The International Comparative Legal Guide to:

Environment &
Climate Change Law 2017

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A practical cross-border insight into environment and climate change law

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Chapter 11

Germany

1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in your jurisdiction and which agencies/bodies administer and enforce environmental law?

Environmental protection has been enshrined as an objective of the state in Article 20a of the German Constitution (Grundgesetz). All state bodies – in particular the legislature – are required to protect the environment and to be mindful of their responsibility towards future generations. This objective is substantiated by three main principles, which form the basis of German environmental policies: the “precautionary principle”; the "polluter pays principle"; and the "co-operation principle", which means that environmental policy must be developed in close cooperation with all relevant public and private organisations.

In general, the 16 states (Bundesländer) enforce the federal environmental statutes as if they were their own statutes. Due to the lack of direct enforcement powers, only a small number of authorities have been set up by the federal government. The 16 states feature a three-tiered or two-tiered administration: the ministries as the highest environmental authorities; in some states followed by government districts (Regierungsbezirke) with monitoring powers at the intermediate tier; and in every state followed by counties (Kreise) or independent cities (kreisfreie Städte) at the lowest administrative tier. As a general rule, most environmental tasks are delegated to the counties or independent cities. As regards technical and scientific questions, they are usually supported by various special agencies that have only limited administrative responsibilities.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

The German administration exerts a strong influence on environmental issues. This is mainly due to the aforementioned constitutional objective in Article 20a of the German Constitution (Grundgesetz). Moreover, public opinion in Germany is traditionally very sensitive to environmental issues. Therefore, environmental issues play an important role in Germany and the utmost care must be applied when dealing with such issues.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

The Environmental Information Act (Umweltinformationsgesetz) governs public access to environmental information at the federal level. All public authorities in possession of environmental information are obliged to grant every citizen free access to such information. Moreover, the right to information includes environmental information held by private law entities (e.g. companies) if they provide (subject to the control of federal authorities) public services or perform public administrative functions related to the environment. There are, however, certain restrictions: access to environmental information may be denied in order to protect certain public and private interests, including the protection of business secrets, intellectual property rights, or personal data. Access to environment-related information at the state and municipality level falls within the legislative competence of the 16 states (Bundesländer). All 16 states have adopted similar Acts.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Licences and permits are the central instruments used to ensure compliance with environmental regulations. Licensing and permit requirements are contained in several environmental statutes. Certain projects may require several authorisations from different authorities. Each authority will review only those provisions for which it is responsible. However, some permits aggregate several environmental law allowances (Konzentrationswirkung). In such cases, the authorities whose permits are replaced are consulted internally by the permit-issuing authority.

The possibility of the transfer of a permit is dependent on whether the permit is a personal permit (Personalkonzession) or an object-related permit (Sachkonzession). Personal permits – which are very rare in environmental law – cannot be transferred from one person to another. Object-related permits (e.g. an operator permit) exist independently of the operator’s identity and can therefore usually be transferred. In some cases, elements of both personal permits and object-related permits are combined, meaning that a transfer is generally possible, but requires approval by the competent public authority.
2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

The applicant may challenge the refusal of an environmental permit or the individual conditions stipulated in the permit. As a general rule, a party must follow an administrative objection procedure before suing in an administrative court. Objections have to be filed within one month of the authority’s decision. In these procedures, the superior authority reviews the objection. If the superior authority dismisses the application, there is a right of appeal to the administrative court. If the claim is justified, the court will remit the case to the authority and require the authority to: grant the permit; repeal the unduly onerous condition; or – at least – consider the court’s decision when taking a new decision.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Depending on the size and type of installation, a formal permit procedure with a public consultation may be necessary. Public consultation includes public notices of the relevant project. The application and accompanying documents must be available for inspection by the public. During the public consultation period, anyone may object to the proposed project. This is followed by a public hearing, during which the licensing authority has to discuss the project with the applicant and any person who has raised objections. Certain industrial and infrastructure projects cannot be permitted without an Environmental Impact Assessment (EIA). An EIA is not an additional permit requirement, but part of the licensing procedure. The authority determines, describes and evaluates the likely environmental effects of the project based on comprehensive information that has to be provided by the applicant. Furthermore, a public hearing must be held and the authority must produce a comprehensive report on the project’s effects. Authorities must consider such effects, although the actual permit decision is made on the basis of the specific environmental laws.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

The administrative authorities have a variety of administrative enforcement instruments at their disposal. They may directly compel the permit holder to comply with the permit, levy an enforcement fine (Zwangsgeld), carry out substitute performance at the expense of the permit holder, revoke the permit, or shut down a facility. In addition, in most areas of environmental law, the administrative authorities may impose administrative fines (Bußgeld) for the violation of a permit. The violation of permits is also subject to criminal penalties. Most notably, breaches of permits related to some industrial activities incur criminal liability, even if no environmental damage has been caused.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

The Closed Substance Cycle Act (Kreislaufwirtschaftsgesetz) defines “waste” as substances and materials which a person rids himself, wishes to rid himself or must rid himself of. Due to specific limitations on the scope of the Act’s application, the waste law only applies to moveable property. The Act establishes a five-level waste hierarchy: waste prevention; preparation for reuse; recycling; other utilisation of waste, such as energetic recovery; and disposal. The Act imposes a duty on producers and possessors of waste to recycle as far as economically and ecologically reasonable. Priority is given on a case-by-case basis to the soundest solution from an environmental viewpoint, be it disposal or recycling. Furthermore, waste is subdivided into hazardous and non-hazardous waste. The scope of registration duties pertaining to waste handling depends on the type of waste, as well as the type of handling, i.e. waste production, transportation or collection, or disposal.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

While waste from private households is disposed of by the municipalities, waste from commercial activities must be disposed of by the producers or possessors. They are also responsible for preparatory and accompanying measures, such as the collection, transport, storage and treatment of waste for further use. There is a general obligation to dispose of waste only in authorised plants or facilities. If commercial waste cannot be treated or recycled in compliance with regulatory requirements, it must be handed over to the municipalities.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Parties responsible for waste may commission third parties to meet their obligations. However, such commissioning does not absolve them of their responsibility to meet the relevant obligations. In fact, the commissioner can incur criminal and civil liability if the waste has not been disposed of properly by the third party and if the commissioner has violated its responsibility to select the third party with due care. Case law has set strict standards in this regard. Third parties must appear reliable, with regard to the hazardousness of the waste, the technical problems of the disposal and the extent of the commission.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

The Packaging Ordinance (Verpackungsverordnung) obliges manufacturers and distributors to take back returned packaging free of charge and to have it recycled in an environmentally-friendly way. They are obliged to take part in a waste disposal system. This system must guarantee regular collection from private consumers. Special rules apply for one-way drink cans and bottles. The End-of-Life Vehicles Ordinance (Altfahrzeugverordnung) obliges manufacturers or importers to accept all returned vehicles which have been licensed in the EU free of charge and to ensure their proper recycling. The ordinance also defines recycling targets: a minimum of 95% of the parts of a used vehicle must be recyclable by 2015. Consumers can return electronic waste, as well as batteries/ accumulators, at collection points free of charge according to...
the Electrical and Electronic Equipment Act (Elektro- und Elektronikgerätegesetz) and the Battery Act (Batteriegesetz), respectively. Producers, importers and (under certain circumstances) re-sellers must take back, recycle or dispose of them properly. Producers must register before placing electrical equipment or batteries on the market.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Environmental liabilities are primarily prescribed under public law provisions. Public law liability is laid down in various statutes, ordinances and administrative regulations at federal and state levels, e.g. for certain occupational activities, the Environmental Damages Act (Umweltschadensgesetz). If specific regulations are not applicable, the competent authority may issue the appropriate orders under the state’s general police laws (Polizei- und Ordnungsrecht). Private claims for compensation or indemnity claims in respect of environmental damage are governed by the Civil Code. For example, neighbours may seek an injunction against emissions affecting their property, with liability arising independently of negligence. Health and personal property are protected by tort law. Compensation may be sought if the damage is caused by wilful or negligent conduct. The Environmental Liability Act (Umwelthaftungsgesetz) provides for strict liability with respect to harmful effects on the environment.

The burden of proof is reversed if there is a likelihood that the installation caused the damage and the relevant responsibility may be presumed. Criminal liability under the German Criminal Code (Strafgesetzbuch) can result from the pollution of natural waters, the creation of harmful air pollution, the creation of serious dangers to health by the release of noxious substances, waste disposal which endangers the environment, and the unauthorised operation of installations which are potentially damaging to the environment. In these cases, criminal liability can also be on negligence.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

There is ongoing debate as to whether the permit defence against public liability is a generally recognised legal instrument under German law. Most case law holds that the scope of the permit defence has to be determined on a case-by-case basis. However, there are also other court rulings which hold that – as a matter of principle – any activity or operation for which a permit has been issued cannot trigger public liability.

For example, under the Environmental Liability Act, there is no permit defence against strict liability. Proof of normal operation, nevertheless, brings two types of relief to the operator: causation is no longer presumed; and liability for insignificant damage to the property is excluded. In cases of environmental hazards, an exclusion of liability may be derived from compliance with environmental standards imposed by statutory provisions and the permit. As another defence, the operator may prove that he took all reasonable measures to avoid environmental damage. The Environmental Damages Act does not provide for a permit defence, but leaves it to the federal states to introduce such legislation.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

In general, directors and officers are not personally civilly liable for environmental wrongdoing. There is no specific precedent set by German civil courts in the area of environmental damage. However, some commentators claim that directors and officers can be held liable if they violate their obligations to organise and supervise environmental safety. The criteria and scope of such liability remains unclear.

Besides the civil liability, directors and officers can attract criminal liability under the German Criminal Code. According to s. 14 of the Criminal Code, the environmental duties of an enterprise are assigned to the company management as a whole and therefore, all members of the management can be held liable for any failure to comply with environmental laws. To some extent, this joint liability can be limited by clearly specifying in advance the areas each manager is responsible for.

Insurance protection is available for claims under public or civil law, as well as for fines and criminal penalties. Since the environmental liability laws are not consolidated and stipulate various offences (e.g. relating to water, soil, air, waste, plants and animal protection) in various acts, a great variety of insurance policies are available to cover specific risks. Insurance is also available to protect against the cost of conducting a defence to industry-related criminal proceedings.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In share deals, the target will remain liable. The same risk arises in mergers, i.e. if the investor becomes the legal successor of the target. In such a scenario, the purchaser may become liable under public and civil law (compensation claims) for any contamination that the target company (or any of its legal predecessors) has ever caused on any former site or adjacent properties.

In asset deals, i.e. if the purchaser acquires the assets of the target, the purchaser will be liable as the future owner (or occupier) of the land. However, the liability of the landowner is, in principle, limited to the market value of the site after the completion of remediation measures. It may be further limited, if the contamination was caused by a natural occurrence, by the public or by an unauthorised third party, and if he did not know about the pollution when he bought the assets. In addition, with asset deals that took place after 1 March 1999, the target company will remain liable as the former owner if it knew or ought to have known about the contamination.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

The concept of lender-liability, under which a creditor is responsible for environmental damage caused by the borrower, does not exist in German environmental law.
5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Under the Federal Soil Protection Act, which aims to protect the soil and groundwater against future contamination, several persons/entities can be held liable: the polluter; the universal legal successor of the polluter; the operator; the person exercising factual control over the land, e.g. a lessee; any former owner, provided that he transferred the property after 1 March 1999 and knew or ought to have known of the existence of the contamination; or the person/entity responsible under general principles of commercial or corporate law for the legal entity owning the site.

5.2 How is liability allocated where more than one person is responsible for the contamination?

In principle, the Federal Soil Protection Act assumes that all responsible persons are of equal status. The competent authority has full discretion to decide which responsible person it wants to charge with investigation/remediation measures. The decisive factor is generally who can prevent any risks most efficiently and immediately.

5.3 If a programme of environmental remediation is ‘agreed’ with an environmental regulator, can the regulator come back and require additional works or can a third party challenge the agreement?

The Federal Soil Protection Act provides for a ‘remediation-contract’ between the environmental authority and the person(s) liable for remediation under the Act. Such a contract may involve third parties (e.g. other responsible parties or future site owners). Once the contract has been made, the authorities are bound by the agreed remediation target and cannot require additional works. Only if the inherent basis of the contract is changed may the authority demand an adjustment or the termination of the contract.

Remediation contracts which contain provisions affecting third parties may require the written consent of the affected third parties. The need for consent is limited to the relevant provisions of the contract. If the contract is agreed without the necessary consent, the third party has the right to challenge the contract.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

In cases involving several liable persons, the Federal Soil Protection Act provides for a compensation claim between these various liable persons, irrespective of their being called to account by the authorities. The obligation to provide such compensation, and the amount of compensation, depends on the extent to which the hazard or damage was caused primarily by one party or the other. The statutory claim for compensation can be excluded by contract. Such exclusion must be stipulated by explicit contractual terms and the exclusion is valid exclusively between the contracting parties and not in relation to future purchasers. From a transactional perspective, this means that a vendor must contractually oblige the purchaser to pass on the exclusion of the statutory claim against the vendor to any onward purchasers and users.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

There is no general compensation for aesthetic harm to public assets caused by pollution. Only if this pollution is accompanied or caused by a change of the shape or the use of surface areas, there may be monetary compensation according to the Federal Nature Conservation Act (Bundesnaturschutzgesetz).

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Environmental regulators have a variety of instruments at their disposal to control compliance with environmental law provisions. Their powers are contained in the respective environmental statues and are supplemented by general provisions in the Law on Administrative Proceedings (Verwaltungsverfahrensgesetz). The powers comprise the right to conduct site inspections, to require the production of documents and to take samples. Operators and site owners are under an obligation to disclose relevant information. Under the Nuclear Energy Act and the Chemicals Act, the authorities also have the right to interview employees. According to many environmental laws, non-compliance with the duty to cooperate with the authorities makes the offender liable under administrative penal law.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

In general, the answer to this question depends on the applicable laws of the individual German states; according to the soil protection laws of various states, contamination and signs of contamination must be reported to the authorities by the responsible parties. It has to be considered on a case-by-case basis whether the disclosure obligation is limited by the privilege against self-incrimination. However, operators must take into account the fact that non-disclosure may result in an administrative fine.

According to the Environmental Damages Act, any existing environmental damage within the meaning of the Act or the imminent danger that such damage will occur must be notified by the polluter to the competent authorities.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

If there is sufficient reason to suspect that a site is contaminated, the authorities may order the persons liable under the Federal Soil Protection Act to carry out investigations to assess the relevant...
hazard. Additionally, under the Federal Immission Control Act, an operator shall generally prepare and submit to the competent authority a baseline report before commencing an industrial activity for the first time if the industrial activity involves the use of hazardous substances. The baseline report contains information necessary to determine the state of the site in regard to soil and groundwater contamination. Upon definitive cessation of the activities, the operator has to reassess the state of the site.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

If the seller fails to inform the purchaser about any existing or suspected contamination, the purchaser may be able to claim compensation. According to German civil law – unless expressly agreed otherwise – the seller is liable for any defect relating to the property he sells, unless the buyer has been made aware of such defect. “Defect”, in this sense, includes any dangerous contamination under the Federal Soil Protection Act because it can lead to several forms of liability (public and private liability to clean-up, private compensation for the costs of remediation or to a restriction in use). The buyer then has the right to either rescind the contract or reduce the purchase price accordingly. If a seller fails to inform a buyer about any existing or suspected contamination, the buyer may be able to claim compensation.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier’s potential liability for that matter?

Public law liability for contaminated land, i.e. the liability of a responsible person towards the competent authority, cannot be modified by private contracts. A polluter, therefore, cannot transfer his public law liability as polluter onto a purchaser; he will remain responsible as the polluter of land after the land is sold. However, the parties can stipulate through contractual provisions how any environmental liability is to be shared between them. The parties may agree on contractual terms such as a financial cap, a de minimis threshold, a time limit to the buyer’s claims, or sliding scales increasing the buyer’s share of liability over time. The parties should agree on a comprehensive and clear contractual definition of the kind and scope of contamination that triggers liability.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

A parent company can transfer environmental liabilities to a subsidiary by transferring title to the real property and its possession to the subsidiary. In such a case, however, the parent company can still be held liable as a historic polluter, as a former owner or under the general principles of corporate law (“piercing the corporate veil”). It is of particular importance in this connection that under-capitalisation of the subsidiary is avoided.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

A parent company can transfer environmental liabilities to a subsidiary by transferring title to the real property and its possession to the subsidiary. In such a case, however, the parent company can still be held liable as a historic polluter, as a former owner or under the general principles of corporate law (“piercing the corporate veil”). It is of particular importance in this connection that under-capitalisation of the subsidiary is avoided.

German courts do not have jurisdiction over claims by a foreign claimant against a German parent company for pollution caused by its subsidiary abroad.

8.4 Are there any laws to protect “whistle-blowers” who report environmental violations/matters?

There is no general legislation protecting environmental whistleblowers. However, some statutes expressly allow for such protection, e.g. in case of violation of health and safety thresholds. Where no such provision applies, whistleblowing is not justified and can lead to the employee’s dismissal. Under general employment laws (Betriebsverfassungsgesetz), the employee must principally seek a solution within the company and, in turn, the employer must not discriminate against him because of internal complaints.

8.5 Are group or “class” actions available for pursuing environmental claims, and are penal or exemplary damages available?

In general, neither US-style class actions, nor punitive damages are available under German law, and the amounts of compensation awarded to aggrieved parties are usually significantly lower than in the US. However, environmental NGOs can bring a claim against decisions related to environmental laws (so called Verbandsklage). Contrary to traditional German legal principles, the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz) allows group actions for these environmental NGOs. They are even allowed to bring a claim if no subjective right of a person is violated.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

German law does not provide for a general rule under which individuals or public interest groups are exempt from liability to pay costs when pursuing environmental litigation. In relation to costs, the general principle in German judicial proceedings is that the losing party must bear the costs relating to the action, and in particular any costs incurred by opposing parties. The rules on legal aid (Prozesskostenhilfe) do not usually have practical relevance in the context of environmental litigation.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in your jurisdiction and how is the emissions trading market developing there?

Germany participates in the EU Emissions Trading Scheme (EU
ETS). The EU allocation rules regarding the third trading period were implemented into German law by amending the existing Greenhouse Gas Emissions Trading Act. For the third trading period (2013–2020), individual national allocation plans for each EU Member State were replaced by one EU-wide cap on emissions. This cap will reduce annually by 1.74% of the average annual level of the Phase II cap, with a view to delivering an overall reduction of 21% below 2005 verified emissions by 2020. Furthermore, the regulations on how the allowances are allocated to the individual installations are now set by the EU rather than the Member States. The percentage of allowances allocated free of costs will decrease from 80% in 2013 to 30% in 2020. Also, a reduction factor will be applied to all industry sectors, if the overall cap is not sufficient to meet the demand for emission allowances as calculated on the basis of the benchmark model. As a result, German companies are likely to face a significant demand for emission allowances in the third phase.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

To ensure compliance with applicable threshold values, the Federal Emission Control Act and related ordinances submit a wide range of industrial activities to the obligation to continuously monitor the emission of air pollutants and to report the results to the authorities. Extensive monitoring and reporting obligations apply, *inter alia*, to combustion plants and waste incineration facilities. Besides such general obligations, authorities are entitled to put in place monitoring and reporting obligations on a case-by-case basis. The Pollutant Release and Transfer Registers Protocol Act foresee an obligation for industrial plant operators to report emissions, including greenhouse gas emissions, to the competent authority. This obligation applies to plants which exceed a certain magnitude and release a significant amount of pollutants into the environment.

9.3 What is the overall policy approach to climate change regulation in your jurisdiction?

Since the inception of the EU ETS in 2005, Germany has been at the forefront of the implementation of the scheme. Consequently, Germany significantly reduced the number of certificates available and tightened the allocation rules. The third trading period sees a significant shift of power towards the EU. Accordingly, the German government has far less discretion to establish national climate change regulation.

10 Asbestos

10.1 What is the experience of asbestos litigation in your jurisdiction?

Germany has not seen any significant asbestos litigation. This is unlikely to change.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

German law does not provide for a general obligation on property owners or occupiers to conduct an asbestos survey or to produce a register of asbestos. Such registration can, however, be required by the authorities on a case-by-case basis as a precautionary measure, especially when the affected building is frequently used by people. There is also no general obligation to remove asbestos contained in buildings or individual building parts. However, if threshold values for asbestos are exceeded or if an asbestos-containing building is demolished or is undergoing construction, all measures have to be agreed to by the competent authority.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in your jurisdiction?

In recent years, a few major transactions have involved environmental indemnity liability insurance that protects against government clean-up orders. Increasingly, major insurers have shown themselves to be prepared to negotiate and offer more flexible policies in transactions. Traditionally, however, environmental risks insurance has not played a major role in Germany. Public liability and fault-based civil liability are difficult to cover under environmental risks insurance policies. Practically, environmental liability insurance mainly plays a role with regard to strict liability under the Environmental Liability Act.

11.2 What is the environmental insurance claims experience in your jurisdiction?

So far, there has been comparatively little litigation, particularly on personal injury (and there does not seem to have been a dramatic change in the legal climate as a result of the strict liability scheme). There have been some property damage claims, but most appear to have been settled with the backing of the relevant insurance policies.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in your jurisdiction.

The German Renewable Energy Law (EEG) has been revised because the EU Commission regarded it as partly incompatible with European state aid regulation. In principal, auctioning will be the standard system to establish support levels for renewable energy to ensure competition.

The Electricity Market Act (*Strommarktgesetz*) develops the design of the German electricity market to ensure reliability of supply; *inter alia*, it contains a phase-out for some lignite power plants in order to achieve the national greenhouse gas reduction goals.

Based on a European Court of Justice decision (case C-137/14), the German Federal Administrative Court has ruled that environmental NGOs are not precluded with their objections if they did not present these objections during the environmental audit. Against this background, the legal standing in court of environmental NGOs is likely to increase further.

Regarding the Water Framework Directive, the German Federal Administrative Court has followed the European Court of Justice (case C-461/13) and ruled that there is a “deterioration of status” of a body of surface water as soon as the status of at least one of the quality elements falls by one class. This decision underlines the importance of the water law for all new projects.
Dr. Nils Christian Ipsen
lindenpartners
Friedrichstrasse 95
10117 Berlin
Germany
Tel: +49 30 755 424 00
Email: ipsen@lindenpartners.eu
URL: www.lindenpartners.eu

Nils Ipsen is our partner for public commercial law. He advises on all matters regarding public commercial law. His expertise includes environmental, planning and mining law, as well as regulatory and constitutional law. Who’s Who Legal Germany 2017 described him as an “up-and-coming” lawyer in German environmental law.

Nils Ipsen graduated from universities in Berlin and Nottingham (LL.M. in environmental, planning and regulatory law) and holds a Doctor of Laws degree (Dr. iur.) from the Humboldt University of Berlin. Before joining lindenpartners, he worked at Freshfields Bruckhaus Deringer and was formerly a partner at Dolde Mayen & Partner.
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