the explanatory notes regarding the Article, it is stated that the claim is meant literally, regarding nature as a kind of “Mother Earth”, however, also in the sense that most economic sectors of the country rely to a large extent on natural assets. (The Constitutional Council 2011. A Constitutional Bill, with explanatory notes.) In regard to the second sentence paragraph 1 the

explanatory notes point out that the idea at the core of the work carried out by the Constitutional Council was that rights and obligations go hand in hand, and it was considered important to reiterate that the obligation to respect and protect Iceland's nature rested equally with public authorities, private parties and individuals.

Article 35 of the Bill of the Constitutional Council deals with information on the environment and parties concerned: The Article reads as follows:

"The public authorities shall inform the public on the state of the environment and nature and the impact of construction thereon. The public authorities and others shall provide information on an imminent danger to nature, such as environmental pollution.

The law shall secure the public's opportunity to participate in the preparation of decisions that have an impact on the environment and nature, as well as the possibility to seek independent verdicts thereon.

In taking decisions regarding Iceland's nature and environment, the public authorities shall base their decisions on the main principles of environmental law."

According to the explanatory notes with the Article, it was based on the proposal of the Constitutional Council with the addition of certain subject matters. The provision of paragraph 1 assumes the authorities' obligation to take the initiative in regard to providing the public with information and paragraph 2 suggests that rights according to the third pillar of the Aarhus Convention be introduced into the Constitution. These concern *inter alia* the authorisation of the public to refer to independent arbiters decisions regarding construction work that may have significant environmental impact. The provision of paragraph 3 of the Article on the principles of environmental law was similarly a novelty.

D. Bill by the majority of the Constitutional and Supervisory Committee of Althingi 2012-2013.

The Constitutional Council submitted to the Speaker of Althingi a Bill for a new constitution on 29 July 2011 that went through parliamentary process over the coming months. In the autumn of 2012, the majority of the Constitutional and Supervisory Committee of the Althingi submitted a Constitutional Bill on the Constitution of the Republic of Iceland (parliamentary document 510 – item 415, 141st legislative assembly, 2012-2013). The Bill was not passed. In the discussions below, the reference point is the Bill with amendment proposals by the majority of the Constitutional and Supervisory Committee, *cf.* parliamentary documents 1111 and 1112. The provisions of the Bill concerning nature and the environment have been changed in minor ways from the proposal submitted by the Constitutional Council, however the content has been reordered. Article 34 of the Bill discusses Iceland's nature and its provisions are largely identical to the provisions of Article 33 of the Constitutional Council. The provision concerning the essence of nature conservation was moved to paragraph 1 and therefore it is no longer primarily connected to the right to a healthy environment as presented by the Constitutional Council. The Article reads as follows:

"Iceland's nature constitutes the basis for life in the country. All shall respect and protect it. This means that the diversity of land and biota must be maintained and natural sites, uninhabited areas, vegetation and soil shall enjoy protection. Earlier damages shall be repaired as possible. Everyone's access to unspoiled nature shall be guaranteed by law.

The use of natural resources shall be such that their depletion will be minimised in the long term and the value of nature and the interests of coming generations be respected."

The Bill discusses the right to a healthy environment in an article on health and health services, *cf.* paragraph 1 of Article 26, and a provision on the right to public access is found in paragraph 1 of Article 12 under the title "Right to residence and travel". Provisions on the obligation of the authorities to provide the public with environmental information and provisions on the principles of environmental law are identical and are found in Article 36. Article 17 discusses the right to participation and the authorisation to seek an independent arbiter, however, it discusses the right to access information in a general manner. The provision is different from the proposal made by the Constitutional Council in that it limits the right to participation to decisions that have a "significant impact" on the environment and nature. According to the explanatory notes to the provision in an explanatory memorandum to the Bill, this was with the aim of having the text of the provision reflect what is stated to be the target in the explanatory notes of the Constitutional Council. (See commentary regarding Article 35 of the initial Bill.)

E. The Constitutional Committee, 2013–2016

In November 2013, the Prime Minister appointed a Constitutional Committee composed of representatives nominated by the political parties that had seats in Althingi at the time, as well as a chairperson who was appointed without nomination. The Committee was entrusted with proposing amendments to the Constitution, taking into consideration the work already done in recent years, as well as other developments in the field of constitutional matters in the international arena. In February 2016, the Committee presented three draft Bills, i.e. concerning environmental protection and nature conservation, public ownership of natural resources and referendums instigated by a certain percentage of voters. Based on these Bills, the Prime Minister serving at that time, Sigurður Ingi Jóhannsson, presented before Althingi a Constitutional Bill on Amendments to the Constitution of the Republic of Iceland, which entailed adding three new provisions to the Constitution, i.e. on environmental protection, natural resources and referendums. (See parliamentary document No 1577, case No 841 of the 145th legislative assembly, 2015–2016.) The Bill was not passed. The Article on environmental protection in that Bill is substantially based on previous proposals, with some changes in the presentation. The Article on the environment and nature in this Bill is based on Prime Minister Jóhannsson's Bill, and therefore there is no need to discuss that Article here.

F. Summary.

If the proposals discussed above are compared, it becomes clear that they focus, in essence, on four main issues. Firstly, they reflect the importance of nature and provide for its protection. Most of them provide for shared responsibility of all people to protect nature and the environment. Secondly, all the proposals mention the authorisation for the public to roam the land in order to enjoy nature. Thirdly, proposals made in the past few years provide for the right of all people to a healthy environment and, fourthly, the right to accessible information regarding the state of the environment and the effects developments have on it, as well as participation in the preparation of decision-making thereon.

A comparison of the previous proposals shows that the level of detail in the provisions differs, and some of the proposals contain more points than others. For example, the thoroughness of listing of nature conservation emphasis points varies considerably. The current Bill states that the maintenance of natural diversity shall be promoted and the growth and development of the biosphere ensured. However, the Constitutional Council's Bill and the majority Bill of the Constitutional and Supervisory Committee contained a more detailed listing of nature conservation objectives, in which were listed more conservation factors. These proposals also contain provisions on the principles of environmental law and on repairing, insofar as possible, previous damage to nature. It is worth noting that in both the Constitutional Commission's proposal and the Constitutional Council's Bill, nature conservation is linked to the right to a healthy environment, and therefore it can be said that it focuses first and foremost on human interests. As stated above, this was amended by the majority Bill of the Constitutional and Supervisory Committee, which discusses nature conservation in a special provision that also provides for the value of nature as the basis of life in the country. This Bill does the same.

The proposals of the Constitutional Council and the majority of the Constitutional and Supervisory Committee envisage provisions to authorise the public to defer decisions that concern the environment and nature to an objective adjudicating entity – rights that have a reference to the third pillar of the Aarhus Convention. It was not possible to reach an agreement to introduce such a provision into this Bill. This was partly based on the fact that such a provision has not yet been introduced into other Nordic constitutions. The third pillar of the Aarhus Convention has been introduced into Icelandic law via the Act on the Appeals Committee for Environmental and Natural Resource Matters, No 130/2011, cf. Act No 89/2018. That Act includes general rules regarding procedures and who can make a complaint, and a special complaint authorisation for nature conservation, outdoor activity and special interest organisations that fulfil certain conditions.

5. Constitutional provisions of other States

Environmental provisions are now included, *inter alia*, in the Constitutions of Norway, Sweden and Finland.

Article 112 of the Norwegian constitution states:

“Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles.”

The Article was originally added to the Norwegian Constitution in 1992 (it was previously numbered 110b). Its objective is to protect the quality of life, both for people now living and for future generations, and is based on the opinion that environmental protection is a human right. It therefore covers both individual rights and aims to protect the public interest. (Cf. *Rapport til Stortingets presidentskap fra Menneskerettighetsutvalget om menneskerettigheter i Grunnloven*. Document 16 (2011–2012), p. 243.) The Article is included in the human rights chapter of the Constitution. The preparatory documents show that the provision of paragraph 1 refers to important principles, such as the right to a certain environmental quality, an obligation to prevent environmental damage and degradation, duty of care, the care-taking duties of land-owners (*n. grunneierens forvalteransvar*), and the integration of environmental concerns in decision-making. Solidarity with future generations is also built into the provision. (Innst. S. No 163, 1991–1992, p. 6.) Paragraph 2 provides for the public’s right to information and participation, and the right to information includes both the authorities and private parties. (Cf. the same source.) The provision of paragraph 3 was amended in 2014, but before the amendment it provided that the authorities should “issue further instructions” regarding the implementation of the principles. The aim of the amendment was to clarify the authorities’ obligation to provide active environmental protection. (Document 16 (2011–2012), p. 246.)

In Chapter 1, Article 2(3) of the The Instrument of Government, which is one of the four fundamental laws of Sweden, it is stated:

“The public institutions shall promote sustainable development leading to a good environment for present and future generations.”

The provision is not part of the human rights chapter of the law, but is found in the chapter on basic principles of the form of government (*s. statsskicketts grunder*), which lays down important objectives for the activities of the State. The provision is, of course, aimed at the authorities and does not set out specific rights for the citizens. It provides for an obligation for the authorities to endeavour to carry out the objective, both through law-making and in administrative practice. The provision also concerns the interpretation of the law. (Cf. SOU 2001:19, p. 64.) There is a special provision on public rights in the part of the Swedish constitutional law that lays out provisions on the protection of property rights (Chapter 2, Article 15). Paragraph 4 of the Article states that “Everyone shall have access to the natural environment in accordance with the right of public access, notwithstanding the above provisions”. This means that it is understood that the public right entails a general restriction, without compensation, on land-owners’ property rights.

The Finnish constitution’s provisions on environment and nature (Section 20, previously Section 14a) concern three factors: firstly, responsibility for the protection of nature and environment; secondly, the authorities’ obligation to ensure a healthy environment; thirdly, participation rights.

The Section states:

“Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.

The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.”

The Article is included in the human rights chapter of the Constitution. The provision of paragraph 1 pertains to the responsibility of everyone, including the public authorities, individuals and legal entities, to protect the environment and nature. The preparatory documents state that the protection of nature and environment constitutes a fundamental right for individuals, but the provision also emphasises other values, both nature’s inherent value and the interests of future generations. (Cf. Regeringens proposition till Riksdagen, RP 309/1993, p. 70.) Responsibility under that provision pertains to the biosphere, water, air, soil and bedrock, as well as any environment marked by human activities. The objective of the provision is to prevent destruction

and damage, but also to take measures to improve the environment. According to the preparatory documents, the requirement of paragraph 2 regarding a healthy environment shall be broadly interpreted. The environment should of course be viable and not cause a risk of direct or indirect damage to health, but the obligation for a healthy environment also pertains to welfare (*s. trivsel*) up to a certain point. In the Finnish constitutional provision, the right to a healthy environment goes hand-in-hand with everyone's obligation to contribute to its protection. A similar connection can be found in the French Charter for the Environment, which has constitutional status, where Article 1 provides for the right of each individual to live in a healthy environment and Article 2 provides for an obligation for everyone to contribute to the preservation and enhancement of the environment.

6. Consultation.

A draft version of the Bill on Amendment to the Constitution (environmental protection) was published through the Government Offices' consultation portal on 10 May 2019 and the time limit for commenting was 30 June of the same year (cf. S-129/2019).

A total of 7 individuals and 5 legal entities sent in comments. The details of the comments can be divided into three main classes: 1. Support for the Constitutional Council's proposal for constitutional provisions regarding the protection of nature and environment. 2. Comments regarding individual provisions of the Bill. 3. Comments pointing out the lack of certain topics, especially as concerns nature's rights.

Since the publication, the text of the provision has been amended once, to change the wording of the first sentence of paragraph 2. It now states that everyone has a right to a healthy environment, whereas the previous version stated that everyone should enjoy a healthy environment.

Additionally, the whole memorandum has now been reviewed with the help of experts.

More details of the findings of the consultation can be found in a special document that has been published through the consultation portal.

7. Impact assessment.

Article 1 of the Bill sets out important objectives regarding protection of the environment and nature. It also provides for specific public rights, as well as obligations placed on the legislature, authorities and public. The Article is intended to frame environmental policy direction and law-making and give guidance in the interpretation of laws and standards. It can also affect the weighing of opposing opinions, e.g. when the authorities are given the power to make assessment-based decisions. The provision gives the legislature leeway to elaborate its contents and decide on the options available. Nonetheless, it will be the role of the courts to assess whether legislation or administrative acts go against the basic principles the provision is based upon.

There are public interests behind the provision of paragraph 1 of the Article on the protection of the environment and nature that can, under certain circumstances, justify limitations to specific rights of natural and legal persons that are protected by the constitution. It has already been established that interests linked to the protection of the environment and nature can have these effects under specific circumstances, cf. the supreme court judgement of 27 September 2007 in the case of Björgun vs. the Icelandic state (case No 182/2007) and the judgement of 6 April 2000 in the Vatnseyri case (case No 12/2000). As for the European Court of Human Rights, there is, for example, the case of Pine Valley Developments Ltd and Others against Ireland of 29 November 1991. A special constitutional provision on the protection of the environment and nature is well suited to better ensure the interests in question here.

It may be assumed that the reference to sustainable development in the second sentence of paragraph 1 will mainly affect the government's general policy direction, law-making, interpretation of the law, and assessment-based governmental decisions.

The provision of the first sentence of paragraph 2, on the right to a healthy environment, entails an individual right but also takes into consideration the common interests of humanity in protecting nature and the environment. The legislature is intended to make provisions adopted in general legislation on how these rights will be ensured subject to the general principles of the Icelandic constitution regarding the legislature's margin of discretion in choosing methods and assessing competing interests. It can be assumed that the provision will mainly influence the interpretation of general legislation and regulations. However, it may be up to the courts to decide

whether or not the laws, administrative acts, actions, or, as the case may be, lack of action, are contrary to the protection the provision is intended to confer.

The basis of this has been that the law should allow the limiting of ownership rights, up to a point, without creating a right to compensation under the property provision of Article 72 of the Constitution. The right of public access is an example of such general limitation of ownership rights. The provision proposed herein, cf. paragraph 2, will include that limitation in the Constitution. However, the constitutional acknowledgement of the right to public access is not expected to affect the protection currently given by the Constitution to ownership rights or other interests, such as protection of privacy. If the legislature chooses to expand the right of public access beyond the current limits, that amendment would have to fit within the leeway marked by the constitutional protection given to the aforementioned rights. In respect of the interaction between the right of public access and ownership rights, the expansion would have to fit within the authorisation given to the legislature for general limitation of ownership rights.

The adoption of the Bill should not necessitate amendments to general legislation. There is currently in force a recent Nature Conservation Act, No 60/2013, which is based on the viewpoints stated in paragraph 1 of Article 1 of the Bill. Precise environmental protection legislation has been adopted and is mostly based on European rules that have been adopted into the EEA Agreement. The Nature Conservation Act covers the right of public access. A special legislation has been enacted regarding the public's right to information and participation as regards environmental issues, and various legal codes contain provisions that ensure the public's participation in the preparation of decisions that will affect the environment and nature, inter alia, in response to the provisions of the Aarhus Convention.

On individual articles of the Bill
Regarding Article 1

Regarding paragraph 1

Article 1 contains a general policy statement intended to underline the importance of nature for all life, both in the present and future, and its meaning for the people of the country, including economically and socially. It also makes a reference to nature's inherent value without direct connection to human interests. There has been a detectable emphasis on nature's inherent value in Icelandic nature conservation legislation since the entry into force of the Nature Conservation Act, No 47/1971. In paragraph 2 of Article 1 of that Act it was stated that the Act was intended to ensure, as much as possible, the development of Icelandic nature on its own principles. There is a comparable provision in paragraph 1 of Article 1 of the Nature Conservation Act, No 60/2013. The paragraph sets out a shared responsibility for everyone, whether it be the legislature, the authorities, natural or legal persons, to protect nature and the environment. The legislature then has the role of prescribing, through general legislation, the obligations placed on individual entities on the basis of the provision. International obligations that Iceland has entered into may affect the rules that are considered appropriate in this respect. An example of current legislation which sets out specific obligations and responsibilities of legal persons is the Act on Environmental Liability, No 55/2012. That Act is intended to fulfil Iceland's obligations under the EEA Agreement and incorporate Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage into Icelandic law. Under that Act, any economic operator that causes damage or impending danger of such damage must take specific measures to prevent the impending damage and remedy any damage that has already been done, and pay all the costs of such measures.

Paragraph 1 sets out the general vision on which the protection of the environment and nature shall be based, i.e. precautionary and long-term visions, and the objective of sustainable development. The importance of precautionary views is best seen by the fact that there is often a lack of information on whether a specific action or, as the case may be, lack of action, will lead to undesirable consequences. Preventive measures are still necessary despite the uncertainty regarding this subject. Precautionary views do not entail an absolute standard that can be applied in all cases. The provision charges the legislature and, as the case may be, the authorities, with elaborating what these general criteria entail in each case, such as what information shall be gathered, how to assess the uncertainty levels, and what measures to take to prevent significant environmental impacts. An example of an elaborated precautionary principle can be found in the Nature Conservation Act, No 60/2013. The precautionary principle is set out in Article 9 of the

Act and applies to decisions made on the basis of the Act. The principle is then elaborated in the Act's other provisions, e.g. Article 63, which concerns the importation of live alien organisms. Paragraph 2 of the Article provides for an assessment of the risk importation and distribution of live alien organisms may have on the Icelandic biosphere. Paragraph 3 provides for a special application process and permits the licensor to make licences subject to conditions that diminish the risk, and paragraph 5 authorises the Minister to lay out, in a regulation, more detailed instructions, including on risk assessment and the criteria that shall form the basis for assessing whether to grant a licence to import and, as the case may be, distribute live alien organisms.

As stated previously, the notion of sustainable development by and large entails that the protection of the environment and nature and the utilisation of natural resources should be based on a long-term vision that takes account of the interests of both present and future generations. Various principles have been formed through international cooperation in the last few decades in order to support sustainable development, such as on precaution, preventive measures and the integration of environmental concerns, as well as polluter pays' principle. The current legislation contains a number of references to sustainable development, both in laws that concern the utilisation of resources, e.g. the Inland Waters Act, No 15/1923, cf. Act No 36/2011, the Act on Water Governance, and the Act on the Plan for Nature Protection and Energy Utilisation, No 48/2011; but also in the planning legislation, e.g. the Planning Act, No 123/2010, and the Act on Planning of Marine and Coastal Areas, No 88/2018, and various laws concerning nature and the biosphere, such as the Nature Conservation Act, No 60/2013, and the Act on Genetically Modified Organisms, No 18/1996.

The main focus of nature conservation is elaborated with reference to maintaining nature's diversity and ensuring that the biosphere grows and thrives. Nature's diversity refers to biological and geological diversity, as well as terrain diversity. The same emphasis can be found in the Nature Conservation Act, No 60/2013, cf. paragraphs 1 and 2 of Article 1.

It is envisaged that legislation will be enacted as regards the obligations and protective measures mentioned in the provision, and the legislature must be given a wide margin of discretion in drafting the legislation.

Regarding paragraph 2

The provision in the first sentence of paragraph 2 sets out the right of every person to a healthy environment. The provision refers to the right of individuals, but is also aimed at ensuring the shared interests of current and future generations. The legislature is given the task of enacting legislation laying out in more detail how this right should be ensured. The term "environment" should be broadly interpreted. It covers both natural factors like air, the atmosphere, water, soil and biological factors, and their interplay, as well as environment marked by human activity. Due to this broad definition, it is not considered to be necessary to state explicitly that everyone should enjoy access to clean water, unpolluted air or other important factors of a healthy environment. The holders of State powers may be obliged to take measures to ensure the rights set out in the provision. It clearly depends on the state of nature and the environment which measures must be taken and which restrictions must be put on developments and activities. Various standards have been set out in Iceland with the purpose of ensuring a healthy environment. Some examples include legislation on hygiene and pollution prevention, handling of waste and protection of water. The laws covering planning and environmental impact assessments of developments and plans are also important. There is a direct link between paragraphs 2 and 3 of the Article, since the public's right to information and participation is the prerequisite for the public to guard their rights to a healthy environment.

The right to a healthy environment relates to important human rights that are, *inter alia*, protected under Articles 2 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. These Articles concern the right to life and the protection of privacy, home and family. Although the European Convention on Human Rights does not contain a provision on the rights of individuals to a healthy environment, the European Court of Human Rights has argued that a considerable impairment of environmental quality, such as due to pollution of water, noise pollution or air pollution, which directly impact the lives of individuals, can lead to them not being able to enjoy the rights conferred on them by Articles 2 and 8 of the Convention. (Cf. e.g. Lopez Ostra vs. Spain, 9 December 1994, Fadeyeva vs. Russia, 9 June 2005, Dzemyuk vs. Ukraine, 4 September 2014, Udovicic vs. Croatia, 24 April 2014 and Jugheli

and others vs. Georgia, 13 July 2017.) Such cases often test whether the authorities have taken the necessary measures to protect the complainant's right to life and the protection of privacy, home and family. The authorities therefore may be obliged to take measures, e.g. due to polluting activities that are liable to cause direct damage to the health of the people living nearby. Article 71 of the Constitution covers protection of privacy, home and family. There is a close link between Article 71 of the Constitution and Article 8 of the European Convention on Human Rights, and the right to enjoy a healthy environment may be assumed to be partially protected by the former provision. The legal protection set out in the Bill is, however, stronger.

Paragraph 2 sets out the principle that the public is free to roam the countryside and stay there for legitimate reasons, and this right shall be elaborated via legislation. This is a right that is commonly referred to as "the right of public access". The right of public access can be traced back to the old law books Grágás and Jónsbók, and it first became a statutory right when the first general Nature Conservation Act, No 48/1956, was adopted. Provisions pertaining to the right of public access have been part of the legislation on nature conservation ever since. Such provisions can also be found in the Inland Waters Act No. 15/1923. The current Nature Conservation Act, No 60/2013, provides for the principle that the public is free to roam the land and stay in the countryside for legitimate reasons. This right carries the obligation to take good care of nature and take the utmost care not to cause any damage to it, and to show land-owners and other rights holders utmost consideration and respect their interests. There are also provisions in the Act that limit the right of public access or contain authorisation to limit it, alternatively due to the interests of land-owners or nature conservation. The aforementioned rights have always been set out in Icelandic legislation as rights of individuals that apply the general public. This right is not limited to Icelandic nationals and the current law makes no basic distinction between the rights of individuals to roam the land based on whether they are travelling on a professionally organised group tour or independently, cf. Article 17 of the current Nature Conservation Act, No 60/2013.

The right of public access is subject to specific conditions, cf. third sentence of paragraph 2. On the one hand, these concern the proper treatment of nature and, on the other hand, respect for the interests of landowners and other holders of right. Other holders of rights can, for example, be the holders of land who are not its owners, but also those who have an indirect ownership right, for example the right to hunt or fish or other kinds of utilisation right.

According to the fourth sentence of paragraph 2, the legislature is entrusted with elaborating the content and limits of the right to public access with regard to the public interest and the interests of private parties that are protected by the Icelandic constitutional system. Those interests can be very diverse and it is up to the legislature to assess whether, and to what extent, they warrant a limitation of the right to public access. It would, for example, be the legislature's role to assess whether it is necessary to set out, by law, special instructions on the organisation, management and special protective measures due to the increased strain on nature caused by a massive number of tourists.

Regarding paragraph 3

Paragraph 3 addresses the right of the public to access information on the environment and the impact of any developments thereon, and to participate in the preparation of decisions that will have an impact on the environment. The right to information should be broadly understood, and it can cover the effects of any kind of human activity. These rights are important and are, in reality, the premise for the public to guard its right to a healthy environment. This is stated, inter alia, very clearly in Article 1 of the Aarhus Convention:

"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."

The European Court of Human Rights has also underlined the importance of the right to information and participation in judgements that concern Article 8 of the European Convention on Human Rights (cf., inter alia, Guerra and others vs. Italy, 19 February 1998, Taşkin and others vs. Turkey, 10 November 2004 and Tătar vs Romania, 27 January 2009). It is envisaged that more detailed provisions will be provided for by law, including as regards limitations and conditions. In the last several years, some amendments have been made to Icelandic legislation,

especially due to obligations under the Aarhus Convention and European Economic Area rules on the right to information and participation. Therefore, the rights provided for by paragraph 3 are already provided for in Icelandic law. One example is Chapter VII of the Information Act, No 140/2012, regarding the right to environmental information. According to the Chapter's provisions, the right to information covers, inter alia, the condition of individual components of the environment, such as air and atmosphere, water, soil, land, landscapes and nature conservation sites, including wetlands and coastal and marine areas, biodiversity and its components, including genetically modified organisms, and the interplay of these components, and also factors like chemicals, energy, noise, radiation and waste, including radioactive waste and the release of various chemicals and other stuff into the environment, that affect or are likely to affect the aforementioned components of the environment, *cf.* Article 3 of the Act. There are more laws that are important for the right to information and participation. Some examples include legislation that provides that the public shall be notified of planned developments and given a chance to make comments, *cf.* the Planning Act, the Act on Environmental Impact Assessment and the Act on Environmental Assessment of Plans.

Regarding Article 2

This Article requires no explanatory remarks.