

Recent Developments: Germany

1. Association Action – the never ending story

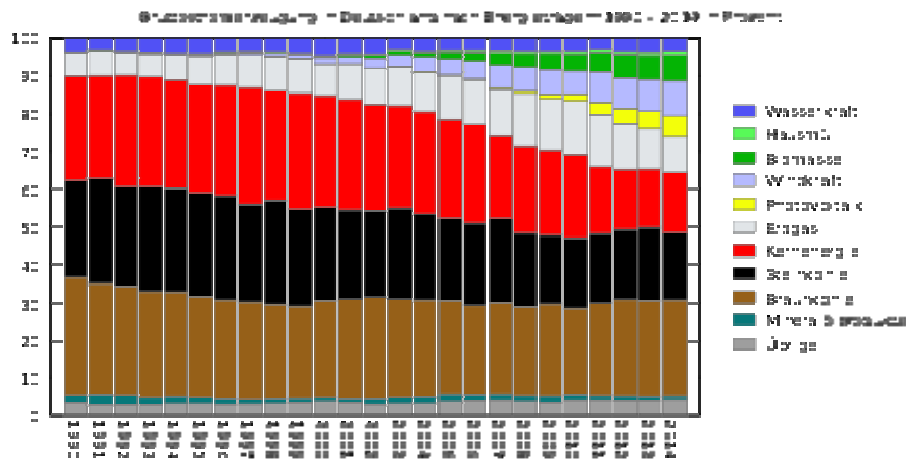
Following the ECJ decision on Art. 9 III Aarhus Convention the Federal Administrative Court (BVerwG) in a decision of 5 sept 2013 of the 7th chamber (BVerwGE 147, 312) had acknowledged admissibility of an association action concerning the obligation of government to restrict traffic in a non-attainment zone. The court based this on the clear command of the Air Quality Directive 2008/50 and construed the association action as a “procuratorial” device. In a decision of 14 nov. 2014 (4 C 34.13) the BVerwG’s 4th chamber somewhat rowed backwards denying association action challenging a noise abatement plan for not having included air traffic noise arguing that the pertinent Environmental Noise Directive 2002/49 was not sufficiently precise and unconditional.

2. Non-regression in water law

Both the rivers Elbe and Weser shall be deepened in order to allow larger container vessels to pass through to the upstream harbours in Hamburg and Bremen respectively. This undoubtedly will cause environmental harm. The approval for deepening the Weser was provided and appealed. The competent court, the BVerwG, submitted to the ECJ basically 2 questions: Does the Water Framework Directive 2000/60 contain an obligation to by 2015 reach water quality standards in effect or just by proper planning and programming, and is the command of its Art. 4 to prevent deterioration of the water conditions only applicable if the expected deterioration leads to a degrading from one to another water quality class, or even if the degrading occurs within one class (C-461/13). GA Jääskinen in his opinion of 13.10.2014 proposed to answer that the obligation is one in effect and covers deterioration within one class. German towns with upstream harbours are now eagerly awaiting the ECJ’s judgement. The BVerwG which also deals with the Elbe deepening has stayed proceedings accordingly. I expect that it will follow the GA. But the developers and competent authorities will then resort to the exceptions provided by Art. 4 VII Dir 2000/60. This will lead to discussing alternatives, and especially their scope. I myself have written an article suggesting that the use of the brand new and underused deep water harbour in Wilhelmshaven (whose construction had already cost heavy damage to nature sites at the coast) would be an alternative. Of course, this is rejected by the ruling opinion because it would degrade the importance of Bremen and Hamburg harbours. For a broader discussion of the non-regression principle see M. Prieur/ G. Sozzo (eds) *La non-regression en droit de l’environnement*, Bryulant 2012.

3. Electricity

The German electricity mix is as follows:



In 2014 the Renewable Energy Act was reformed. Some of its issues:

- the basic system (feed in right, guaranteed price, renewables charge imposed on endconsumers, with (contested) exceptions for competitive industry
- no further increase of generation of electricity from biomass
- lower subsidies for wind energy in order to prevent oversupply
- better planned increase of offshore wind installations
- phasing in of obligation of generators to directly feed users rather than serving distributors
- priority of feed-in and use of renewables untouched

The phasing out of nuclear power is still progressing according to plan. There is heavy discussion about stopping mining of brown coal. No solution in reach concerning nuclear waste.

Gerd Winter, 26.5.2015