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Law

Business

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Austria <i>Christian Schmelz and Bernd Rajal</i> Schönherr Rechtsanwälte GmbH	3
Brazil <i>Ricardo Barretto Ferreira da Silva and Flávia Scabin</i> Barretto Ferreira, Kujawski e Brancher Sociedade de Advogados (BKBG)	12
Bulgaria <i>Vesela Mirkova and Elena Andonova-Rangelova</i> Schönherr	20
Canada <i>Dianne Saxe and Jackie Campbell</i> Dianne Saxe Professional Corporation	30
China <i>Stéphane Gasne and Hu Xiao</i> Gide Loyrette Nouel	37
Denmark <i>Mads Kobberø and Anne Sophie K Vilsbøll</i> Bech-Bruun	43
Dominican Republic <i>Romina Santroni and Giselle Perez Reyes</i> Perez Quiroz Santroni – Abogados Consultores	50
France <i>Laurent Deruy, Stéphane Gasne and Corentin Goupillier</i> Gide Loyrette Nouel	57
Germany <i>Christoph Anger and Thomas Gerhold</i> Avocado Rechtsanwälte	63
India <i>Els Reynaers</i> Kini M V Kini & Co	70
Japan <i>Akiko Monden, Rieko Sasaki and Sachiko Sugawara</i> Atsumi & Sakai	78
Malta <i>Jotham Scerri-Diacono and Annalise Caruana</i> Ganado & Associates	84
Mexico <i>Sergio B Bustamante and Jose Luis Rendon</i> Lexcorp Abogados	94
Nigeria <i>Soji Awogbade, Sina Sipasi and Olasumbo Abolaji</i> ÆLEX Legal Practitioners and Arbitrators	101
Peru <i>Sandra Orihuela and Michelle Beckers</i> Orihuela Abogados Attorneys At Law	106
Portugal <i>João Diogo Stoffel and João Louro e Costa</i> Uría Menéndez – Proença de Carvalho	113
Romania <i>Bogdan Ionita and Nicolae Miha</i> SCA Schoenherr si Asociatii	120
Russia <i>Tatiana Kazankova, Iliia Rachkov and Viktoria Tkatschenko</i> Noerr 000	129
South Africa <i>Ian Sampson and Melissa Groenink</i> Shepstone & Wylie	137
Spain <i>Carlos de Miguel and Jesús Sedano</i> Uría Menéndez	143
Switzerland <i>Stefan Wehrenberg</i> Blum&Grob Attorneys at Law Ltd	149
United Kingdom <i>Douglas Bryden, Owen Lomas and Carl Boeuf</i> Travers Smith LLP	156
United States <i>Donald J Patterson Jr and Holly Cannon</i> Beveridge & Diamond, PC	165

Germany

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Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

Article 20a of the constitutional German Basic Law establishes the basis for public action in the area of environmental protection. Accordingly, the state – through its legislative, executive and judiciary branches – safeguards the natural foundations of life and the animal kingdom.

The German legislative body has discharged this duty by enacting a variety of laws protecting the individual environments affected, and controlling activities that have a particular bearing on the environment. The following bodies of regulations are eminently important:

- Federal Emission Control Act dated 3 March 1974, together with the Implementing Ordinances Nos. 1 to 33 – Act for the prevention of harmful effects on the environment caused by air pollution, noise, earth tremors and similar events;
- Federal Water Act dated 31 July 2009 – Management of Water Resources, Water Conservation;
- Federal Soil Protection Act dated 17 March 1998, including Federal Soil Protection and Contaminated Site Ordinance – protection against adverse soil alterations and clearing of contaminated sites;
- Federal Nature Conservation Act dated 29 July 2009 – protection of the natural balance and scenic reserves, species and biotope protection;
- Recycling and Waste Management Act dated 27 September 1994 – facilitation of recycling economy and ensuring environment-friendly waste disposal;
- Chemicals Act dated 16 September 1980 – protection against hazardous substances;
- Environmental Impact Assessment Act dated 12 February 1990 – details and assessment of environmental effects of certain projects;
- Environmental Information Act dated 22 December 2004 – access to environmental information at public authorities; and
- Environmental Damage Act dated 10 May 2007 – prevention and clearing of environmental damages.

In part, these laws are substantiated and amended by subordinate provisions and regulations issued by the constituent federal states.

Additionally, directly applicable European legislation prevails in individual areas:

- Waste Shipment Regulation EC 1013/2006 dated 14 June 2006 – shipment of waste.

In case of infringement against environmental regulations, liability and sanctions are governed by the following statutes:

- Environmental Liability Act dated 10 December 1990 – liability for damages caused by environmental impact from industrial sites;
- Civil Code dated 18 June 1896 – liability for damages caused by environmental impact; and
- Criminal Code dated 15 May 1871 – criminal acts against the environment.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

German law only partially provides for an integrated control of environmental requirements. During public planning and approval procedures required for large-scale infrastructure projects, for example, such as highways, railroad lines or airports, compliance with all environmental standards is checked in uniform procedures leading to a conclusive decision. Prerequisite approvals under the Federal Emission Control Act for construction and operation of certain production facilities or power plants, for example, only partially cover the environmental constraints (such as immission control law, nature conservation law). If the project touches on further legal environmental issues, separate permission decisions are necessary (eg, approvals/permits under the Federal Water Act).

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

The essential provisions for the protection of the soil currently in effect in Germany have been consolidated into the Federal Soil Protection Act dated 17 March 1998. The act is substantiated and amended by the Federal Soil Protection and Contaminated Site Ordinance dated 12 July 1999. The Federal Soil Protection Act determines the duties of prevention and decontamination as the basic duties. The duty of prevention states that the owner as well as the holder and the occupant of real property shall take preventive steps against the emergence of adverse soil alterations that may result from use of the property or from burdens in its affected zone. What exactly establishes an apprehended adverse soil alteration has been specified in the Federal Soil Protection and Contaminated Site Ordinance. The duty of prevention may lead to an official prevention or abatement order to be issued to the owner or user of the property. Beyond this, it may cause restrictions to be imposed on permission decisions for activities that are subject to approval such as, for example, the deposition of waste.

The duty of decontamination under the Federal Soil Protection Act, however, is even more important in business operations. Accordingly, the perpetrator of soil contaminations and its universal successor in interest, as well as the property owner and the holder of the

actual authority over the property, shall remediate the contaminated soil, and bodies of water contaminated thereby, in such a way that no danger ever emanates from it. Additionally, the previous owner of a contaminated property may be held responsible for decontamination. In the long run, it is conceivable that under certain conditions the duty of decontamination for a property plot extends to a company that is not the owner of the contaminated area but is – within a group structure – backing another company holding the title to the contaminated property. In principle, under German law the perpetrator of the contamination and the owner of the property are ranking *pari passu* in relation to their remediation responsibility. There is no general obligation for authorities to primarily identify, and raise claims against, the perpetrator. The remediation responsibility exists independently of fault, and is unlimited with regards to remediation costs. Where the property owner or the holder of the actual authority over the property is held liable for remediation rather than the perpetrator of the contamination the Federal Soil Protection Act provides for a compensation claim to be raised against the perpetrator by the owner so held liable.

Beyond this, the Environmental Damage Act dated 10 May 2007, stipulates a general obligation for remediation of environmental damages owing to certain business activities. This Act, however, is subsidiary to the Federal Soil Protection Act and, at the most, is subject to ancillary application.

4 Regulation of waste

What types of waste are regulated and how?

In Germany, waste management and disposal are governed by the Recycling and Waste Management Act dated 27 September 1994. The Act implements the European directives of the Waste Framework Directive into German law. In principle, the coverage of the Recycling and Waste Management Act extends to all waste defined as any objects discarded by its holder, or that its holder intends, or is required, to discard (article 3, section 1). Only those objects and substances are exempted the disposal of which is governed by more special regulations such as nuclear fuels, mining waste or animal by-products not designated for consumption by humans.

The Recycling and Waste Management Act constitutes specific basic obligations for producers and holders of waste. Accordingly, waste first and foremost shall be avoided, or, to the extent prevention is impossible, recovered (article 4, paragraph 1 KrW-/AbfG). Only if neither prevention nor recovery is possible may waste be disposed of. Supplementary regulatory ordinances specify individual requirements for the prevention, recovery and disposal of particular types of waste.

According to the European directives, the Recycling and Waste Management Act in principle assumes that producers and holders of waste are responsible in person for its disposal. This does not apply to waste from private households, and waste that is removed. This waste is to be relinquished to the competent public authority.

Furthermore, the Recycling and Waste Management Act includes regulations regarding the approval of certain waste disposal facilities and control.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

The vital provisions for the protection against air pollution are found in the Federal Emission Control Act dated 3 March 1974. In part, this Act implements European directives, specifically the IPPC Directive (RL 96/61/EC) and the Air Quality Directive (RL 96/62/EC). It is worth noting that essential stipulations cannot be found in the Federal Emission Control Act directly but rather in subordinate legislation. Primarily, protection against air pollution is achieved by direct control of the pollution sources. To this end, the act builds on the focal term ‘facility’ to further distinguish between facilities that

require, or do not require, operating licences. The operator of a facility requiring an operating licence is subject to a set of basic duties. In accordance with article 5, it shall avoid detrimental environmental effects and other hazards (duties of protection and defence), or take preventive steps against detrimental environmental effects (duty of prevention). These duties are dynamic, in other words they continue to develop along with technological and scientific progress.

In contrast, the Federal Emission Control Act is relinquishing preventive controls at facilities not requiring an operating licence. However, the general basic duties (article 22) also apply to these facilities, together with specific stipulations for the respective type of facility.

In addition to facility-focused pollution control, the Act establishes pollution control pivoting on product, traffic and regional aspects. For instance, road traffic restrictions may be imposed for purposes of air pollution control in accordance with article 40. According to European standards, the act further includes provisions that, rather than addressing individual sources of pollution, are determining regional and planning targets for air pollution. The pertinent statutory ordinances incorporate critical values for immission, alarm thresholds as well as target values together with their corresponding monitoring and assessment procedures. Compliance with these target values is subsequently ensured by clean air and action plans.

6 Climate change

Are there any specific provisions relating to climate change?

Germany is party to the Kyoto Protocol, and, in order to meet its obligation to reduce greenhouse gases resulting thereof, has established a European emission trading system together with the other member states of the European Union (Directive 2003/87/EC). This system commits the sources of greenhouse gases from certain industry sectors to trade in allowances for their greenhouse gas emissions. Overall, only a limited number of allowances – determined in advance for the trading period – is available to the emission sources under emission trading obligation. During the trading period the allowances may be traded. The Greenhouse Gas Emissions Trading Act dated 8 July 2004 is the legal basis for emissions trade in Germany. It basically states that sources under emission trading obligation are required to obtain approval for emitting their respective greenhouse gases and to maintain a monitoring concept to determine and to document the emissions they cause, as well as to trade in a commensurate number of allowances. In Germany, allocation of allowances during the 2008–2012 trading period is governed by the Allocation Act 2012. It includes rules regarding free-of-charge supply of allowances to the sources. Following a revision of the European emission trading system effective in 2013, allocation of allowances will occur based on uniform European requirements. The allowances are planned to be auctioned off basically. Only air traffic and specific industry sectors will enjoy free-of-charge allocation.

7 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

Water protection in Germany is covered by the Federal Water Act dated 31 July 2009. Its area of application extends to surface water, groundwater as well as to coastal water bodies (article 2).

There are three sections of regulations that are of particular importance for business enterprises:

- Permits for water utilisation and water engineering;
- Waste water disposal; and
- Handling of water hazardous materials.

The basic policy is that utilisation of bodies of water requires official approval (article 8 WHG). Examples for utilisation of bodies of

water are abstraction of water from a river for the purpose of cooling industrial facilities, pumping of ground water for manufacturing processes, or discharge of liquids or materials into a body of water (article 9). Utilisation of merely subordinate importance is exempt from approval requirements. Approval may be granted in the form of either a permit or an authorisation, with the water user being in a better legal position if an authorisation was granted.

Water engineering such as river development by locks or ports, for example, are subject to mandatory public planning and approval procedures (article 68).

With regards to waste water disposal, German water law distinguishes between direct and indirect discharge. As a form of utilisation of a body of water, direct discharge requires mandatory approval according to the above principles. The Waste Water Ordinance dated 17 June 2004, states specific requirements. Currently, 57 appendices to the Waste Water Ordinance define explicit pollutant-oriented standards for waste water based on origin and manufacturing sector.

In general, direct discharge of waste water is not possible. In fact, the relevant state provisions basically require anyone accumulating waste water to cede this waste water to the public authority responsible for disposal (usually municipal authorities). Although this does not constitute an utilisation of a body of water, this discharge of waste water into public sewage works ('indirect discharge') in principle requires permission by the competent authority (article 58). The restrictions imposed for direct discharge in the Waste Water Ordinance apply accordingly.

Handling of water hazardous materials is covered in articles 62 and 63 of the Water Act. Water hazardous materials are defined as solid, liquid and gaseous substances that may have detrimental effects on water quality (article 62, paragraph 3 WHG). Depending on their potential damage effect they are classified into three different water hazard classes. Facilities that store, fill, produce, treat or use water hazardous material have to comply with the generally accepted rules of technology, and shall be designed and operated so that no concern of detrimental changes to bodies of water may arise. Facilities for handling of water hazardous materials such as storage tanks, electroplating companies, or silos, fall into this category. Further details can be found in an ordinance (Ordinance regarding Facilities for Handling Water Hazardous Materials) differentiating between the respective type of facility and water hazard class.

A specific application for approval under the Federal Water Act is mandatory for facilities storing, filling or handling of water hazardous materials. They may be erected and operated only if the competent authority has certified their suitability. The mandatory suitability assessment is not applicable in cases where the prerequisites under the Act are met by other regulations, or in the course of other approval procedures (article 63, paragraph 3).

Additionally, a general obligation for remediation is in effect in accordance with the Environmental Damage Act dated 10 May 2007. Its provisions, however, are subordinate to the specific guidance of the Federal Water Act, and are subject to supplementary application only.

8 Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

In Germany, the rules for the protection of nature and landscape are codified in the Federal Nature Conservation Act dated 29 July 2009. The Act distinguishes between the protection status awarded to certain parts of nature and landscape and general protection applied by operation of law regardless of awarding protection status.

Elements of nature and landscape that are especially worthy of protection are awarded protection status by individual official declaration (article 22 et seq WHG). Protection status may be awarded to certain areas (eg, nature reserves, scenic reserves), or to specific objects in nature (eg, natural landmarks, natural monu-

ments). Protection award decisions rest with the relevant authorities in the federal states. The resulting declarations list bans and rules intended to ensure protection of the respective landscape element (eg, building ban, access/driving ban, prohibitions on excavations or embankments). Locations in close proximity to especially protected elements of nature and landscape, therefore, may be subject to substantial restrictions. Protection status awards may, however, provide for individual exemptions from bans and rules. In addition, bans and rules may be waived if this is in the best public interest, or if the bans and rules otherwise impose an unreasonable burden and the waiver is consistent with the interests in protecting nature and landscape (article 67).

In addition to these elements of nature and landscape protected by national law, European sanctuaries that are integral parts of the 'NATURA 2000' network enjoy particular protection. These areas have been identified by the EU member states in a selection process, and then have been included by the European Commission in a list of sites of community importance. As a matter of principle, the significant conservation or protection characteristics of these sites may not be adversely affected. Notwithstanding an adverse impact on a 'NATURA 2000' site, a project may be approved for compelling public interest on an exceptional basis when no reasonable alternative exists. In such case, however, steps have to be taken to ensure the integrity of the protected area network 'NATURA 2000', for instance, by creating new biotopes at other sites as a replacement for destroyed biotopes.

The Federal Nature Conservation Act awards protection status to certain biotopes worthy of particular protection without separate official act and determination (article 30 BNatSchG). Among these are, for example, fens, swamps, reeds or alluvial forests as well as coastal and rocky cliffs. By operation of law any act is prohibited that may result in the destruction of or a significant adverse impact on these biotopes. Independent from any particular protection privilege of an element of nature and landscape, a comprehensive minimum level of protection is provided by the regulations covering interference in nature and landscape (article 13 et seq). Accordingly, adverse interference affects on the natural balance and on the landscape shall be avoided, or, if unavoidable, be compensated for by other steps conserving nature and landscape.

Interference in nature and landscape is defined as any modification to shape or utilisation of a site that has the potential of significant adverse impact on the natural balance or the landscape. Due to this broad definition the provisions covering interference in nature and landscape are of eminent importance in day-to-day practice. Leading to corresponding prevention and compensation obligations, structural works, such as excavations and embankments as well as uprooting of plant populations, are viewed as interference in nature and landscape.

9 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

Flora and fauna species worthy of protection in Germany are indirectly protected already by the legal instruments for conserving nature and landscape (see question 8). Beyond this, the Federal Nature Conservation Act extends specific biodiversity protection shielding each single individual of a species whether it is found in a sanctuary or not. According to the provisions of this act it is prohibited to kill or destroy animals or plants of the species that have been awarded special protection, or to inflict significant disturbance, or to damage or destroy their reproduction or rest sites. Prohibitions on possession and commercial exploitation interdict possession, purchase or sales as well as public exhibition of animals and plants of specially protected species. A complicated system of exceptions applies to these biodiversity prohibitions. Among others, in the absence of reasonable alternatives a waiver may be granted based on compelling public interest.

The general obligations of the Environmental Damage Act dated 10 May 2007, also apply in subsidiary form to species and habitats.

10 Noise, odours and vibrations

What are the main features of the rules governing noise, odours and vibrations?

Similar to air pollution control (see question 5), protection of the environment against noise, odours and vibrations is subject to the Federal Emission Control Act dated 3 March 1974. Accordingly, facilities have to be erected and operated in such a way that detrimental effects on the environment et al cannot be induced by noise, odours or vibrations. To what extent noise, odours or vibrations are to be regarded as being detrimental to the environment within the meaning of the act is determined in technical rules and standards, which are used for assessment in legal practice.

The Federal Emission Control Act further includes provisions for vehicles as well as for the construction of roads and railways. These provisions are also specified by subordinate regulations.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

Liability for environmental damage is primarily spelled out in the individual special laws briefly introduced above (see, for example, question 3). These laws are supplemented by the stipulations of the Environmental Damage Act dated 10 May 2007. To the extent that the special laws for each element of the environment do not provide otherwise, the Environmental Damage Act sets forth a reporting requirement for the responsible party if the danger for environmental damage is imminent, or an environmental damage has occurred (article 4); additionally, the Act stipulates the obligation to avert the imminent risk of environmental damage as well as a remediation obligation for environmental damages incurred (article 6). The application area of the law includes damages to species and natural habitats, damage to bodies of water and damage to soil by direct or indirect inserting of materials, preparations or organisms by conclusively designated professional activities such as the operation of facilities, waste management procedures, or production, use or storage of hazardous materials.

12 Environmental taxes

Is there any type of environmental tax?

German law provides for various environment levies. German legislation, however, is reticent in this area, which may be attributable to the fact that regulations regarding environmental levies repeatedly have been determined as unconstitutional, and subsequently have been rescinded, by the Federal Constitutional Court.

The waste water levy according to the Waste Water Levy Act as amended on 18 January 2005, is considered to be the paradigmatic environmental levy in German law. It stipulates staggered financial burdens commensurate to the level of harmfulness per unit of quantity for the discharger of waste water. It is the distinguishing feature of the waste water levy that it focuses on influencing behaviour rather than on funding government functions.

Another characteristic example for an environmental levy in German law is the so-called 'water penny', which in the majority of federal states is charged as consideration for drawing and using of water from bodies of water.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

The majority of environmental regulations aim at the controlling of activities bearing a risk for the environment and for human health. In addition to the regulations introduced above, it is worth pointing out, for example, the Atomic Energy Act governing construction and operation of nuclear facilities, handling of nuclear fuels as well as radioactive waste management, or at the Hazardous Incident Ordinance containing stipulations for facilities with a particularly high risk potential. The latter implements the European Seveso-II-Directive (regarding the Hazardous Incident Ordinance, see also question 15).

14 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

Since 2007, protection against risks for the environment and human health by hazardous materials is primarily regulated in Germany by the directly applicable REACH Directive (Directive EC 1907/2006) dated 18 December 2006. According to this Directive, manufacturers and importers of materials are obligated to register materials exceeding a certain quantity with the European Chemicals Agency. Registration shall include documentation constituting the basis for an assessment of the hazards immanent to the material. On the basis of this assessment use of materials may be restricted, or even prohibited.

The stipulations of the REACH Directive are augmented by the German Chemicals Act as amended 2 July 2008, incorporating provisions implementing the REACH Directive, conditions for the licensing of biocides as well as reporting requirements and prohibitions and restrictions for workforce protection.

The law pertaining to classification, labelling and packaging of hazardous materials and mixtures containing hazardous materials is currently in transition. The CLP-Directive (EC 1272/2008) dated 16 December 2008, replaces national law in effect previously, and introduces the United Nations' Globally Harmonized System in Europe. Since 1 December 2010, classification, labelling and packaging of substances is performed in accordance with the CLP-Directive; as of 1 June 2015, it shall also be applied to mixtures.

Industrial accidents

15 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

In Germany, the prevention of industrial accidents is controlled by the Hazardous Incident Ordinance dated 26 April 2004. The Ordinance applies to industrial facilities that hold certain quantities of hazardous materials. The Ordinance requires facility operators to take the requisite precautionary measures against hazardous incidents. Depending on the quantity of the hazardous materials held, the operators have to design a concept for the prevention of hazardous materials as well as alarm and contingency plans; a safety report has to spell out potential risks emanating from the facility along with remedial measures taken. Additionally, the operators – besides having to report incidents to the competent authority without delay – shall have to appoint an incident coordinator.

Environmental aspects in transactions**16 Environmental aspects in M&A transactions**

What are the main environmental aspects to consider in M&A transactions?

Which environmental aspects have to be considered depends on the type of transaction. If, for instance, as part of an asset-deal only production facilities are acquired the proper condition of the facility is crucial for its value and the liability risks inherent to its acquisition. In particular, it is to be determined whether all required approvals for the facility have been obtained, and whether environmental damages (eg, soil, water) already have occurred on the facility premises. If, on the other hand, the transaction consists in acquisition of shares the liability risks have to be assessed that may arise from earlier violations of environmental duties committed by the company to be acquired. In the end, the risks of each transaction have to be considered individually.

17 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

The aspects discussed under question 16 apply to other transactions such as IPOs, restructurings or bankruptcy proceedings in which environmental matters may be relevant, accordingly.

Environmental assessment**18 Activities subject to environmental assessment**

Which types of activities are subject to environmental assessment?

The implementation of environmental impact assessments in Germany is regulated by the Environmental Impact Assessment Act dated 12 February 1990. The Act implements the Europe-wide uniformly applicable requirements for environmental impact assessment in Germany. The projects that must undergo an environmental impact assessment are listed in attachment 1 to the Environmental Impact Assessment Act. The Act enumerates, for example, power plants, quarries, chemical industry facilities and industrial livestock farming, and also waste disposal facilities and pipelines. An environmental impact assessment is mandatory whenever projects reach a given size. For some projects, tying the threshold value initially triggers an obligation for a preliminary assessment.

In addition to the specific projects listed in attachment 1, the plans and programmes stated in attachment 3 to the Environmental Impact Assessment Act are subject to a mandatory strategic environmental assessment the structure of which roughly corresponds to the environmental impact assessment.

19 Environmental assessment process

What are the main steps of the environmental assessment process?

The environmental impact assessment in accordance with the Environmental Impact Assessment Act is organised in the following steps:

- determination of the scope of the assessment (scoping);
- submission of documentation;
- participation of authorities and public;
- summary presentation of environmental impact; and
- assessment of environmental impacts and consideration of the result in the decision.

Regulatory authorities**20 Regulatory authorities**

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

Compliance with environmental regulations is mainly supervised by the authorities of the federal states. For example, they apply environmental laws within licensing procedures or other regulatory procedures. Federal authorities are responsible for execution of the law only on an exceptional basis, for example, the Federal Environment Agency for trading of emissions. For certain aspects, cities and municipalities for once also may be involved in the execution of environmental law, for instance, in urban planning, or to the extent they are responsible for the approval of projects.

21 Investigation

What are the typical steps in an investigation?

If an authority becomes aware of circumstances that point towards a violation of provisions of environmental law it investigates the validity of the suspicion ex officio. It is basically the authority's free discretion to pick its information sources in the proceedings and which steps to take. As a matter of principle, the respective individual is to be given at least the opportunity to offer its representations during the proceedings. In general, the proceedings end with an administrative decision.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

To enable the competent authorities to perform effective investigations, almost all relevant environmental regulations grant the authorities access and control rights as well as access to internal records. If an individual concerned refuses to have such controls performed a contingency exists to enforce the control rights by means of penalties and fines.

23 Administrative decisions

What is the procedure for making administrative decisions?

The procedures for administrative decisions are not significantly dissimilar from investigation procedures (see question 21). Again, authorities may use their discretion but, as a minimum, must provide the party concerned the opportunity to present its representations regarding the issue to be decided.

24 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

In the event of violations a difference has to be made between consequences under public law and criminal sanctions. On the public law level, compliance with environmental requirements may be enforced by means of subpoena, and fines in particular. If the party concerned still does not meet its environmental duties, many special laws provide for a ban of the respective professional activity. And on the level of criminal law, many violations of environmental regulations are punishable with either criminal sanctions or penalty payments.

25 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

In Germany, everyone basically has the right to have an administrative decision reviewed by an administrative court, provided that the

Update and trends

In Germany, waste legislation is currently being adapted to the new requirements of the European Union. In particular, the present three-tier waste regime of prevention, recycling and disposal is substituted by a five-tier system consisting of prevention, preparation for reuse, recycling, other recovery and disposal. In implementing this five-tier waste regime the German legislative body sees potential facilitating some interface between the individual waste tiers. Whether or not this is in agreement with European requirements remains to be seen.

As outlined in question 6, the legal prerequisites for emissions trade in Germany have been adjusted to meet European standards.

Finally, owing to a decision of the European Court of Justice dated 12 May 2011, the expansion of the rights of action for the nature conservation organisations should be noted, stating that the rights accorded to the environmental organisations in Germany had been insufficient so far.

claiming citizen or the claiming company can substantiate a violation of their own rights. Legal remedy therefore is available only against decisions that are directed at the claimant. Administrative decisions directed at third parties, however, can be subject to a claim only if the claimant claims a violation of legal provisions that as a minimum serve to protect his interests. The right to file action of environmental protection organisations is an exception, as these may proceed against administrative decisions that touch on the field of activities listed in their statutes of association without their rights being infringed upon.

The German administrative court system in principle provides for a three-tier review. In the second and third instance (appeal, revision on grounds of law), however, proceedings require a court decision regarding their acceptance at court. Therefore, not all proceedings are actually reviewed at three levels.

Judicial proceedings**26 Judicial proceedings**

Are environmental law proceedings in court civil, criminal or both?

Environmental law issues in Germany are mainly tried before administrative courts. Yet, claims for damages arising from any violation of environmental law are pursued in the civil courts. Likewise, criminal sanctions that follow from violations of environmental law are punishable by the criminal courts.

27 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

In court proceedings, violations of environmental law may result in administrative decisions to be repealed, or to be declared unenforceable. Regarding civil and criminal liability of persons concerned, the courts impose the appropriate sanctions.

28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

In accordance with German law and as a matter of principle, violations of environmental regulations result in civil law indemnity claims subsequent to article 823, paragraph 2 of the Civil Code. Pursuant to this provision, violations of laws aiming at protecting third-party interests shall be indemnified. In addition, compliance with environmental legal obligations self-evidently may be the subject of contractual agreements between the parties.

29 Defences and indemnities

What defences or indemnities are available?

It depends on the respective environmental law system as to exactly which objections may be raised against an administrative decision. Attention should be paid to the fact that many specialty laws provide for the application of collateral estoppel permitting those objections only in judicial hearings that have already been raised by the concerned party in administrative hearings.

In general, indemnity is based on the applicable provisions of civil law. It should be noted that liability for violations of environmental law is frequently attributed in terms of law to several people who may raise compensation claims mutually.

30 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability? Liability for violations against environmental law first of all is borne by the respective company or organisation as such. Particular officers within these organisations are held liable only by way of exception under special circumstances.



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31 Appeal process

What is the appeal process from trials?

The judicial review of administrative decisions in principle is carried out in three instances (see question 25). This applies to administrative proceedings as well as to both civil and criminal proceedings.

International treaties and institutions**32 International treaties**

Is your country a contracting state to any international environmental treaties, or similar agreements?

The Federal Republic of Germany is party to various international agreements in the environmental area. Notable examples are the Aarhus Convention on public participation in environmental matters and the Kyoto Protocol on climate protection.

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

The obligations under international agreements are frequently implemented through national legislation in Germany. This again is exemplified by the Aarhus Convention, which has been codified in Germany as binding German law by the Environmental Appeals Act dated 7 December 2006. International agreements often have an immediate effect on legal policy in Germany.



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