



Transposition and Application of the Environmental Liability Directive in Germany

10th National Experts Meeting on ELD

Dr. Ulrich Klein



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- I. State of implementation
 - II. Court decisions
 - III. Decisions of competent authorities
 - IV. Conclusions



I. State of implementation

Federal Law

Water Management Act

Soil Protection Act

Nature Conservation Act

Environmental Damage Act (supplementary)

Law of the Federal States

on the competent authority (article 11 ELD) and the recovery of costs (articles 8 and 10 ELD)

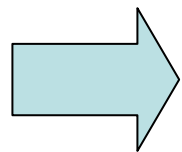


I. State of implementation

What are the main effects of the ELD?

Three answers are often given:

1. Introduction of new legal requirements on remedial measures concerning the damage to protected species and natural habitats.
2. Very few cases have occurred in practice.
3. Introduction of uniform procedural requirements (in particular “request for action”).



These answers have to be explained.



II. Court decisions

No court decision until today.

Three court cases are to be decided.

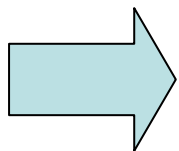
- Drainage of a bird sanctuary affecting the breeding sites of the black tern (VG Schleswig).
- Removal of hedges for construction works affecting protected birds and habitats (VG Karlsruhe).
- Recycling of railway ballast and sleepers causing soil contamination and affecting protected animals (VG Saarlouis).



II. Court decisions

One court procedure has been finished without a court decision.

- Construction of a solar energy park affecting protected reptiles and natural habitats. The operator agreed by contract to take the necessary remedial measures. Meanwhile new habitats have been provided.



Very few court cases.



II. Court decisions

What are the main reasons?

- Cases are often decided before an action is brought to court either by agreement or administrative decision.
- In cases where an authorisation or another kind of consent has been issued by the competent authority, the chances of success in a court procedure are often seen as uncertain by environmental associations.
- [According to German law access to justice for environmental associations has been limited to “individual rights”. (ECJ, C-115/09).]



III. Decisions of authorities

Recent developments and trends:

- Increasing number of cases.
- Environmental associations use the right to request for action more often.
- The focus is on damages to protected species and natural habitats.
- Not only operators are made responsible, but also the competent authorities (although the latter is not a case according to the ELD).



III. Decisions of authorities

Examples for typical cases:

- Maintenance work at a hydropower plant reduced the water level of the river “Sauer” and affected natural habitats and protected species in Germany.
- Filling of an adit with soil material destroyed the natural habitats of protected bats.
- Clearing of a forest patch in a protected area affected the natural habitats of protected birds.
- Geocaching in protected areas, especially caves, affected the habitats of protected birds and bats.



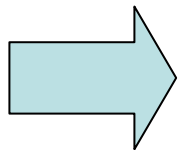
III. Decisions of authorities

New developments:

- In some cases the **competent authority**, which has issued an authorisation or another kind of consent to the operator, has also been made responsible.

Environmental associations are aiming at:

- raising public and political awareness and
- stopping the consent procedure.



Preventive strategy.



IV. Conclusions

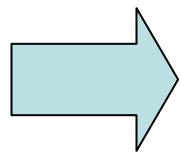
- Court cases are rare.
- Most of the cases are decided by a competent authority.
- The right to request for action is used.
- The focus is on damages to protected species and natural habitats.
- Cases are often caused by activities like farming, forestry, extraction of mineral resources, maintaining of water bodies.



IV. Conclusions

Further steps of implementation:

- For member states the exchange of information on better ELD implementation is desirable.
- For competent authorities systematic publication of cases and decisions would be useful for applying the abstract legal requirements.
- For companies the development of specific guidelines and checklists would be useful for avoiding and minimising environmental risks and damages.



Research Project “Environmental Damage”
University of Applied Sciences Bingen



Thank you for your attention!

