

## Recent Developments in German Environmental Law

2017/2018 Report by Bernhard Wegener ([bernhard.wegener@fau.de](mailto:bernhard.wegener@fau.de))

(Continuing the Riga 2016-report)

### New Coalition

After some unusual back and forth, Germany has a new “Big-Coalition”-government. Its plans for the environment have been criticized by many for being too unambitious. That is especially true for its climate policies.

### Legal protection

In mid 2017 the 3<sup>rd</sup> mayor revision of the “Umwelt-Rechtsbehelfsgesetz” (UmwRG), the law of legal remedies in environmental matters entered into force ([https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl117s3290.pdf#\\_bgbl\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl117s3290.pdf%27%5D\\_1525275753792](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl117s3290.pdf#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl117s3290.pdf%27%5D_1525275753792)). The revision again complicates the provisions (to an extent that they become hardly comprehensible) and follows the over-restrictive line of transformation of EU- and Aarhus-requirements. Esp. it still distinguishes in parts between accessible legal remedies by NGOs under Art. 9 II AC and none accessible remedies by individuals and NGOs under Art. 9 III AC.

In this context much attention has been focused on the new judgement of the ECJ in C-664/15, 20.12.2017 (Protect) which is widely regarded as a further extension of access to justice under Art. 9 III AC (see: Wegener, Der Braunbär lernt schwimmen, ZUR 2018, 217).

### Renewable energy

The German legislature has amended the Renewable Energies Act (EEG) and switched the promotion of renewable energy from politically determined prices on competitive tendering. The goal is a more efficient promotion of renewable energy and the prevention of exceeding the so-called expansion corridor. <https://www.bmwi.de/Redaktion/EN/Artikel/Energy/eeg-2017.html>. An English version of the EEG 2017 can be found under <https://www.bmwi.de/Redaktion/EN/Downloads/renewable-energy-sources-act-2017.html>.

## Air Pollution

The discussion about the air pollution in Germany still focuses on manipulations especially in diesel passenger cars (VW scandal) and the transgressions of the European air quality limit values in inner cities. The main concern are no longer the small particles-thresholds but those for NOx. The NGO Deutsche Umwelthilfe (German Environmental Aid), represented by legal attorney *Remo Klinger*, strained a number of (often successful) actions for non-introduction of and adherence of air action plans and because of the lack of monitoring of the car manufacturers. Some cases also concerned access to information. In one especially revealing case (VG Berlin, 19.12.2017, VG 2 K 236.16, ZUR 2018, 236), the German ministry of transportation convinced a public prosecutor's office to ask for the ministry's files in order to shield them (unsuccessfully in the end) from the public.

The technical debate actually focusses on the question, whether there should be further limitations for diesel-cars to enter the centers of a number of cities in Germany, on which type of cars these limitations should focus and whether technical (hardware or software) solutions are possible to tackle the problem.

## The Vattenfall case

Vattenfall, the energy company owned by the Swedish state is still suing Germany under the auspices of the Energy-Charter before the ICSID/Washington. Vattenfall claims damages of 4.7 billion \$ because of the premature closing of two of its nuclear power plants in Germany.

Germany however might finally find some arguments to the invalidity of the ICSID-trial in the new ECJ decision in C-284/16, 6.3.2018 (Achmea). In this decision, the ECJ declared that at least inner-EU investor state arbitration violates Art. 344 TFEU.

## Glyphosate-Case C-673/13 P / Imidacloprid-Case C-442/14, 23.11.2016

These are not German cases but I have reported on the Glyphosate one before: Contrary to Advocate General *Juliane Kokott's* opinion (see last report), the ECJ upheld the judgment of the General Court of the European Union of 8 October 2013 in *Stichting Greenpeace Nederland and PAN Europe v Commission* (T-545/11, EU:T:2013:523) and followed the emissions-clause argument, that business secrets cannot be invoked concerning information about emissions into the environment (Krämer, elni-review 1/2017; Wegener, *Kein Mund auf Augen zu*, ZUR 2017, 146). In a follow-up case, a group of MEPs is asking the EFSA to get access to information about its glyphosate assessment (T-329/17 – Hautala et al.).

Glyphosate continues to be a hot political topic in Germany after the former minister for agriculture declared Germany's consent with the prolongation of its EU-permission for another five years without authorization by the cabinet.