

## Recent Developments in German Environmental Law

Report by Bernhard Wegener (bernhard.wegener@fau.de)

### Legal protection

In Case C-137/14, the European Court of Justice has condemned the Federal Republic again because of an insufficient guarantee of effective legal protection in environmental law. The decision was made after an infringement procedure initiated by the Commission. The Court confirmed its explanations already contained in decision C-72/12 (Altrip) concerning the necessity of effective judicial review of procedural errors. Moreover, the Court rejected the regulations contained in German environmental administrative law for so-called “Präklusion” (foreclosure). National laws according to which objections which have not been raised during the administrative procedure cannot be introduced in the subsequent court proceedings, are not in conformity with EU-law and the Aarhus-Convention.

On the 19<sup>th</sup> of April 2016 the federal ministry for the environment has published a proposal for yet another revision of the “Umwelt-Rechtsbehelfsgesetz” (UmwRG), the law of legal remedies in environmental matters:

[http://www.bmub.bund.de/fileadmin/Daten\\_BMU/Download\\_PDF/Gesetze/entwurf\\_umwRG\\_bf.pdf](http://www.bmub.bund.de/fileadmin/Daten_BMU/Download_PDF/Gesetze/entwurf_umwRG_bf.pdf).

1

---

### Renewable energy

The German legislature is currently seeking an amendment to the Renewable Energies Act (EEG) to switch 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.

<http://www.bmwi.de/BMWi/Redaktion/PDF/E/eeg-nouvelle-2016-eckpunkte-praesentation,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf>.

### Air Pollution

The discussion about the air pollution in Germany focused last year on manipulations especially in diesel passenger cars (VW scandal) and the still to be observed transgressions of the European air quality limit values in inner cities. Also other manufacturers than VW apparently use so-called shutdown systems that reduce or completely shut off the emission control for cars below a temperature of 10° C (in some cars below 17° C). Temperatures below 10° C prevail in Germany in about half of the year. The NGO Deutsche Umwelthilfe (German Environmental Aid) strained a number of (partly successful) actions for non introduction of and adherence of air action plans and because of the lack of monitoring of the

car manufacturers, see, for example:  
[http://www.duh.de/pressemitteilung.html?&tx\\_ttnews\[tt\\_news\]=3716](http://www.duh.de/pressemitteilung.html?&tx_ttnews[tt_news]=3716).

### TTIP transparency

Since the beginning of the year, Member of the Bundestag can read the negotiation documents to TTIP in a specially designed reading room. The conditions, however, are restrictively designed. In particular, only the parliamentarians themselves can inspect. Insight from qualified personnel is not permitted. Against this limitation that does not apply to MPs of the European Parliament, the Greens have complaint to the European Court (CFI), see. <https://www.gruene-bundestag.de/themen/freihandel/klage-beim-europaeischen-gericht-auf-mehr-transparenz-bei-ttip.html>.

Meanwhile Greenpeace has published at least some of the TTIP-files:

<http://www.ttip-leaks.org/>

### The Glyphosate-Case C-673/13 P

It is not a real German case but I have reported on it before: Advocate General *Juliane Kokott* has delivered her opinion. She proposes that the Court should set aside 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 reject the emissions-clause argument. According to her arguments, the Plant Protection Regulation of 2011, which was adopted subsequent to the emissions clause, changes the legal situation, as Article 63(2) catalogues information the disclosure of which would undermine the protection of commercial interests. This includes the specification of the full composition of a plant protection product and of impurity of the active substance except for the impurities that are considered to be toxicologically, ecotoxicologically or environmentally relevant, and results of production batches of the active substance including impurities; precisely the contested information. In defining the catalogue the legislature ought to have known that that information arises in connection with the approval of plant protection products. If it had assumed that information from the approval procedure falls under the emissions clause because plant protection products are intended to be released into the environment, it would have defined a catalogue of highly sensitive information which would be rendered ineffective in practice, as such information would always be subject to the presumption of an overriding public interest in disclosure. As the Commission had pointed out, however, the view cannot be taken that the legislature intended to adopt a provision which was ineffective in practice. According to *Kokott*, it must therefore be assumed that the legislature implicitly reassessed the anticipated weighing of the relevant fundamental rights and principles and thus defined the scope of the emissions clause strictly.