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Practical cross-border insights into environment and climate change law

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Contributing Editor:

Simon Tilling
Steptoe & Johnson LLP

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Germany


Dr. Wolf Friedrich Spieth


Niclas Hellermann


Dr. Justus Quecke


Kristin Vorbeck

POSSER SPIETH WOLFERS & PARTNERS

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?

The Federal German Constitution (*Grundgesetz*), as well as the constitutions of most of the states (*Bundesländer*), recognise environmental and climate change policy as a constitutional value. In particular, article 20a of the Federal German Constitution is the cornerstone of such policy in Germany. According to this provision, all branches of the state shall protect the natural foundations of life and animals, minding the responsibility towards future generations. In a recent landmark decision, the German Federal Constitutional Court (*Bundesverfassungsgericht*) underlined the importance of climate protection and the goal of climate neutrality against the backdrop of article 20a and the fundamental rights of the Federal German Constitution (see question 12.1).

The German Parliament (*Bundestag*) is primarily responsible for legislating environmental matters. There are important authorities at the federal level, e.g. the Federal Ministry of Environment (*Bundesministerium für Umwelt*) and the Federal Environmental Agency (*Umweltbundesamt*). The administration and actual enforcement of environmental requirements rests, however, not with the federal authority, but with the states and their respective authorities. Following the recent general election, a reorganisation of the ministries and a strengthening of climate protection policies is widely expected. In addition, the EU and its authorities play an important role in defining and monitoring environmental and climate change law.

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

Germany attaches great importance to compliance with environmental law requirements. The authorities have a variety of enforcement instruments at their disposal. They may compel a permit holder to comply with the respective permit, levy an enforcement fine (*Zwangsgeld*), undertake necessary measures themselves at the expense of an operator (*Selbstvornahme*), revoke permits, or shut down a facility.

In addition, in most areas of environmental law, the authorities may impose administrative fines (*Bußgeld*) if permit or statutory obligations are violated. Such violations may also be subject to criminal penalties. Most notably, breaches of permits related to certain industrial activities incur criminal liability, even if no actual environmental damage occurred.

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*) and similar acts at state level regulate access to environmental information. Under these freedom of information laws, public authorities are required to provide applicants with access to environmental information on request. This includes environmental information held by private entities (e.g. companies) if they perform public duties or provide public services that are related to the environment and subject to the control of public authorities. However, the authority can deny or limit the access in order to protect certain public or private interests, including the protection of business secrets, intellectual property rights or personal data.

2 Environmental Permits

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

Permits are the central administrative instrument to ensure compliance with environmental regulations. Their requirements and specifications depend on sector-specific environmental statues, including, *inter alia*, the Federal Emission Control Act (*Bundesimmissionsschutzgesetz*). The more environmentally sensitive an activity is, the more likely it is to require a permit.

Generally, there is no single, all-encompassing environmental permit. A project may therefore require several permits from different authorities. However, some permits integrate several environmental permits in one (*Konzentrationswirkung*), especially permits under the Federal Emission Control Act.

Whether and under what conditions a permit can be transferred depends on the subject of the permit. Permits that relate to a person or entity (and their capabilities and attributes) are inseparably linked to the permit holder and therefore cannot be transferred without the approval of the authority. In contrast, permits that relate to a piece of land, facility or similar object can usually be transferred along with the object to which they relate without the need for another authority decision. Personal permits are rare in environmental law. If a permit is related to an object and a person at the same time (e.g. operation of a facility by a specific operator), a transfer of the permit is generally possible, but requires approval by the 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?

An applicant has the right to appeal an authority's refusal to grant an environmental permit. Alternatively, the applicant may appeal against individual conditions stipulated in the permit, which he believes to be unduly onerous.

Usually, the applicant must initiate an administrative objection procedure (*Widerspruchsverfahren*) before filing a claim with the administrative courts. If an appeal is conceded by an administrative court, the court will, in principle, (i) remit the case to the authority and require the authority to grant the permit, (ii) order the authority to reconsider the application, taking into account the court's decision, or (iii) repeal the unduly onerous condition.

Under German law, applicants must demonstrate that the authority's refusal to grant a permit may violate their individual rights. This is not the case for the special remedies available to officially recognised environmental or nature conservation associations (NGOs), which have their legal basis in the Environmental Appeals Act (*Umweltrechtsbehelfsgesetz*), the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) and in corresponding statutes of the states.

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

Industrial and infrastructure projects, which tend to have a significant impact on the environment (e.g. power stations, chemical plants, waste management facilities, railway tracks), must conduct an environmental impact assessment before a permit can be issued. An environmental impact assessment may also be required if such projects are to be altered or extended.

EU law provides for two types of such impact assessment, the environmental impact assessment (*Umweltverträglichkeitsprüfung*, or EIA) and the strategic environmental assessment (*strategische Umweltprüfung*, or SUP), which both aim to proactively determine potential environmental impacts. Moreover, a number of projects, such as paper mills, wind farms, industrial zones or shopping malls, require a preliminary "screening" of their environmental impact, in order to decide whether a full EIA is necessary.

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

The authorities have a variety of enforcement powers at their disposal. If an entity violates a permit, the authorities may, e.g., close down the operation of the facility, withdraw the permit or impose additional requirements. Administrative coercion (*Verwaltungszwang*) may also be utilised in order to enforce compliance with a permit. Most notably, the violation of a permit can lead to criminal and administrative offence proceedings if the breach relates to certain industrial activities, 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 Circular Economy Act (*Kreislaufwirtschaftsgesetz*) defines waste as substances or objects that the holder disposes of, intends to dispose of, or is required to dispose of. Under the Circular Economy Act, waste is categorised as either hazardous or non-hazardous. The scope of additional duties, such as the duty to register, notify or permit the waste handling, depend on the type of waste, as well as the type of handling the waste, i.e. waste production, transportation, 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 the possessor. 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 under the Circular Economy Act to dispose of waste only in authorised plants or facilities. If commercial waste cannot be treated or recycled, 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)?

Pursuant to section 22 of the Circular Economy Act, the parties responsible for waste can commission a third party to dispose of the waste, which, however, does not completely relieve them of their responsibility. If the commissioning party did not select the third party with due care, he may be held criminally and civilly liable if the waste has not been properly disposed of. However, if waste is transferred to a certified waste management company (*Entsorgungsfachbetrieb*), a due waste disposal process can usually be assumed.

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

The Packaging Act (*Verpackungsgesetz*) obliges manufacturers and distributors to take back returned packaging free of charge and to have it recycled in an environmentally friendly way. Under the Packaging Ordinance, packaging manufacturers and distributors are obliged to participate financially in a waste disposal scheme, which must guarantee regular collection from private consumers. Additionally, similar measures with respect to take-back and recovery of waste are provided under the End-of-Life Vehicles Ordinance (*Altfahrzeug-Verordnung*), Battery Act (*Batteriegesetz*) and Electrical and Electronic Equipment Act (*Elektro- und Elektronikgerätegesetz*).

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 liability is laid down in various statutes and regulations at federal and state level, e.g. the Environmental Liability Act (*Umwelthaftunggesetz*), Federal Soil Protection Act (*Bundesbodenschutzgesetz*) and Federal Water Act (*Wasserhaushaltsgesetz*). Environmental liabilities are usually strict and uncapped and often include the responsibility for both investigative and

clean-up measures. Even if no specific regulations apply, the competent authority may still issue the orders under general police law (*Allgemeines Polizei- und Ordnungsrecht*) to prevent a danger in order to public safety and order.

Further, German tort law protects, among others, health and property. Under section 823 of the German Civil Code, liabilities for environmental damages can arise if the damages are caused by wilful or negligent conduct. In addition, the German Criminal Code (*Strafgesetzbuch*) contains several provisions dealing with environmental offences.

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

An operator may claim that the environmental damage was caused while operating within permit limits. Some case law holds that the scope of the permit defence must be determined on a case-by-case basis, taking into account the underlying statutes and the terms of the individual permit. Accordingly, the "permit defence" does not necessarily exclude environmental liabilities.

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 principle, corporations themselves are liable for environmental wrongdoings. Directors and officers of corporation, however, can also be liable if they violate, e.g., obligations to organise or supervise environmental safety. This applies, in particular, to (environmental) criminal law, as companies cannot be prosecuted under German criminal law.

Insurance protection is available for claims under public or civil law, as well as for fines and criminal penalties. However, due to the varied nature of offences covered under various environmental statutes, such risks are covered through a great variety of insurance policies.

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?

The implications depend on the subject of the transaction (company, site, plant) and the complexity of the environmental liabilities at issue. For environmental liabilities, provisions in the transaction documents should therefore be tailored on a case-by-case basis. In the absence of such individual provisions for soil and groundwater contamination, the following generally applies.

In share deals and merger scenarios, the purchaser may acquire or consume the target with all its pre-acquisition environmental liabilities. In such a scenario, the purchaser has (generally unlimited) liability under public and civil law for any pre-acquisition environmental liability of the target company or any of its legal predecessors (universal succession).

Unlike in a share deal, in an asset deal, the purchaser is not the universal legal successor of the seller and therefore becomes not liable for any pre-acquisition environmental liability. In an asset deal scenario, the purchaser of a site is therefore, in principle, not liable for contamination of third-party sites. Moreover, his liability is usually limited to the market value of the site after the completion of remediation measures if he acquired the property *bona fide* regarding the absence of contamination.

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

The concept of lender liability does not exist under German environmental law.

5 Contaminated Land

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

The Federal Soil Protection Act governs liability for soil and groundwater contamination. Such liability is strict and, in principle, uncapped. Liable are, in particular, the polluter, the polluter's universal legal successor, the owner, the former owner (if additional requirements are met), as well as the operator or every other person exercising factual control over the land. These persons/entities are jointly and severally liable *vis-à-vis* the authorities.

If there are sufficient grounds for suspecting that a site has been contaminated, the competent authority may require any of the aforementioned persons/entities to carry out an investigation at their own expense in order to determine the degree of contamination. If there is evidence of a threat to the environment or environmental damage, the authority is permitted to order remedial action. In addition, the authority may recover the costs of the measures it has taken in order to avert environmental damage. When recovering such costs, the authorities may select whom to hold liable on the basis of their financial resources.

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

The authorities have broad discretion over whom to charge with investigation or remediation measures or the costs thereof. Generally, the "polluter pays" principle applies. Regarding soil and groundwater contamination, however, the liable persons/entities (see question 5.1) have a joint-and-several liability *vis-à-vis* the authorities. The polluter, therefore, is not necessarily held liable, e.g., if it is difficult to determine the identity of the polluter or the polluter is financially incapable of carrying out remediation. In such cases, the authority may charge other liable persons/entities, e.g. the owner of the site. In turn, the owner may then have a compensation claim against the polluter under the Federal Soil Protection Act (see question 5.4).

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?

Informal agreements on remediation programmes do not bind the authorities. However, the Federal Soil Protection Act provides for a remediation contract (*Sanierungsvertrag*) between the authority and the liable persons/entities (contract under public law). To ensure that the kind and scope of remediation measures can be planned reliably, a contract public law is generally recommended. Once such a contract has been executed, the authorities are bound by the contract and cannot require additional works. Only if the factual basis of the contract has changed significantly and if agreed specifically, may the authority demand an adjustment or the termination of the agreed contract.

Remediation contracts can also involve third parties (e.g. other responsible parties or future site owners). Remediation contracts containing provisions affecting third parties usually require their written consent. The need for consent is limited to the relevant provisions of the contract and the third party can challenge the contract if they withheld the necessary consent.

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?

Pursuant to section 24(2) of the Federal Soil Protection Act, a site owner charged by the authority with remediation measures has a claim for compensation against the polluter (polluter pays principle). The extent of this compensation depends on the extent to which the risk or damage was caused by one or the other party.

The compensation claim pursuant to section 24(2) of the Federal Soil Protection Act can be excluded by contract. Such exclusion must be stipulated by explicit contractual terms and is only between the contracting parties and not in relation to future purchasers. However, a seller may contractually oblige a purchaser to pass on the exclusion of the statutory claim against the seller to any future purchasers and subsequent users.

Liabilities *vis-à-vis* the authorities for site contaminations cannot be transferred from the seller to the purchaser. Regarding the internal relationship between the seller and the purchaser, however, indemnity claims may stipulate the respective share for the environmental liabilities (see question 8.1).

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 harms to public assets. However, the Environmental Damages Act provides for, *inter alia*, remediation duties with regard to damage caused by certain occupational activities to protected habitats and species, inland waters and soil.

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 ensure compliance with environmental law. Their powers are contained in the respective environmental statutes and are supplemented by the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

Under German law, regulators shall obtain the relevant facts *ex officio*, including the determination of nature and scope of an investigation. Accordingly, the powers of environmental regulators comprise the right, e.g., to conduct site inspections, obtain documents, take samples or impose monitoring duties. Operators and site owners are under an obligation to provide assistance in finding facts and evidence.

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?

Generally, a duty to disclose information regarding environmental issues is subject to the law of the states and, more importantly, can be subject to permits issued for a respective site. Whether a disclosure obligation is limited by the privilege against self-incrimination must be considered on a case-by-case basis.

The Environmental Damages Act requires notification by the polluter to the competent authorities of any existing environmental damage within the meaning of the Act or the imminent danger that such damage will occur (*unmittelbare Gefahr eines Umweltschadens*).

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 person/entity liable under the Federal Soil Protection Act to carry out investigations in order to assess the relevant hazards (*Gefährdungsabschätzung*). These investigations may include the duty to commission experts and investigative bodies.

If a site is contaminated, the authority may then require all potentially responsible parties to carry out all necessary measures, especially soil and water investigations and installation of monitoring stations. Moreover, it may order the responsible parties to submit a remediation plan (*Sanierungsplan*).

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?

German contract law provides the purchaser with relatively strong protection. Generally, the seller is liable for any defect relating to the property he sells, unless the purchaser has been made aware of such defect.

Existing environmental problems, e.g., site contamination, constitute such a defect. In addition, mere suspicion of environmental problems can also constitute a defect. Generally, the greater the potential impact of a suspected environmental problem is, the more likely a duty to disclose applies. If not informed accordingly, the purchaser may rescind the contract, reduce the purchase price or be entitled to 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?

Obligations under German public law *vis-à-vis* authorities cannot be modified by private contracts. The parties of a contract, therefore, are not able to transfer their liability *vis-à-vis* the authorities to a purchaser unless the authority is itself a party to a (public) contract, e.g. in cases of remediation contracts under the Federal Soil Protection Act (see question 5.3).

Regarding the internal relationship between the seller and the purchaser, however, private contracts (without the involvement of the authorities) may stipulate the respective share for the environmental liabilities. Often, the purchaser requires the environmental liabilities arising prior to signing or closing of transaction to be considered in the purchase price or to be covered by an indemnity clause. In any event, the parties should include a clear definition of the kind and scope of the environmental damages (e.g. soil, groundwater, munitions, buildings, etc.) covered by such contractual provisions. Given the strong influence of German authorities on environmental issues, the agreements should always contain the parties' mutual rights and obligations in dealing with administrative proceedings (e.g. the buyer's duty to protest against orders in co-operation with the seller).

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

Under German law, a company generally cannot avoid environmental liabilities through dissolution. However, a parent company can transfer its environmental liabilities to a subsidiary by transferring title to the real property and its possession to the subsidiary. In such cases, however, the parent company can still be held liable as a historic polluter, as a former owner or under general principles of corporate law, i.e. piercing the corporate veil due to, e.g., material under-capitalisation of the subsidiary.

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?

Generally, companies themselves are liable for environmental damages, but not their shareholders. Under the Federal Soil Protection Act, however, an entity/person which under general principles of corporate law is responsible for its subsidiaries/affiliates, shall be held liable for contaminated land owned by its subsidiary. The corporate veil may only be pierced if, e.g., (i) the subsidiary is under-capitalised, (ii) finances are mixed up with its shareholders' finances, or (iii) both entities form "*de facto* consolidated companies" (*qualifiziert-faktischer Konzern*).

In principle, there is no jurisdiction of German courts for claims of foreign plaintiffs against a German parent company for pollution by a foreign subsidiary.

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

There is no uniform legal approach or general legislation for protecting environmental whistle-blowers. Whether a breach of confidence by the whistle-blower is justified (e.g. due to an imminent danger) must be determined on a case-by-case basis.

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

In general, neither the US-style class action, nor the concept of punitive or exemplary damages, exist under German law. However, changes in the legislation, particularly the Environmental Appeals Act, have increased the standing of certain interest groups and NGOs to challenge environmental decisions, particularly relating to permits and planning consents. In addition, "collective interest claims" have recently been introduced on both national (*Musterfeststellungsklage*) as well as EU levels (*Verbandsklage*), but for now only concern consumer law.

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. 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) and holds the largest share of participating installations. The EU ETS mainly covers the power sector, heavy industry and aviation sector. It sets an EU-wide cap on the total amount of greenhouse gases and no longer includes national sub-targets. The cap is reduced gradually in order to decrease total emissions over time and emission allowances can be traded with other companies (cap-and-trade mechanism). The price for an emission allowance has increased considerably in the meantime.

The European Commission launched the European Green Deal in 2019 in order to make the EU climate neutral by 2050. Therefore, the whole policy set-up regarding climate change is currently under review, including the EU ETS (see question 12.1). According to the "Fit for 55" package presented in July 2021, the EU ETS will be adapted in the coming years towards a steeper reduction and probably extended to sectors such as building and/or transport.

Besides, Germany introduced a national Emissions Trading System for fuels in 2021, which encompasses the building and transport sector. Initially, certificates can be purchased at a fixed price of EUR 25 in 2021, rising gradually to EUR 55 in 2025; from 2026 onwards, certificates will be acquired via auctions.

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?

There are further extensive obligations to monitor and report greenhouse gas emissions; however, these primarily address the federal or respective state government. Obligations to monitor and report sector-specific greenhouse gas emissions follow, in particular, from the Federal Climate Protection Act (*Bundesklimaschutzgesetz*) and the climate protection laws of the states. The EU Climate Law, which entered into force in 2021, also provides for monitoring and reporting obligations.

In addition, there are a variety of EU requirements for monitoring and reporting greenhouse gas emissions from individual products or sectors. This applies, e.g., to the greenhouse gas emissions of new passenger cars or new light commercial vehicles (Regulation 2019/631) or for shipping companies (Regulation 2015/757).

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

Climate change is one of the most important policy topics in Germany. A recent landmark decision of the German Federal Constitutional Court stressed the importance of climate protection (see question 12.1). The Federal Climate Protection Act provides for binding climate goals, according to which greenhouse gas emissions must be reduced by 65% in 2030 and 88% in 2040 (compared to 1990 levels) and Germany must achieve (net) climate neutrality by 2045. The Federal Climate Protection Act also stipulates national greenhouse gas emissions reduction targets for sectors such as energy, industry, transport, buildings and land use.

Aside from these national standards, Germany's climate change policy is extensively regulated at EU level, e.g. the European Green Deal, "Fit for 55" package, etc.

10 Asbestos

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

Germany has not seen a development of an "asbestos litigation industry" that is in any way comparable to the extent of litigation taking place in the US. As far as we can see, this is not going to change any time soon.

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

Under German law, there is no general duty on property owners or occupiers to conduct an asbestos survey or to produce a register of asbestos. Such registration may, however, be required by the authorities on a case-by-case basis as a precautionary measure. There is also no general obligation to remove asbestos contained in buildings or individual building parts if this asbestos does not pose any threat. The authority has the power to issue all orders deemed necessary to protect human health. In addition, the responsible party can incur civil liability for personal injuries based on its duty to protect the public (*Verkehrssicherungspflichten*). Illness due to asbestos exposure is recognised as an occupational hazard.

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 Germany, insurance protection is available for claims under public or civil law as well as for fines and criminal penalties. However, since the environmental liability laws are not consolidated and stipulate various different offences across various different acts, a great variety of insurance policies (ranging from standard liability policies to more tailored products for distinct risks) are required to effectively cover risks.

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; however, 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.

In a landmark decision issued in March 2021, the German Federal Constitutional Court emphasised the importance of climate protection policies. Accordingly, the legislature did not violate its duty to protect complainants from the risks of climate change through the Federal Climate Protection Act in general. However, the Court considered the Act unconstitutional insofar as it does not provide for binding reduction targets for the period of 2030 onwards. Since almost every exercise of liberty is linked to greenhouse gas emissions, the Act – according to the Court – violated the fundamental rights of the (mostly young) plaintiffs in their so-called "intertemporal dimension". As a result, the legislature amended the Federal Climate Protection Act and set stricter reduction targets for 2030 and 2040 and a long-term reduction path towards (net) climate neutrality by 2045 (see question 9.3).

Following this decision, as well as the ruling by the district court of the Hague against Royal Dutch Shell in May 2021, climate change law suits against private companies have been filed in German civil courts. All these lawsuits are supported by NGOs and aim to oblige private companies to reduce their greenhouse gas emissions more quickly. However, the German Federal Constitutional Court has not established climate protection obligations for private companies. Moreover, the court assigned the decision and implementation of climate policies primarily to the legislator and not to the courts. It also appears more than doubtful whether and to what extent the ruling by the district court of the Hague is any relevant to German civil law. NGOs have, nevertheless, announced further climate protection lawsuits, which pose a considerable risk for CO_2-intensive business activities in Germany. Parallel to these developments at national level, the EU is in the process of translating the European Green Deal in concrete regulatory requirements. The European Climate Law entered into force and the EU announced the "Fit for 55" package. With this programme, the EU plans to revise its key climate change regulations. These amendments will affect all CO_2-intensive industries.

Dr. Wolf Friedrich Spieth is a founding Partner at POSSER SPIETH WOLFERS & PARTNERS (pswp) and has led Freshfields' global low-carbon energy group as well as their environmental and regulatory team for many years. From offshore wind, power-to-X, refineries and power plants to chemical industry and large infrastructure projects, Wolf brings decades of hands-on expertise to the table. Wolf and his team are spearheading new developments in energy projects and all matters relating to the carbon economy and environmental law, especially the renewable sector and climate litigation. Wolf receives top ratings in national and international rankings for low-carbon energy and environmental and public law.

POSSER SPIETH WOLFERS & PARTNERS
Palais Holler, Kurfürstendamm 170
10707 Berlin
Germany

Tel: +49 30 814 542 501
Email: wolf.spieth@pswp.de
URL: www.pswp.de

Niclas Hellermann is a founding Partner at pswp. Previous to this, he was part of Freshfields' Environment Planning and Regulatory Group with a particular focus on renewable energy. Niclas advises national and international companies as well as governments on a wide range of environmental law and regulatory questions. His work focuses on projects of the energy transition (coal phase-out, hydrogen and offshore wind projects), climate litigation, industrial and infrastructure projects (including M&A transactions) as well as on advising industries in cases of environmental liabilities.

POSSER SPIETH WOLFERS & PARTNERS
Palais Holler, Kurfürstendamm 170
10707 Berlin
Germany

Tel: +49 30 814 542 504
Email: niclas.hellermann@pswp.de
URL: www.pswp.de

Dr. Justus Quecke is an Associate at pswp. He advises companies, associations and governments on all aspects of environmental and regulatory law, including European law. His practice focuses on the automotive, energy, chemical and mining sector as well as climate regulation in general. Currently, Justus extensively advises on major climate change litigations in Germany. In addition, he advised on the introduction of the Federal Climate Protection Act, on claims for environmental damages in and outside of courts and has extensive experience in transactions whose success hinges on environmental law matters.

POSSER SPIETH WOLFERS & PARTNERS
Palais Holler, Kurfürstendamm 170
10707 Berlin
Germany

Tel: +49 30 814 542 510
Email: justus.quecke@pswp.de
URL: www.pswp.de

Kristin Vorbeck is an Associate at pswp. She advises the private and public sector on issues of German, European and international environmental and regulatory law and represents our clients in proceedings at national and European levels. Her focus is currently on projects implementing the energy policy turnaround as well as on major infrastructure and industry projects, mainly from the chemical and food industry. Kristin is well experienced in advising various clients on complex environmental law related aspects of significant M&A transactions.

POSSER SPIETH WOLFERS & PARTNERS
Palais Holler, Kurfürstendamm 170
10707 Berlin
Germany

Tel: +49 30 814 542 511
Email: kristin.vorbeck@pswp.de
URL: www.pswp.de

POSSER SPIETH WOLFERS & PARTNERS was founded in 2018 by leading members of the Environment Planning and Regulatory Group of Freshfields, a team of highly experienced partners and lawyers.

Our team of six Partners and 15 Associates with offices in Berlin and Düsseldorf has more than 20 years' exceptional experience and knowledge of regulatory and environmental law projects that have broken new ground in the legal and economic development of Germany and Europe.

We advise in a number of sectors, in particular in the sectors of energy and climate regulation, industry and environment, mining, water and raw materials. Our firm has already shaped the national nuclear phase-out and the coal phase-out. We are now at the forefront of dealing with climate litigation for the industry as well as the energy transition to renewable energy, green hydrogen, and a low-carbon economy.

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