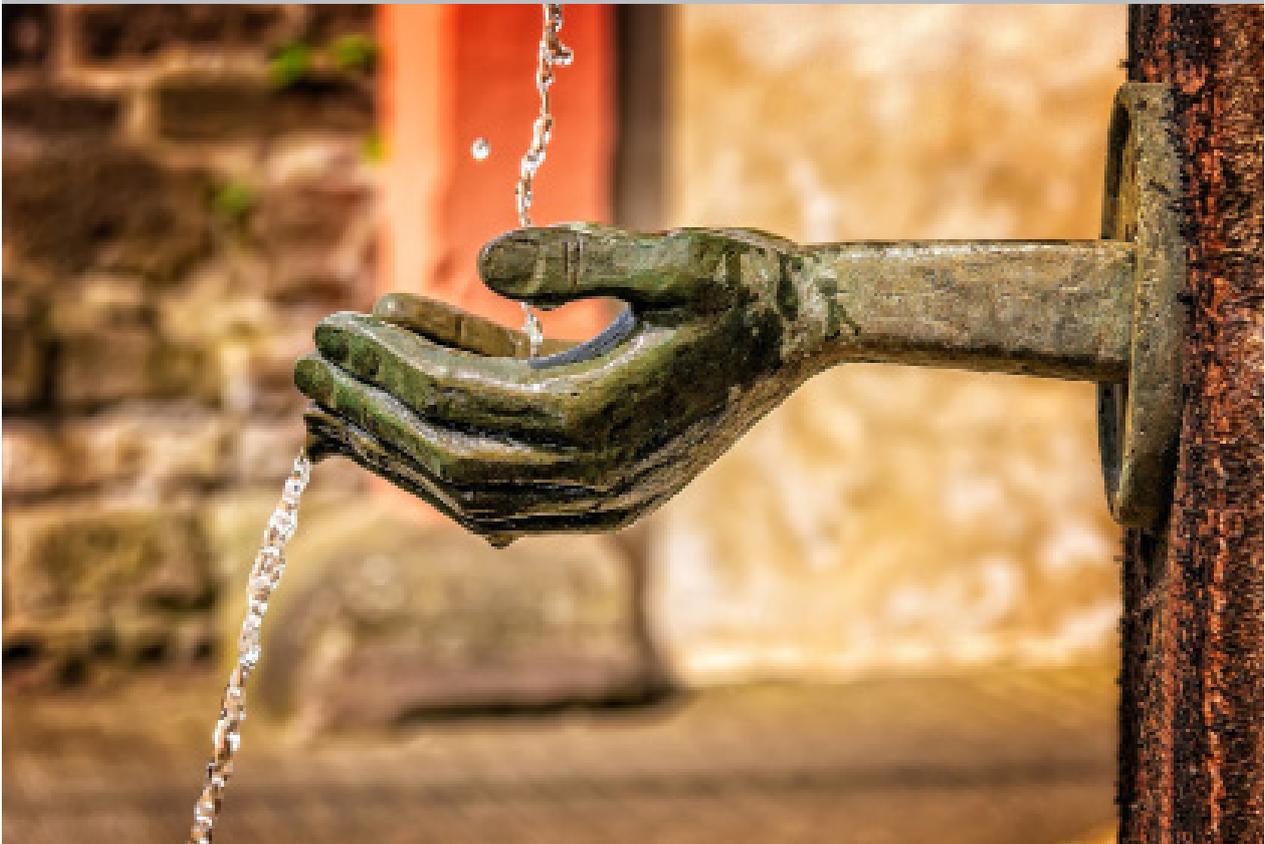
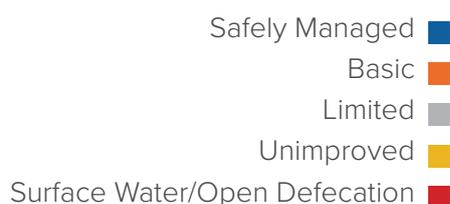


# LEGAL COUNTRY MAPPING

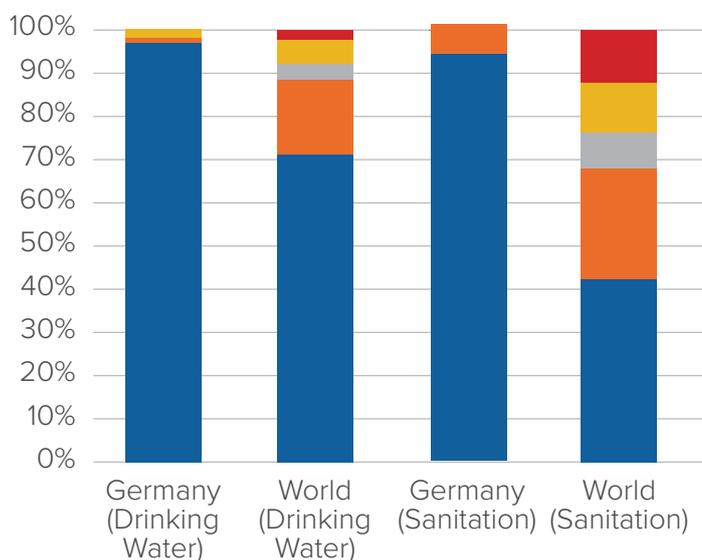
# GERMANY



## GERMANY COUNTRY MAPPING



### WATER AND SANITATION STATUS (2015)



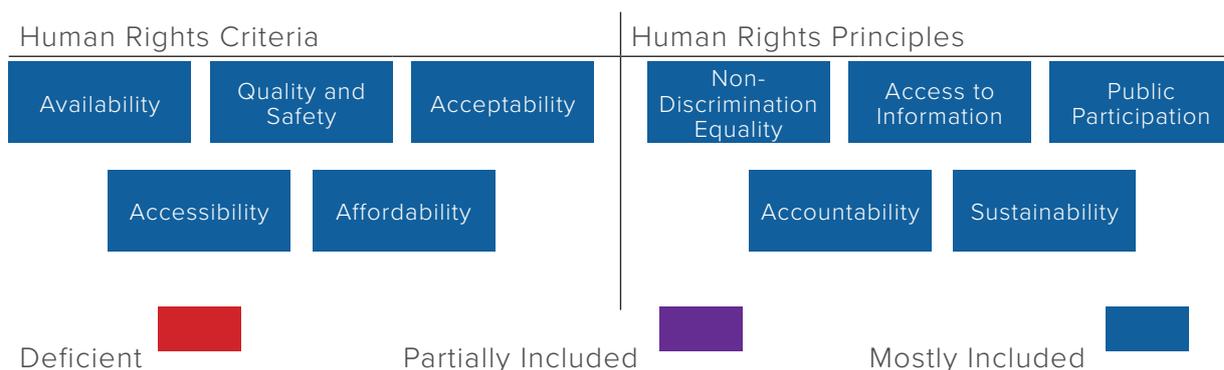
### GENERAL LEGISLATION

Member of a regional integration organisation	Yes (the EU)
State Organisation	Federal
Relationship between International and National Law	Dualist
Supreme Law	European Union Law
Independent National Human Rights Institutions (NHRI)	Yes
Name of National Institution possessing regulation-making authority	Bundestag
Popular consultation as part of governing/legislative process	Yes

### WATER GOVERNANCE

Right to Water or Sanitation mentioned in Constitution	No
A water code or a law specific to water resources	Yes
National Strategy, Policy, Action Plan etc. on Water and Sanitation	No
Transboundary Water Resources	Yes
Priorities in the allocation of water for different uses	No

### LEGAL FRAMEWORK



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## A. PRELIMINARY QUESTIONS

### What type of State is the country? (e.g., Federal, Unitary, etc.)

Germany is organized as a federal state based on the German Basic Law (Grundgesetz, the GG), German Basic Law, art. 20 (1).

### How is the government organised politically?

Article 62 of the Constitution states that “the Federal Government shall consist of the Federal Chancellor and the Federal Ministers.”

### Division of government powers exist?

Article 65 of the Constitution determines the policy guidelines within the Government. “The Federal Chancellor shall determine and be responsible for the general guidelines of policy. Within these limits each Federal Minister shall conduct the affairs of his department independently and on his own responsibility. The Federal Government shall resolve differences of opinion between Federal Ministers. The Federal Chancellor shall conduct the proceedings of the Federal Government in accordance with rules of procedure adopted by the Government and approved by the Federal President.”

### Which institutions and levels of government have legislative powers?

On matters within the legislative power of the Federation, the parliament (Bundestag) possesses the regulation-making authority. Furthermore, the Länder participate in the legislative procedure via the Federal Council (Bundesrat, German Basic Law, art. 50). Depending on the matter of the law, the Federal Council may either lodge objection (which can be overruled by the parliament) or may even deny its approval (German basic Law, art. 77).

On matters within the legislative power of the Länder, their parliaments (Landtage) possess the regulation-making authority. Moreover, the state governments may be authorized by a federal or state law to issue statutory instruments.

Furthermore, municipalities possess regulation-making authority to a limited extent under their administrative autonomy; examples in the field of water law include local wastewater regulations (Abwassersatzungen) and local drinking water regulations (Trinkwassersatzungen).

### Who has the power to ratify treaties?

The Federal President has the Power to represent the Federation for the purposes of international law and concludes treaties with foreign states on behalf of the Federation (art. 59 (1)). However, treaties that regulate the political relations of the Federation or relate to subjects of federal legislation require the consent or participation, in the form of a federal law, of the bodies responsible in such a case for the enactment of federal law. In

the case of executive agreements, the provisions concerning the federal administration shall apply mutatis mutandis (art. 59 (2)).

### **Is there popular consultation as part of governing/legislative process?**

The only expressly stated cases of public participation on federal level are by referendum in case of a reorganisation of the federal territory and the adoption of a new constitution by the German people (German Basic Law (GG), art. 29 (2) and 146).

### **Has the country established a basin management agency? Is it autonomous?**

No, a special purpose government administration at river basin level does not exist. The management of river basins is carried out by the local and regional authorities that need to coordinate with all authorities within the river basin (Federal Water Act, § 7 (2) (Wasserhaushaltsgesetz, the WHG)).

### **Does the country have transboundary water resources?**

Yes. These include but are not limited to: the Danube (shared with 9 other countries), the Rhine (shared with 5 other countries), the Elbe (shared with the Czech Republic), the Oder (shared with Poland and the Czech Republic), the Moselle (shared with France and Luxembourg) or the Inn (shared with Austria and Switzerland).

### **Where transboundary water resources exist, is there an established international institution for basin management? Does it have any responsibility in relation to drinking water?**

No. None of the water resources that Germany shares with its neighbors (e.g. France, Switzerland, Poland, Czech Republic, or the Netherlands) are managed by an international basin agency.

However, the management of transboundary basins within the EU is regulated by art. 3 of Directive 2000/60/EC (the Water Framework Directive) that determines a close coordination between the authorities of the Member states within a transboundary basin. In addition, multilateral agreements that also include non-EU Member States, like Switzerland, foresee the cooperation within international river basins (compare e.g. Convention on the Protection of the Rhine).

## **B. IS THE COUNTRY A MEMBER OF A REGIONAL INTEGRATION ORGANISATION?**

### **Which countries form part of this organisation?**

Germany is part of the European Union. Following States are parties of this organisation: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

## Are the decisions of the organisation binding for the members?

The aims set out in the EU treaties are achieved by several types of legal act. Some are binding, others are not. Some apply to all EU countries, others to just a few.

Regulations:

A “regulation” is a binding legislative act. It must be applied in its entirety across the EU. For example, when the EU wanted to make sure that there are common safeguards on goods imported from outside the EU, the Council adopted a regulation.

Directives:

A “directive” is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals. One example is the EU consumer rights directive, which strengthens rights for consumers across the EU, for example by eliminating hidden charges and costs on the internet, and extending the period under which consumers can withdraw from a sales contract.

Decisions:

A “decision” is binding on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable. For example, the Commission issued a decision on the EU participating in the work of various counter-terrorism organisations. The decision related to these organisations only.

Recommendations:

A “recommendation” is not binding. When the Commission issued a recommendation that EU countries’ law authorities improve their use of videoconferencing to help judicial services work better across borders, this did not have any legal consequences. A recommendation allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.

Opinions:

An “opinion” is an instrument that allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed. An opinion is not binding. It can be issued by the main EU institutions (Commission, Council, Parliament), the Committee of the Regions and the European Economic and Social Committee. While laws are being made, the committees give opinions from their specific regional or economic and social viewpoint. For example, the Committee of the Regions issued an opinion on the clean air policy package for Europe.

## What is the mandate of the organisation?

The goals of the European Union are:

- promote peace, its values and the well-being of its citizens;
- offer freedom, security and justice without internal borders;
- sustainable development based on balanced economic growth and price stability, a highly competitive market economy with full employment and social progress, and

environmental protection;

- combat social exclusion and discrimination;
- promote scientific and technological progress;
- enhance economic, social and territorial cohesion and solidarity among member countries;
- respect its rich cultural and linguistic diversity;
- establish an economic and monetary union whose currency is the euro.

**Does the regional organisation have the authority to regulate or make decisions which affect water and sanitation?**

Yes, the Framework Water Directive of the European Parliament and of the Council (dated 23.10.2000) establishes a framework for Community action in the field of water policy.

## C. WATER GOVERNANCE AND ADMINISTRATION

**What is the structure of the government water administration (provide relevant organisational charts whenever available) and what power, role and responsibilities does the Government have at each level? At national/federal level?**

### Structure of the federal water administration

Generally, federal and state laws are executed by the Länder (the 16 states within the federation) in their own right (German Basic Law, art. 83). However, in certain areas the Federation executes its laws through its own administration authorities (German Basic Law, art. 86).

### Role and responsibilities of the federal government

Due to the fact that there is only a limited range of federal administration in the field of water law, the role and responsibility of the federal government regarding water administration is limited as well. It mainly acts as a supervisory body to the above-mentioned authorities.

**At the intermediate level (state, river basin, other)**

### Structure of the state water administration

Since the federal and state laws are, in general, executed by the Länder, the main bodies of government water administration can be found at this level. Most Länder pursue a three-tier administrative structure.

First, the Ministry responsible for water (mostly Ministry of Environment) acts as the highest state authority (oberste Landesbehörde) and therefore functions as Senior Water Authority, which is responsible for the management of the water sector and superior administrative proceedings. In addition, science and research related authorities can be

found in many Länder, like States Offices for Environment (the Landesämter für Umwelt). They are mainly in charge of researching water related topics, informing the public and consulting other authorities within these matters.

Second, intermediate authorities (Landesmittelbehörden) oversee water related proceedings and the water management with a regional dimension.

Third, the lower or local authorities (untere Landesbehörden) are municipalities (counties and cities) which execute laws on behalf of the Länder (without or limited autonomy). They are responsible for normal water legislation procedures, official permits or the monitoring of waters.

Special associations that play a crucial role in the water administration.

Municipal special purpose associations (kommunale Zweckverbände) or water and soil associations (Wasser- und Bodenverbände) play an important role in water administrations. Some are on a voluntary basis; however, some are statutory and pursue administrative functions and execute law. In most cases, these associations are formed to ensure the joint maintenance of waters and facilities with regards to waters. Members are municipalities and/or user of water as well as riparian.

### **Role and responsibilities of the state government**

The states governments are the head of the executive branch within the Länder. Therefore, state governments have two important functions:

First, state governments play an important role as head of the administrative system. Generally, the Länder execute federal laws in their own right (cf. German Basic Law, art. 84 (1)). Moreover, the Länder execute their own laws. Therefore, the Länder have to provide for the establishment of the requisite authorities and regulate their administrative procedures. The state governments are, thus, the senior supervisory bodies to all subordinated state authorities.

Second, state governments act politically. The state government's primary duties include developing and drafting legislation, determine political guidelines and participating directly in the decisions taken by the Federation through the Bundesrat.

### **At the local level?**

The municipalities play a crucial role in the German water administration. On the one hand, they act on behalf of the Länder without or limited autonomy. For this reason, they are part of the state administration (see above). On the other hand, municipalities have the right to regulate all local affairs on their own responsibility within the limits prescribed by the laws (local self-government, kommunale Selbstverwaltung), German Basic Law, art. 28 (2).

### **Which government ministries/agencies are directly or indirectly involved in governance of water and sanitation?**

The authorities that are involved in the water and sanitation governance at the federal stage are mainly the competent ministries – especially the Federal Environment Ministry. Moreover, the Ministries of Transport can be involved regarding rivers as transportation routes; the same is true for the Ministry of Energy regarding hydroelectric power, the Ministry of economy regarding the important impact of water legislation on the economy,

or the Ministry of agriculture regarding the severe impact of agriculture on the water quality and quantity.

Furthermore, the above mentioned Federal Waterways and Shipping Administration (Wasserstraßen- und Schifffahrtsverwaltung des Bundes, the WSV) is involved on matters related to waterways as part of the infrastructure. Beyond this, scientific and research related authorities, like the Federal Waterways Engineering and Research Institute (Bundesanstalt für Wasserbau), the Federal Institute for Hydrology (Bundesanstalt für Gewässerkunde) or the Federal Environment Agency (Umweltbundesamt) are indirectly involved in the water and sanitation governance.

## CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES

1. Has the country ratified the following international or regional treaties and declarations? Please insert the date of the signature/ratification/accession.

2. Has the country made any declaration or reservation to the following instruments?

### A. REGIONAL MULTILATERAL/BILATERAL TREATIES

Table 1. Regional multilateral and bilateral treaties

Instruments	Signature	Ratification	Entry into force
European Convention on Human Rights (1950)	04.11.1950	05.12.1952	03.09.1953
<p><b>Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)</b></p> <p><u>Reservation/Declaration:</u></p> <p>made upon signature and confirmed upon ratification:</p> <p>“The Federal Republic of Germany, in order to protect information related to personal data according to its national law, reserves the right to supply personal data only under the condition that the part receiving such protected information shall respect the confidentiality of the information received and the conditions under which it is supplied, and shall only use that information for the purposes for which it was supplied.”</p>	18.03.1992	30.01.1995	04.08.2005
UNECE London Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International lakes (1999)	17.06.1999	15.01.2007	-

Instruments	Signature	Ratification	Entry into force
<p><b>Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)</b></p> <p><u>Reservation/Declaration:</u></p> <p>Upon signature:</p> <p>Declaration:</p> <p>“The text of the Convention raises a number of difficult questions regarding its practical implementation in the German legal system which it was not possible to finally resolve during the period provided for the signing of the Convention. These questions require careful consideration, including a consideration of the legislative consequences, before the Convention becomes binding under international law.</p> <p>The Federal Republic of Germany assumes that implementing the Convention through German administrative enforcement will not lead to developments which counteract efforts towards deregulation and speeding up procedures.”</p>	21.12.1998	15.01.2007	30.10.2001
Agreement for cooperation in dealing with pollution of the North Sea by Oil and other harmful substances (1983)	13.09.1983	13.09.1983 (modified on 17.01.1995)	01.09.1989
Convention on the Protection of the Marine Environment of the Baltic Sea Area (1992)	09.04.1992	11.11.1994	17.01.2000
Convention for the Protection of the Marine Environment of the North-East Atlantic (1992)	22.09.1992	02.12.1994	25.03.1998
Protocol concerning the Constitution of an International Commission for the Protection of the Moselle against Pollution (1961)	20.12.1961	-	01.07.1962
Second Protocol amending the Convention on the canalization of the Moselle (1983)	22.03.1990	-	01.01.1993
Third Protocol amending the Convention on the Canalization of the Moselle (1987)	13.11.1992	-	13.08.1994

Instruments	Signature	Ratification	Entry into force
Agreement on flood warning for the catchment basin of the Moselle (1987)	01.10.1987	01.10.1987	01.10.1987
Convention on the International Commission for the Protection of the River Oder against pollution (ICPOAP) (1996)	11.04.1996	03.02.1998	28.04.1999
Amending Agreement to the Convention on the International Commission for the Protection of the River Oder against pollution (27th November 2008)	25.06.2008	15.12.2010	14.01.2011
Convention on the Collection, Deposit and Reception of Waste occurring in the Course of Navigation Inland and on the Rhine (1996)	09.09.1996	10.06.2004	01.11.2009
Convention on the Protection of the Rhine (1998)	12.04.1999	16.11.2000	01.01.2003
Convention on the Protection of the Rhine (1999)	12.04.1999	29.11.2002	01.01.2003
Agreement between the Federal Republic of Germany and the European Economic Community, on the one hand, and the Republic of Austria, on the other, on cooperation on management of water resources in the Danube Basin (1987)	01.12.1987	14.12.1990	01.03.1991
Convention between the Federal Republic of Germany and the Czech and Slovak Federal Republic and the European Economic Community on the International Commission for the Protection of the Elbe (1990)	08.10.1990	-	30.10.1992
Agreement between the Federal Republic of Germany and the Republic of Poland on cooperation on water resource management (1992)	19.05.1992	19.05.1992	19.05.1992
Convention on Cooperation for the Protection and Sustainable Use of the Danube River (1994)	29.06.1994	16.08.1996	22.10.1998

Instruments	Signature	Ratification	Entry into force
Agreement between the Federal Republic of Germany and the Czech Republic on cooperation on water resource management (1995)	12.12.1995	12.12.1995	12.12.1995
Supplementary Protocol relating to the Agreement of 8 April 1960 between the Federal Republic of Germany and the Kingdom of the Netherlands on Cooperation to protect Water and Nature at the Estuary of the Ems (1996)	22.08.1996	22.08.1996	22.08.1996
International agreement on the river Maas (2002)	03.12.2002	01.08.2005	01.12.2006
Agreement between the Federal Republic of Germany and the Czech Republic on the implementation of the common environmental project "Waste Water Treatment Plants" in the North of Bohemia (1994)	19.12.1994	19.12.1994	19.12.1994
Protocol to the Convention of 8 October 1990 between the Governments of the Federal Republic of Germany and the Slovak Federal Republic and the European Economic Community on the International Commission for the Protection of the Elbe	13.08.1993	13.08.1993	13.08.1993
Convention regulating the Withdrawal of Water from Lake Constance (1966)	30.04.1996	26.10.1967	25.11.1967
Agreement between the Federal Republic of Germany and the Republic of Lithuania on protection of the environment	16.04.1993	16.04.1993	16.04.1993
Agreement between the Federal Republic of Germany and the Republic of Latvia on protection of the environment	14.04.1993	14.04.1993	14.04.1993
Agreement between the Federal Republic of Germany and the Government of Estonia on cooperation on the environment	25.05.1992	25.05.1992	25.05.1992
Agreement between the Russian Federation and the Federal Republic of Germany on cooperation in the sphere of environmental protection	25.10.1988	25.10.1988	25.10.1988

Instruments	Signature	Ratification	Entry into force
Agreement on Administrative Arrangements for the Prek Thnot (Cambodia) Power and Irrigation Development Project (1968)	-	13.11.1968	13.11.1968
European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (1968)	16.09.1968	01.02.1973	16.02.1971
Protocol amending the European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (1983)	25.10.1983	-	01.11.1984
Strasbourg Convention on the Limitation of Liability in Inland Navigation (CLNI 2012)	11.07.2013	-	-
European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) (2000)	26.05.2000	31.01.2008	29.02.2008
Convention concerning the Protection of the Alps (1991)	07.11.1991	05.12.1994	06.03.1995
London Fisheries Convention (1964)	09.03.1964	19.01.1970	15.03.1966
Convention on the Conservation of European Wildlife and Natural Habitats (1979)	19.09.1979	13.12.1984	01.06.1982
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (1994)	14.10.1994	10.07.1996	26.12.1996

## B. INTERNATIONAL TREATIES

Table 2. International binding instruments

Instruments	Signature	Ratification
<p><b>International Covenant on Civil and Political Rights (1966)</b></p> <p><u>Reservation/ Declaration:</u></p> <p>“1. Articles 19, 21 and 22 in conjunction with Article 2 (1) of the Covenant shall be applied within the scope of Article 16 of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms.</p> <p>2. Article 14 (3) (d) of the Covenant shall be applied in such manner that it is for the court to decide whether an accused person held in custody has to appear in person at the hearing before the court of review (Revisionsgericht).</p> <p>3. Article 14 (5) of the Covenant shall be applied in such manner that: (a) A further appeal does not have to be instituted in all cases solely on the grounds the accused person having been acquitted by the lower court-was convicted for the first time in the proceedings concerned by the appellate court. (b) In the case of criminal offences of minor gravity, the review by a higher tribunal of a decision not imposing imprisonment does not have to be admitted in all cases.</p> <p>4. Article 15 (1) of the Covenant shall be applied in such manner that when provision is made by law for the imposition of a lighter penalty the hitherto applicable law may for certain exceptional categories of cases remain applicable to criminal offences committed before the law was amended.” (27 December 2001)</p> <p>“The Federal Republic of Germany now recognizes for an unlimited period the competence of the Human Rights Committee under Article 41(1) of the Covenant to receive and consider communications to the effect that at State Party claims that another State Party is not fulfilling its obligations under the Covenant.” (27 December 2001)</p>	09.10.1968	15.11.1973
<p><b>Optional Protocol to the International Covenant on Civil and Political Rights (1966)</b></p> <p><u>Reservation/Declaration:</u></p> <p>“The Federal Republic of Germany formulates a reservation concerning article 5 paragraph 2 (a) to the effect that the competence of the Committee shall not apply to communications a) which have already been considered under another procedure</p>	N/A	1983

Instruments	Signature	Ratification
of international investigation or settlement, or b) by means of which a violation of rights is reprimanded having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany c) by means of which a violation of article 26 of the [said Covenant] is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the aforementioned Covenant.”		
International Covenant on Economic, Social and Cultural Rights (1966)	09.10.1968	23.11.1973
Optional protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	-	-
<p><b>Convention on the Elimination of All Forms of Discrimination against Women (1979)</b></p> <p><u>Reservation/Declaration:</u></p> <p>“The right of peoples to self-determination, as enshrined in the Charter of the United Nations and in the International Covenants of 19 December 1966, applies to all peoples and not only to those living ‘under alien and colonial domination and foreign occupation’. All peoples thus have the inalienable right freely to determine their political status and freely to pursue their economic, social and cultural development. The Federal Republic of Germany would be unable to recognize as legally valid an interpretation of the right to self-determination which contradicts the unequivocal wording of the Charter of the United Nations and of the two International Covenants of 19 December 1966 on Civil and Political Rights and on Economic, Social and Cultural Rights. It will interpret the 11th paragraph of the Preamble accordingly.”</p>	17.07.1980	10.07.1985
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	10.12.1999	15.01.2002
Convention on the Rights of the Child (1989)	26.01.1990	06.03.1992
The Convention on the Rights of Persons with Disabilities (2006)	30.03.2007	24.02.2009

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Instruments	Signature	Ratification
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Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	10.12.1999	15.01.2002
Convention on the Rights of the Child (1989)	26.01.1990	06.03.1992
The Convention on the Rights of Persons with Disabilities (2006)	30.03.2007	24.02.2009

Instruments	Signature	Ratification
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	30.03.2007	24.02.2009
<p><b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)</b></p> <p><u>Reservation/Declaration:</u></p> <p>Upon signature: "The Government of the Federal Republic of Germany reserves the right to communicate, upon ratification, such reservations or declarations of interpretation as are deemed necessary especially with respect to the applicability of article 3. Upon ratification: Article 3 This provision prohibits the transfer of a person directly to a State where this person is exposed to a concrete danger of being subjected to torture. In the opinion of the Federal Republic of Germany, article 3 as well as the other provisions of the Convention exclusively establish State obligations that are met by the Federal Republic of Germany in conformity with the provisions of its domestic law which is in accordance with the Convention (19 October 2001). In accordance with article 21 (1) of the Convention, the Federal Republic of Germany declares that it recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. In accordance with article 22 (1) of the Convention, the Federal Republic of Germany declares that it recognizes the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by the Federal Republic of Germany of the provisions of the Convention."</p>		
<p><b>Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)</b></p> <p><u>Reservation/ Declaration:</u></p> <p>03.12.1954: At accession on 3 December 1954, the Federal Republic of Germany stated that the Conventions are also applicable to Land Berlin.</p> <p>03.03.1975: Objection to the reservation made upon accession by Guinea-Bissau to the Geneva Conventions I, II and III. Notification effected with the Government of Switzerland on 3</p>		03.09.1954

Instruments	Signature	Ratification
March 1975: "The reservation formulated in this connection by the Republic of Guinea-Bissau concerning Article 13 (2) of the first Geneva convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field Article 13 (2) of the second Geneva convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea Article 4 (2) of the third Geneva convention relative to the Treatment of Prisoners of War exceed, in the opinion of the Government of the Federal Republic of Germany, the purpose and intent of these Conventions and are therefore unacceptable to it. This declaration shall not otherwise affect the validity of the said Geneva Conventions under international law as between the Federal Republic of Germany and the Republic of Guinea-Bissau."		
Geneva Convention (IV) relative to the protection of Civilian Persons in Time of War (1949)	N/A	03.09.1954
Protocol Additional (I) to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict (1977)		
Protocol Additional (II) to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (1977)		
Convention on the Law of the Non-Navigational Uses of International Watercourses (1997)	13.08.1998	15.01.2007
Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)	18.03.1992	30.01.1995

Table 3. ILO conventions

Instruments	Signature	Ratification
ILO Forced Labour Convention, No. 29 (1930)		13.06.1956
ILO Recruiting of Indigenous Workers Convention, No. 50 (1936) (shelved convention)		

Instruments	Signature	Ratification
ILO Food and Catering (Ships' Crews) Convention, No. 68 (1946) (instrument to be revised)		
ILO Plantations Convention, No. 110 (1958)		
ILO Hygiene (Commerce and Offices) Convention, No. 120 (1964)		05.12.1973
ILO Occupational Safety and Health (Dock Work) Convention, No. 152 (1979)		17.12.1982
ILO Convention No. 161 concerning Occupational Health Services (1985)		17.10.1994
ILO Safety and Health in Construction Convention, No. 167 (1988)		18.11.1993
ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)		
ILO Work in Fishing Convention, No. 188 (2007)		

## CHAPTER 3: DOMESTIC LEGISLATION ON WATER

### A. WATER LAW

#### Is the right to water or the right to sanitation mentioned in the Constitution?

No. However, water is implicitly mentioned in the German Basic Law since 27/10/1994. To protect national resources is a state objective due to German Basic Law, art. 20a.

#### Does the Constitution otherwise reference water and sanitation?

Although not explicitly mentioned in German Basic Law, art. 20a, water is considered one of the “natural foundations of life”. Further, sanitation, (although not explicitly mentioned as well) is inextricably linked to human dignity, art. 1. Thus, these are not fundamental rights but a guideline to state actions which must be regarded by all political levels, this means the judiciary, executive and legislative. It is regarded as a political mandate to develop new regulations and actions. This means, that the right of water and sanitation cannot be claimed by individuals or environmental groups.

The right to water and sanitation is not explicitly included in any other German law. However, according to WHG (the Federal Water Law [Wasserhaushaltsgesetz], § 50 (1)), the public water supply represents an important concern of public interest. The municipalities and cities have to supply their inhabitants with water.

#### Is there a water code or a law specific to water resources? Please specify.

Yes. The WHG transforms, inter alia, the Water Framework Directive into German federal law and is applicable to surface water, coastal water and groundwater bodies as provided in WHG, § 2 (1).

In large parts, the WHG follows the European water law terminology. In order to ensure that the most important parts of the water can be controlled the most effectively by the authorities, groundwater as well as flowing surface water bodies shall not be in private hands (WHG, § 4 (2))

**The Water Securing Act** (Wassersicherstellungsgesetz, the WasSiG) does not deal with water management or protection. It sets up an organisational frame how to ensure that a water shortage among the population can be prevented in case of a state of defence.

The situation of the **Federal Waterway Act** (Bundeswasserstraßengesetz, the WaStrG) is comparable as it does not address water management but only the waterway traffic system throughout the country.

**The Water Board Act** (Wasserverbandsgesetz, the WVG) regulates the procedure how a water board is elected and which tasks it has. Those are statutory, public bodies who can be charged with the tasks provided in § 2 WVG, such as the protection of premises against storm tides and floods, the removal of wastewater and the procurement of

water. To that extent, the WVG is not unimportant when it comes to everyday water management tasks.

**The Wastewater Fee Act** (Abwasserabgabengesetz, the AbwAG) is a law which does not operate with prohibitions but influences the behaviour of the public by imposing a tax on the discharge of waste water in inshore waters. Everyone who passes wastewater into the waters (polluter) has to pay a certain fee which depends on the harmfulness of the polluting wastewater (AbwAG, § 9 (1)).

Other laws related to water and wastewater management can exist in several branches of public environmental law such as the wastewater law, waste and (chemical) contamination law, emission control law etcetera.

Despite the current full federal water law regulation, state law still plays a role in the German water law system. All Länder still have its own **Water Acts** (Wassergesetze, the WG) which were adapted to the new situation of a fully regulating WHG. The Water Acts are concretising the provisions of the WHG in several places.

Besides that, the mentioned regulatory mechanism also shows the impact of **building law** fundamentals as a part of public law on water management issues

#### **Is there a national strategy/policy, action plan or similar documents on water?**

No. There is no specific, stand-alone national strategy on water. Nevertheless, the Federal Cabinet has, in both cases supported by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, adopted a National strategy on Biological Diversity on 07/11/2007 as well as a national Strategy for Adaptation to Climate Change on 17/12/2008.

**The national Strategy for Adaption to Climate Change** e.g. includes climate change effects in integrated river basin management.

**The national Strategy on Biological Diversity** e.g. calls on the efficient use of water, safe wastewater for farming and development of water-saving methods. It also sets goals to reach a good chemical, ecological and quantitative status of surface, - flowing, - and ground waters by a certain time.

#### **Are there any other major regulations, decrees, orders, circulars, or similar official documents related to water (such as pricing, water policing, utility easements, public domain occupation...etc.) related to the rights to water and sanitation?**

Yes. The municipalities as decentralised authorities are granted the right to enact statutes by their respective state law. In general, every German Land except for the city-states (Berlin, Bremen and Hamburg) have Municipal Codes.

In those Municipal Codes the Länder allow the municipalities to enact their own statutes on water supply. The municipal water supply statutes (Wasserversorgungssatzungen) are enacted by the local councils and contain provisions such as the right of connection and usage of water.

Furthermore, the water supply statutes are not only based on the states municipal codes. The Länder also have in general so-called Local Rates Acts. In those acts the Länder allow the municipalities to determine certain fees to be paid for grey water discharge etc.

## B. EXTRACTION AND/OR USE OF WATER

### Does the legislation regulate the right to abstract water? (surface, groundwater, etc.)?

Yes. The extraction of groundwater is covered by the term “use of waters” in the Federal Water Act and is thus regulated by its provisions. In principle, groundwater extraction therefore requires an official permit or license, § 8 (1) Federal Water Act.

Exemptions from the obligation to obtain authorisation are listed in § 46 of the Federal Water Act (Permission-free use of groundwater) and encompass the extraction of groundwater for domestic and agricultural purposes, for the watering of cattle outside the farm, for use in small quantities for temporary purposes and for the normal drainage of land used for agricultural, silvicultural and horticultural properties.

The exploration and extraction of groundwater with regard to the public water supply is touched upon in § 50 et seq. of the Federal Water Act. According to § 50 (1) (Public water supply), it is the state’s duty to provide public water supply as part of its public services. In order to protect natural water resources and recharge groundwater, the federal state governments can thereby establish water protection areas and prohibit or restrict certain activities in these areas (§ 51 (1) (Water protection areas)).

### Does the legislation distinguish between the extraction of drinking water and water for other uses?

There is no legally based prioritisation of water uses in Germany, due to the sufficient water resources. The Federal Water Act contains a general provision according to which at the application of an affected party or by official initiative, the nature, scope and periods of exercising permits, licences, existing rights and existing authorisations may be regulated or limited by a compensatory procedure if the quantity and quality of the water is not adequate for all uses, or if the uses adversely affect one another, and provided this is in the public interest, particularly in the interest of public water supply.

### Is the right to use water connected to land ownership?

According to § 4 of the Federal Water Act (Ownership of bodies of water, Limitations of land ownership) flowing surface water and groundwater are not subject to ownership. Conversely, this means that ownership of standing surface waters is legally possible.

However, for any use of water which requires a permit or license pursuant to the Federal Water Act, the ownership of land does not create a further reaching entitlement: the owner, too, has to obtain a permit or license if so required by law and does not enjoy privileges in obtaining them (see § 4 (3)). Moreover, the owner of a property is obliged to tolerate the use of water by a third party if permission has been granted to this party or if none is required (§ 4 (4)).

The owner may, however, use surface water on his land for his own requirements provided that there is no conflict with the rights of others, no adverse effects on the water regime and no substantial reduction of the body of water (§ 26 (1) Use by the property owners and riparian owners).

### **Are permits/licenses required for water use? (e.g. domestic, agricultural, industrial)?**

Yes. According to § 8 of the Federal Water Act (Permit, licence), the use of water, in principle, requires an official permit or licence.

This general rule is, however, subject to exceptions. The permission-free use of water has to be expressly prescribed by the law and encompasses only uses of minor significance. An analysis of the exceptions shows that they mainly apply to domestic, farming and agricultural uses of water in relatively small quantities and with only marginal effects on the water properties (see §§ 46, 25, 26 Federal Water Act). Certain leisure activities such as bathing and ice skating, too, fall under the category of permission-free “public use” according to federal state law (see § 25)<sup>1</sup>. Most federal states also allow certain fishing activities under their “public use” provisions. Each of these exceptions is, however, subject to the condition that the use does not lead to significant adverse effects on the water regime (e.g. § 26 Federal Water Act).

Any further reaching uses for e.g. industrial purposes are, on the other hand, not exempt from permission.

### **Can permits/licenses be suspended? Under what circumstances??**

According to § 13 (1) Federal Water Act, permits and licences can be varied during their lifespan as additional stipulations can be subsequently added at any time. The revocation of permits and licences is regulated in § 18 of the Federal Water Act (Revocation of permits and licences). The revocation of a permit under § 18 (1) is justifiable for reasons of public interest. No compensation is paid after its revocation, as the grant of a permit does not create legitimate expectations as to its persistence.

Licenses, on the other hand, award a “stronger” legal position. They can only be revoked pursuant to § 49 (2) no 2-5 of the Administrative Procedure Act (against compensation) or on grounds listed in § 18 (2) (without compensation). No compensation is paid if the license has not been used for an uninterrupted period of three years, if the scope of the license has been considerably exceeded or if the purpose of the use has been changed so that it no longer conforms to the plan. In any other case, the expectations of the user are legitimate and worthy of protection; compensation therefore has to be granted.

Besides, permits and licences can end due to their time limitation, due to the occurrence of a condition subsequent, due to their withdrawal (provided they have been illegally granted) or due to a waiver declared by the entitled person.

### **Can water abstraction licenses be transferred? Is transferability subject to restrictions?**

Yes. Water abstraction licenses can be passed on to any legal successor together with the water utilisation plant or together with the relevant piece of land, unless otherwise specified in the grant of the permit/license (§ 8 (4) (Permit, license)).

<sup>1</sup> See: Czychowski/Reinhardt (2014), § 25, recital 23, attachment 32; Kotulla (2011), WHG, § 25, recitals 8, 19, attachment 32

### **Are there priorities in the allocation of water for different uses?**

No priorities for the allocation of water are explicitly prescribed in the Federal Water Act. Criteria on how to allocate water or on how to decide whether permits/licenses are granted and to whom, are, however, provided by Länder law. If not all applications can be approved, permits and licenses are allocated based on the assessment of which project entails the greatest benefit for the public good. Uses which serve the public water supply or the wastewater disposal are thus given priority, whereas purely private interests are subordinated. If this standard does not lead to any results, some states further take into account the economic importance of the project, ownership of land or time of application. Other than that, the local nature of a business or the lower level of nuisance of the project can be decisive..

## CHAPTER 4. HUMAN RIGHTS CRITERIA TO WATER AND SANITATION

### A. AVAILABILITY

#### Does the law ensure that a minimum essential level of water is available to all?

There is no limited range of persons and no specific limit to the amount of water available. Nonetheless, as a general principle, everyone is urged not to waste water but to use it sparingly (see § 5 (1) no. 2 Federal Water Act, General duties of care).

#### What are the standards on the amount of water to be made available/is there any guidance in the law in this respect?

Water supply is a core duty of public services in the general interest, § 50 (1) Federal Water Act (Public water supply). It falls within the competence and responsibility of the local governments within the meaning of their public service mandate pursuant to art. 28 (2) German Basic Law. The municipalities have a right to choose whether they exercise their supply duty in a sovereign capacity or whether they appoint private companies to take care of the public water supply on their behalf. However, even if the task is carried out by private parties, the local governments remain responsible for the supply and are obliged to ensure proper performance (so-called “guarantee responsibility”). Federal state legislation further specifies this obligation of the municipalities to ensure the local water supply. Almost all households as well as local authority institutions such as schools, authorities and hospitals are connected to the distribution system of a public water utility (99,2% of the population). More than 6.000 companies are involved in public water supply.

According to § 50 (2) Federal Water Act (Public water supply), the water demand shall primarily be covered by local water resources unless the demand exceeds the local availability of water. This implies that the amount of water to be made available is determined by the amount of water required and consumed.

Local bylaws may specify the local duty for water supply and wastewater disposal and codify the compulsory connection to local utilities for the sake of reliable supply and water hygiene. Local bylaws thereby establish the utilisation prerequisites for all property owners in cities and municipalities. Municipalities have a monopoly position in this regard and locals are thus reliant on their service. This leads to a local service obligation meaning that water utilities may have an obligation to conclude a contract with any person resident within the supply area. Locals are, in turn, legally required to connect to these local utilities (public water supply and wastewater disposal) and utilise them exclusively.

Supply contracts which include general conditions have to comply with the requirements provided in the “Regulation on general conditions for the supply of water” (Verordnung über Allgemeine Bedingungen für die Versorgung mit Wasser, the AVBWasserV). These are applicable if the relations between water utility and consumer are arranged under private law. However, according to § 35 AVBWasserV, supply arrangements under public

law shall be designed in accordance with the requirements of this regulation. According to § 5 AVBWasserV, the water utility has to make sure that water is available at any time within the contractually agreed scope. The water utility owes this, however, only within the limits of possibility and reasonableness.

**Does the law ensure continuous supply of water for all?**

See answer of question 2 in 4.A Availability.

**Does the law prioritize water for domestic uses over other uses?**

According to the Federal Water Law, uses which serve the public water supply are given priority, whereas purely private interests are subordinated. See answer of 7th Question of 3.B.

**Is there provision in the law for availability of water and sanitation facilities in non-domestic places such as schools, hospitals, work places, prisons, refugee camps, etc.?**

Yes. Article 4 of the Ordinances of Workplaces (Workplace Ordinance - ArbStättV) regulates and requires water and sanitation facilities in public workplaces. Sanitation rooms thus must comply with several requirements mentioned in art. 4(1) and provide e.g. running water, or necessary disinfectants.

## B. ACCESSIBILITY

**What are the grounds for disconnecting, interrupting or altering water supply and sanitation services (e.g., authorities may alter water supply in case of droughts or emergencies, in which cases are disconnections possible...)?**

Local bylaws contain provisions which require the water supply generally to be guaranteed for persons within the supply area at all times unless interruptions are necessary to ensure the public water supply in general or if supply is impeded for force majeure reasons or circumstances alike. However, according to the report on the “Profile of the German water sector 2015”, households are affected by interruptions caused by operational disruptions for a maximum of 10-15 minutes a year. Areas with water shortages are provided with water from more distant sources. There is also a high volume of unused water (amounting to 82,4 percent in 2010). Water supply and disposal are therefore reliable and secured in the long term; long or frequent interruptions are very unlikely.

According to § 5 AVBWasserV, the agreed water supply must be guaranteed at all times within the limits of reasonableness and possibility. Water utilities may, however, contractually reserve the right of temporary interruptions to the extent necessary in the event of a water emergency (e.g. a drought or an oil spill). Interruptions due to maintenance of the facilities are also permissible, provided they are necessary and proportionate. Water suppliers are, however, obliged to mitigate and remedy interruptions and take preventative measures in order to avoid negative impacts on the supply.

### **What are the procedural standards/criteria for permitting interruption, disconnection or alteration of water supply and sanitation services?**

According to § 5 (3) AVBWasserV, the water supplier has to notify the customer about an interruption, if it is not only of short duration. The duty to notify does not apply if timely notification is impossible under the circumstances or if notification would delay the remedy of interruptions that have already occurred.

### **Are alternative ways of water supply and sanitation services provided for in case of alteration of supply and/or service?**

As Germany is a water-rich country, long and frequent interruptions are unlikely to occur (see E2). Furthermore, supply and disposal utilities often use additional capacities available for use in emergency situations in order to prevent such interruptions.

The local demand of water shall primarily be covered from local sources (§ 50 (2) Federal Water Act), in order to ensure the responsible use with regional resources and promote their protection. An alternative way and exception to this priority on local sources is, however, the possibility of distant water supply under certain circumstances. Distant water supply is justified if based on overriding reasons of general interest; it is therefore allowed where deemed to be necessary for the supply of the population with drinking water – in terms of quantity or quality. Apart from that, it is also permissible where local water supply would incur disproportionately high technical and financial expenditures. This system provides for flexibility and security in the event of disruptions.

#### **Does the law provide guidance on:**

##### **The number of water outlets?**

##### **The safety, distance and time from a dwelling or structure to reach water outlet or sanitation facilities (e.g., laws that specify water outlets must be available within a certain distance from a school or household)?**

##### **Technical safety of water outlets or sanitation facilities (e.g., law requiring that certain standards are applied in the constitution of those facilities or of buildings)?**

The construction of the local public infrastructure (which includes water supply and disposal) falls within the responsibility of the local governments (§ 123 (1) of the Federal Building Code (Baugesetzbuch, the **BauGB**)). Local governments have to make sure that they fulfill this task taking into consideration the urban development while acting within the limits of their financial capacities. However, individual citizens do not have a legal entitlement to the construction of new infrastructure facilities (e.g. the creation or conversion of new supply lines)<sup>2</sup>. They are, on the other hand, entitled to connect their property to the existing infrastructure, in particular to water facilities, e.g. already existing supply lines within the supply area. The provisions of the Federal Building Code further make sure that residential buildings may not be constructed outside of the area with the necessary infrastructure for water supply and sewage disposal.

Further, art. 4.1. (2)(a), of the Ordinance on Workplaces require sanitation facilities to be in the vicinity of working rooms.

<sup>2</sup> Ernst/Grziwotz, in: Ernst/Zinkahn/Bielenberg/Krautzbecker, BauGB, § 123, recital 26 et seq, attachment 42.

**Is there provision in the law for accessibility of water and sanitation facilities in non-domestic places such as schools, hospitals, work places, prisons, refugee camps, etc.?**

Yes. Article 4 of the Ordinances of Workplaces (Workplace Ordinance - ArbStättV) regulates and requires water and sanitation facilities in public workplaces. Sanitation rooms thus must comply with several requirements mentioned in art. 4(1) and provide e.g. running water, or necessary disinfectants.

## C. QUALITY AND SAFETY

**Are there parameters of quality and safety for drinking water established under law?**

The legal standards for the quality of drinking water are set out in the Ordinance on the quality of water intended for human consumption (Trinkwasserverordnung, the TrinkwV) from 2001. Generally, it has to be distinguished between drinking water provided by the public water system and drinking water sold in supermarkets.

The Ordinance on the quality of water intended for human consumption transferred the European Drinking Water Directive 98/83/EC into German law.

**Is monitoring of drinking water quality or wastewater required by law? If so, which actor is required to monitor it and how often (according to the law)?**

The monitoring is also dealt with in the Ordinance on the quality of water intended for human consumption. The public health authority is responsible for monitoring drinking water and wastewater quality. It is applicable to both public and private service providers (cf. § 18 Ordinance on the quality of water intended for human consumption).

**Do laws/regulations include guidance on the safe construction of water and sanitation Infrastructure (e.g., to ensure no contact with excreta, ventilation, respect for construction guidelines)?**

The Ordinance on the quality of water intended for human consumption sets out specific criteria to be maintained by water and sanitation infrastructure. While § 5 sets out microbiological criteria, § 6 sets out chemical criteria.

**Do laws/regulations include requirements or guidance on safe emptying of latrines as well as safe treatment and disposal of treated sludge?**

Yes. Sec. 15 ff. of the Act on Reorganizing the Law on Closed Cycle Management and Waste (Gesetz zur Neuordnung des Kreislaufwirtschafts- und Abfallrechts, 2012) lay down basic waste disposal requirements. Sec. 15 (2) states that "Waste shall be disposed of in such a manner that the public interest is not impaired". An impairment is given in following instances:

- human health is impaired,
- animals and plants are endangered,
- water bodies and soil are harmfully influenced,

- harmful influences on the environment are caused by air pollution or noise,
- the aims, principles and other requirements of regional planning, and the interests of nature conservation, landscape management and urban development, are not considered,
- public safety and public order are otherwise threatened or disturbed.

**Do laws/regulations establish requirements on household water treatment and storage (e.g., quality requirement with respect to water containers, rainwater harvesting limitations, etc.)?**

Yes. Requirements on household water treatment and storage are established in the Water Quality Ordinance. For instance, Household water storages must be reported to the public health department, under certain conditions such as e.g. when they are newly launched or restarted, § 13. The user also should frequently examine it by the Requirements laid out in § 14. Requirements on the quality of household water treatment and storage facilities are given in § 17 of the Water Quality Ordinance. The Public Health Department is monitoring the facilities, § 18.

## D. WATER POLLUTION CONTROL

**Are there legislative provisions concerning waste disposal activities? Which authorities are responsible for monitoring to determine if waste has caused pollution of bodies of water?**

According to Article 57, paragraph 1 of the Federal Water Act (WHG) discharges of waste water into water bodies is only permissible if the pollution load of the waste water is kept to the lowest level achievable by means of the best technology available. More detailed and specific requirements are set out in the Waste Water Ordinance (AbwV). According to the Waste Water Ordinance the interfaces between the environmental media waste, air, soil and water will be jointly assessed in the future. This provision makes sure that protective measures in the water sector will not go to the detriment of the air, waste and soil sectors. The IPPC Directive (integrated pollution prevention and control) established the best available technology standard in all environmental laws as a uniform basis for integrated assessments. The Waste Water Ordinance will therefore align its requirements for waste water discharges more strongly with the best available technology required across all environmental media. For waste water this implies an assessment of the entire sewage chain (input material, preventive measures, sewage system, sewage treatment facility) and the interface to other environmental media.<sup>3</sup>

More specific requirements concerning waste disposal are laid out in the “Reorganising the Law on Closed Cycle Management and Waste Act” which lays out basic principles of the prevention, management and disposal of waste. Further, art. 5 (1) of the Federal Immission Control Act mention specific obligations for operators of installation regarding waste disposal.

### Is there legislation which regulates the contamination of groundwater?

Groundwater pollution is regulated in the Federal Water Act (Wasserhaushaltsgesetz). Uses within the meaning of the Act include the introduction and discharge of substances into water (§ 9 (1) no. 4 Uses). Specifically for groundwater, § 47 (Management objectives for groundwater) lays down binding management objectives. According to the provision, any deterioration of the quantitative or chemical status of groundwater shall be avoided; good statuses shall be preserved or achieved. Where the concentration of pollutants in the groundwater rises due to human activities, this development shall not only be stopped but reversed. § 48 (Maintenance of groundwater quality) prescribes a “principle of concern” which requires the prevention of any adverse impact on the groundwater quality (see Question 4).

The Groundwater Ordinance (Grundwasserverordnung, the GrwV) specifies requirements and provides thresholds which help assess the groundwater quality as “good” or “bad”. In order to achieve the management objectives of § 47 Federal Water Act, measures shall be taken to prevent the input of pollutants listed in annex 7 into groundwater. If the concentration of certain pollutants exceeds the thresholds specified in annex 2, the groundwater body shall be classified as “endangered” (§ 3 (1) Groundwater Ordinance, Bodies of groundwater at risk).

### Is permission required to discharge effluents? What are the criteria used for considering applications and granting permits?

Yes. According to § 8 (1) Federal Water Act (Permit, license), the use of water generally requires permission, either in the form of a license or a permit. Uses within the meaning of the act include the discharge of effluents into surface water, coastal water or groundwater, cf. 9 (1) no. 4. However, for the introduction or discharge of substances (including effluents) into water, no licenses (only permits) may be issued, § 14 (1) no. 3 (Special provisions for the grant of a license).

However, anyone can file an application for water permits and licenses.

Permits and licenses must, however, be refused based on the grounds given in § 12 (1) (Requirements for granting a permit or license). A permit or license shall be refused if (1) detrimental impacts on the water regime, which cannot be avoided or compensated by the imposition of conditions, are to be expected or if (2) other requirements of public law are not met. If no such ground of refusal is relevant, permits and licenses are granted at reasonable discretion of the competent authority (§ 12 (2)). This implies that even if no ground of refusal of § 12 (1) is relevant, the applicant does not have a legal claim to a permit or license. Within its discretionary power, the competent authority reaches its decision under appreciation of the individual circumstances of the case. This decision may by no means be arbitrary; it has to be made in accordance with the purpose of the empowerment to act at discretion and must respect the legal limits to such discretionary power (see § 40 Administrative Procedure Act, *Verwaltungsverfahrensgesetz*, the *VwVfG*). For example, according to the principle of equal treatment, the authority has to grant a permit or license if it has done so repeatedly in the past in the same circumstances. In so far, the administrative authorities are bound by the criteria they themselves have laid down.

Furthermore, licenses (as opposed to permits) may only be granted under the additional requirements listed in § 14 (Special provisions for the grant of a licence): If it would be

unreasonable to leave the applicant without a secure legal position and if the use of water is for a specific purpose which is pursued in accordance with a specific plan and if the use does not include the discharge of substances into water and does not lead to permanent or significant adverse impacts on the water regime. It needs to be noted that even if these requirements are met, the applicant is only eligible for a license but does not have a legal claim to its grant.

See answer to the 5. Question of 3.B.

In particular, § 18 Federal Water Act (Revocation of permits and licences) contains a statutory reservation of revocation. Therefore, permits can be withdrawn for any objective legal reason related to water management. In that case, compensation does not have to be paid. Licenses – which are not as easily revocable – may, however, not be granted for the discharge of waste (§ 14 (1) no. 3).

Due to § 13 (1), permits can also be varied through the subsequent imposition of conditions, stipulations and specifications (see Question 6).

#### **Are instances of pollution of water sources subject to penalties/fines? Which institution is in in charge of the administration of the penalties?**

Yes. When adversely altering the conditions of waters, § 89 of the Federal Water Act (WHG) stipulates that the person or persons being responsible for the pollution of water sources are responsible to pay compensation of the damage they have caused (art. 89 (1)). The same is applicable to owners of facilities (89(2)). When detrimentally damaging waters in terms of § 90 (1), the responsible person bears the cost of remediating the damage caused as required in § 90 (2).

The institution in charge of the administration of the penalties is typically the Federal Agency for Nature Conservation, § 90 (3)2. Exceptions mentioned in § 90 (3) 1.

## **E. AFFORDABILITY**

### **How does the law address affordability of water supply and sanitation services?**

In German law, affordability of water supply and sanitation services is mainly ensured by monitoring tariffs for water supply by state authorities. The kind of supervision varies whether tariffs of a public or a private nature are concerned.

Tariffs of a public nature are defined in municipal statutes of the respective local communities. Thus, the consumer as person entitled to vote can indirectly influence the pricing decision of “his” local community through the election of certain municipal council members. In addition, pricing decisions of the local communities are supervised by municipal supervisory authorities. Furthermore, each consumer is entitled to file a suit against the local community concerning the charges levied for water supply. The competent administrative court then reviews if the charges have been levied in accordance with the applicable municipal statute and if the municipal statute itself is

based on prior-ranking law.

Tariffs of a private nature are defined by the water suppliers organized as private-law companies. These tariffs are subject to supervision by the antitrust authorities. The antitrust authorities are empowered to oblige the suppliers to reduce their tariffs if investigations come to the result that a market-dominating position has been abused by the supplier.

### **What mechanisms are established by law to ensure affordability of water and sanitation services?**

See answer of first question in E. Affordability

### **How are tariffs established under law and what is the process for updating these tariffs?**

Water supply is characterized by a complex infrastructure. Thus, a large part of the tariffs relates to the costs of the construction, maintenance and operation of the infrastructure required for the water supply. Another significant part of the tariffs relates to personnel costs of the suppliers.

The process for updating these tariffs again varies whether the tariffs are of a public or a private nature. For updating tariffs of a public nature, a new municipal statute defining the updated tariffs has to be resolved. For updating tariffs of a private nature the supplier has to inform the consumer about the updated tariffs. In both cases, increasing the tariffs has to be reasonable and is subject to supervision by the municipal supervisory authorities or the antitrust authorities (see answer of first question in E. Affordability).

### **Does the tariff vary depending on the regions/circumstances?**

Yes, different tariffs significantly relate to different hydrological, topographical and geological circumstances in Germany. Furthermore, the variety in tariffs is influenced by different settlement structures and levels of water use.

### **Which actor is responsible for and involved in setting and/or approving tariffs for water supply and sanitation services?**

Depending on whether the tariffs are of a public or a private nature, different actors are responsible for setting tariffs for water supply and sanitation services. In case tariffs are of a public nature the municipal communities are responsible for setting tariffs for water supply by resolving municipal statutes. In case tariffs are of a private nature the management board of the respective private-law company sets the tariffs for water supply.

### **Does the law allow disconnection from water supply and sanitation services for non-payment? What procedures must be followed in such cases prior to disconnecting the supply and service?**

In case of non-payment by the consumer the supplier is entitled to disconnect the consumer from water supply. Prior to disconnecting the supply, the supplier must have given warning to the consumer and a grace period of two weeks after the warning must have been elapsed (see § 33 (2) AVBWasserV).

## F. ACCEPTABILITY

**Is there provision in the law or contracts with service providers that relate to the need to take into account cultural and social dimensions of acceptability (e.g., colour or odour of water, or the positioning of a facility)?**

Yes. The Drinking Water Ordinance (TrinkWV) lays out parameters of water quality. Annex 3 in relation with §§ 7 and 14 (3) stipulates the specific parameters on colour (Nr.7), odour (Nr.8) and taste (Nr.9) of the drinking water which must be acceptable.

Further, the Ordinance on Workplaces states in Annex 4.1 that toilettes (Annex 4.1.1.) and washrooms (Annex 4.1.2.) must be available, set up separately for men and women, hygienic, near working rooms, concealed from view etc.

**Is there provision in the law or contracts with service providers that relate to the need to ensure dignity and privacy (e.g., in work places, but also in the design of shared sanitation facilities for certain communities)?**

Our research has not indicated that specific laws exist that address these issues. However, art. 1 (1) states that human dignity shall be inviolable and that to respect and protect it is the duty of all state authority. Service providers must provide that the dignity of one's person is not infringed.

## CHAPTER 5. HUMAN RIGHTS PRINCIPLES TO WATER AND SANITATION

### A. NON-DISCRIMINATION, EQUALITY AND UNIVERSAL ACCESS

#### Is there any legislation about the prohibition of direct and indirect discrimination (on all grounds) and promotion of equality in accessing water and sanitation services?

In Germany, many human rights are secured in the Basic Law for the Federal Republic of Germany. In art. 1 of the Basic Law, the state pledges to honour and protect the dignity of every human being and to acknowledge human rights as the basis of every community. It is stated that “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.” Art. 3 (3) declares, that “[n]o person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability”.

German legislation has been developed on the basis of these rights of equality in order to ensure equal treatment and to prevent discrimination. In principle, there is no need for a further legislation other than the Basic Law for the Federal Republic of Germany to ensure the equality in access to those fundamental rights because any act of public authority, for example legislation, needs to be in conformity with the Basic Law for the Federal Republic of Germany.

Since those fundamental rights do not bind private individuals in general, there are special provisions for important issues. Those are especially:

- The General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, the AGG): The General Equal Treatment Act is based on EU directives which have been incorporated into German law. The goal of the act is to prevent or eliminate discrimination against employees in the workplace. It prohibits discrimination due to race or ethnicity, religion or worldview, disability, age, sexual identity or gender.
- § 1631 (2) of German Civil Code (Bürgerliches Gesetzbuch, the BGB): Children must not be discriminated regarding the human right to physical integrity. Even though they are not of age they have the right to an upbringing free of violence. If the parents do not follow these regulations and there is a risk that the welfare of the child is endangered, the court can take actions to avert the danger, i.e. the part or complete removal of parental custody (§ 1666 (1), (3) number 6 German Civil Code).
- Social Security Code IX (Sozialgesetzbuch IX, the SGB IX): SGB IX aims to eliminate disability-related discrimination, promote self-determination for people with disabilities and for those at risk of becoming disabled, and enhance their equal participation in society. For more information, see the Guide for rehabilitation and participation of People with disabilities of the Ministry of Labour and Social Affairs.
- Act on Equal Opportunities for Persons with Disabilities (Behindertengleichstellungsgesetz, the BGG): The purpose of the act is to implement

the ban on discrimination in areas other than social law, to help ensure equal rights for disabled persons in many areas of public and private life and to put them into practice in everyday life. For more information, see the Guide for rehabilitation and participation of People with disabilities of the Ministry of Labour and Social Affairs

**Are there any specific provisions that address and seek to ensure (physical) access to water and sanitation services for persons with disabilities, children or the elderly?**

No, there are no direct specific provisions for the above-mentioned persons of the German Federal Water Act, the Act on Equal Opportunities for Persons with Disabilities or any other law to ensure access to water and sanitation services.

However, the Act on Equal Opportunities for Persons with Disabilities (BGG) has the aim to build up a barrier-free environment (barrierefreie Umwelt). Thus, a disabled person should be able to use the environment in the same way as people without any disability. § 4 of the Act on Equal Opportunities for Persons with Disabilities defines “barrier-free” as follows: “Structural and other facilities, means of transport, technical basic commodities, information processing systems, acoustic and visual information sources and communication equipment and other formed areas are free of barriers, if they are accessible and can be used by handicapped people without particular complication and generally without external help.” (unofficial translation).

For instance, the abovementioned standard is implemented in the following regulations which are connected with the access to water and sanitation services:

- § 48 (2) sentences 1, 2 of the building code of North Rhine-Westphalia (Bauordnung für das Land Nordrhein-Westfalen, the BauO NRW): Buildings with more than two flats have to be barrier-free. The regulation explicitly mentions that at least one toilet and one bathroom must be accessible for people with wheelchairs.

But there are also exceptions from this obligation in § 48 (2) sentence 3. There is no need for a flat free of barriers, if it involves a disproportionate effort. For instance, there is no need to build in an elevator just to make a flat barrier-free.

The other federal states of Germany have similar regulations.

- § 4 (1) sentence 1 number 2a, sentence 2 German Restaurant Code (Gaststättengesetz, the GastG): A person who wants to run a restaurant needs a permission of the competent authority. The permission can be refused, if the rooms of the restaurant were not built barrier-free (§ 4 (1) sentence 1 number 2a). In § 4 (1) sentence 2 there is an exception from this obligation. A restaurant does not need to be barrier-free, if a barrier-free design is not possible or involves a disproportionate effort.

In a broader sense, a barrier-free environment should enhance the equal participation in society not only for persons with disability, but indirectly also for elderly and children. For example a barrier-free restaurant can also help parents with pram and elderly to use sanitation facilities in a more easy way. § 51 (2) of the building code of Berlin (barrier-free building, Bauordnung für Berlin, BauO Bln) states that “public facilities have to be build and maintained in a way, that disabled persons, elderly and people with children can reach the main entrance without any help of others” (unofficial translation).

Therefore there are specific provisions for disabled people, but also, at least indirectly, for elderly and children.

## B. RIGHT TO INFORMATION

### Is there any specific legislation about the right to seek, receive and impart information held by public authorities?

Yes. There are various acts regulating the access to information: The Environmental Information Act (Umweltinformationsgesetz, the UIG), the Freedom of Information Act (Informationsfreiheitsgesetz, the IFG) and the Consumer Information Act (Verbraucherinformationsgesetz, the VIG) as well as the Spatial Data Access Act (Geodatenzugangsgesetz, the GeoZG). For the requested water and environmental information, the UIG is the most relevant law with the GeoZG being important too.

### Does the law expressly set out the right to seek, receive and impart information on water-related issues?

Yes. The UIG states that every person is given the right and claim to have free access to environmental information in general (UIG, § 3 (1)). This includes information about water as well. Further, each of the Länder has their own Environmental Information Act or Information Act respectively, that grants person the right to seek and impart information, which includes information about water or sanitation as well.

### Does the right to information require the payment of a fee? Is there a provision on the affordability of such fee?

Yes, the right to information requires the payment of a fee. However, there are differences between the information granted under the UIG and the GeoZG.

The right to information under the UIG generally requires the payment of appropriate fees, which should cover the costs of the official act but should not detain any individual from claiming information (§ 12 (2) UIG). The existence and the amount of the fee depend on the manner one receives the requested information. However, the maximum fee that has to be paid is set with EUR 500.00 (UIGGebV, § 1 (2)).

The requirement of information under the GeoZG does not require the payment of any fees (GeoZG, § 11 (2) sentence 1).

However, the fees for information may vary in the different Länder.

### Are there any exceptions regarding who or what type of water and environment-related information held by public authorities can be accessed?

#### Federal level

No. In principle, there are no exceptions regarding who has the right to access all information held by public authorities (UIG, § 3).

However, there are exceptions about the type of information that can be disclosed, for example information with respect to public interests, personal data, intellectual property rights etc. (UIG, §§ 8, 9 (1)).

Likewise, the GeoZG gives everyone the right to access information. Concerning the type of information, there are exceptions too. In cases of adversely effects on international relations, important protective goods of the public security or the national defence geo data can be restricted (GeoZG, § 12 (1)). GeoZG, § 12 (2) refers to UIG, §§ 8, 9 (see above).

### State level

In the Länder the access to information is regulated very similarly to the federal level. There also exist exceptions with regard to the type of information that can be disclosed.

**Which institutions are required by law to make information on water public? Does the law reference only the right to access information or also the obligation to make public such information on water related issues (e.g., are institutions obligated to provide information only upon demand, or are they obligated to publish or make available information at certain periodic intervals, on the occurrence of certain circumstances, etc.)?**

Institutions, which are required to make information public are listed in UIG, § 2 (1). Authorities that are obligated to make information public are therefore the federal government and other authorities belonging to the public administration. Concerning the Geodata Access Act, institutions which hold geo data related information are according to the GeoZG, § 2 authorities of the federation or legal persons governed by public law.

Additionally, the law states the obligation of the authorities, that are obligated to inform the public about the environment (UIG, § 10) concerning what information ought to be published and under what circumstances. For geodata related information there is no explicit provision stating an obligation to inform the public. However, GeoZG, § 5 regulates the form of providing information.

If there is a claim, information has to be provided by the authority, that is obligated to provide information, within one month after the qualifying period starts (UIG, § 3 (3) sentence 2 no. 1).

**What are the requirements listed in the law in relation to the language, locations, format, timing and means used for providing water-related information to the public? How does the law ensure that information is made available to all including to minorities?**

In UIG, § 4 all requirements are listed that are necessary to get information from an authority that is obligated to inform. First of all specific environmental information will be provided upon request. This request has to be clear in terms of what kind of environmental information is requested. The form that information can be provided is different. Information can be communicated through oral or written exchange, through inspection of records or in other manner (UIG, § 3 (2) sentence 1).

As mentioned above, authorities should inform the public actively and systematically about the current status of the environment by publishing relevant information they have (UIG, § 10). The dissemination of information to the public has to be in simple presentation and easy accessible formats. Especially electronic formats shall be used. Moreover, the public can also be informed in the form that connections to websites, that contain the important information, are installed. Authorities, which are obligated to inform, are required to ensure that information about the environment that has been

collected from or for them, is up to date, exact and comparable.

There is no direct provision about languages in the UIG; however generally the official language is German.

There are no specific requirements for the use of geodata. Geodata and geodata services, including metadata shall be provided publicly in a manner free of payment, as far as no specific provision or rights of third parties restrict its use (GeoZG, § 11 (1, 2) and GeoNutzV, § 2 (1)). Geodata will be connected through an electronic network on federal level (GeoZG, § 9 (1, 2)).

### **Are there any legal provisions requiring certain authorities to educate the population on water-related issues?**

No. The UIG contains specific regulations which oblige the federal government to publish a report about the status of the environment. The state just has to inform the public, but there is no provision to actively educate them. The only provision within the UIG that has an educative part is UIG, § 11.

Moreover, the Federal Environment Ministry (Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit, the BMUB) promotes and finances a lot of projects or competitions related to environment and water in order to educate the public and make them aware of the challenges concerning environmental pollution. Also, children should be raised with an increased awareness of the environment. However, there is no provision regulating this form of education and information. The same applies to the state level.

### **Are the legal requirements concerning informing the population about regulations, restrictions, prohibitions and discontinuations in water services? Does the law require that information be made available about the existence of complaint mechanisms for water supply and sanitation services to users of such services?**

The legal requirements with regard to informing the population about regulations, restrictions, prohibitions and discontinuations in water services are regulated in the UIG, §§ 10 (1), 11. The federal government is obligated to publish a report about the status of the environment in a period of not more than four years that contains specific information considering the quality of the environment and existing environmental pollutions. UIG, § 10 (5) lists a plan on how to react in the case of a direct endangerment of human health respectively environment. If that is the case, authorities, that are obligated to inform, must spread immediately every piece of information they have that might be useful for the population to take measures for defence or limitation of expected damages. It does not make any difference, if this endangerment is caused by human activities or nature. If a number of authorities contain helpful information, they shall coordinate the spread of information (see also above, 6.2.). The same applies to the state level.

### **Are there any requirements in relation to access to information in contracts with water and sanitation operators?**

#### **Federal level**

No. There are no specific requirements in relation to access to information in contracts with water and sanitation operators, at least not in the UIG. On the contrary, the

confidentiality of commercial or industrial information is guaranteed (UIG, § 9 (1) no 3). In that case, the request to access on environmental information has to be refused, unless the public interest on the disclosure prevails. Otherwise, it is still possible to make a request to access on information according to the UIG, § 3 (1) and § 4 (1, 2).

#### State level

In the Länder, there are no specific requirements in relation to access to information in contracts with water and sanitation operators.

## C. PUBLIC PARTICIPATION

### Is there a law which addresses public participation?

There are three levels of legislation on which public participation is generally possible: federal level, state level and municipal level.

**At federal level** the constitution stipulates the general possibility of public participation. This is by elections and votes in which people may participate in decisions regarding the personnel of governmental bodies (German Basic Law (GG), art. 20 (2)). The only expressly stated cases of public participation on federal level are by referendum in case of a reorganisation of the federal territory and the adoption of a new constitution by the German people (German Basic Law (GG), art. 29 (2) and 146).

**At state level**, the regulations regarding public participation is laid out in the states' constitutions and concretised by parliamentary laws.

For example, the regulation of the state of North Rhine-Westphalia lays out the ways and conditions in which public participation is possible. These include people's initiatives (Constitution NRW, art. 67 or public petitions (Constitution NRW, art. 68 (1). In case of the parliament not allowing the petition, it must start a referendum, which constitutes the third level of public participation on state level (Constitution NRW, art. 68 (2,3)).

**At municipal level**, public participation may also be achieved by means of public requests, public petitions and referenda which are laid out in the respective Municipal Codes of the Länder (e.g. Municipal Code NRW, art. 25 (1) and 26 (1)).

Additionally, certain laws require public participation in terms of a planning approval process (Planfeststellungsverfahren). The regulations regarding the planning approval process are laid out in the Administrative Procedure Act (Administrative Procedure Act (VwVfG), § 72 (1)).

According to the Federal Pollution Control Act, the construction and operation of facilities that are capable of invoking adverse changes to the environment are subject to approval procedures. Part of the approval procedure is the public announcement of the planned construction or operation and the opportunity of citizens to raise objections to such construction or operation.

Similarly, according to the Federal Building Act, urban land-use plans must be publicly announced before such plan may be passed by the municipality.

Public participation by public announcement is also part of the environmental impact assessment regulated in the Environmental Impact Assessment Act.

**What are the criteria listed in the law in relation to participation in water-related issues (e.g., allocated time to provide comments, invitation to public hearings, etc.)?**

Water-related issues (e.g. construction of a sewage treatment plant, boreholes for water supply, construction of water transportation systems) are subject to public participation under the Environmental Impact Assessment Act.

Mandatory public announcements according to Environmental Impact Assessment Act follow the abovementioned regulations laid out in the Administrative Procedure Act (VwVfG), § 73.

**Do the contracts between governmental authorities and operators of water and sanitation services impose upon the operators an obligation to ensure or provide for public participation at any levels at which the applicable services are delivered?**

Public participation is only mandatory in the approval process. At later stages, i.e. in the course of operation, no further public participation is required.

However, it should be noted that the provision of water and sanitation services is a public obligation and, therefore, not privately organized. It is either carried out by the relevant municipality itself or through a private entity with a majority public shareholding. Therefore, the statutory regulations on, inter alia, quality control apply to operators of water and sanitation services and there is no further requirement for contractual imposition of such obligations.

**Is the establishment of regional or local associations or other groupings of water users provided for and regulated by laws or regulations? How do they interact with or connect into other agencies or regulators?**

Yes. The Water and Soil Association Act (Wasserverbandsgesetz) regulates the establishment and the management of water and soil associations. Members of these associations are mainly bodies, who have to carry out special duties with respect to water. This may comprise users of water, riparian as well as bodies who are dedicated to dike or river maintenance. These associations interact with agencies and regulators in many ways, i.a. consultation, cooperation, in some cases delegation of statutory tasks (see water, river and dike maintenance, waterway construction).

In addition, municipal special purpose associations (kommunale Zweckverbände) are established based on special state laws for municipal cooperation (Gesetze zur kommunalen Zusammenarbeit). These acts allow municipalities to work together in distinct areas like inter alia drinking water supply and waste water disposal.

## D. SUSTAINABILITY

### **How does legislation ensure that water and sanitation services are delivered in a sustainable manner, considering the availability of water resources, competing demands and generally the needs of present and future generations?**

As a general principle, the state has to ensure the sustainability of its water management (§ 6 (1) General principles of water management). Surface waters shall be managed according to the concept of “no deterioration” and in a way which guarantees a minimum quality, a “good” status, ecologically and chemically speaking (§ 27 (1)). The same or similar rules apply to coastal waters (§ 44) and to groundwater (§ 47). § 47 adds a good quantitative status to the requirements for groundwater management. If there is a risk that the aims of § 47 are not met for groundwater bodies, they can be classified as “endangered” within the meaning of § 3 of the Groundwater Ordinance (Grundwasserverordnung, the GrwV). The competent authorities are entitled and obliged to take measures which ensure that the legal requirements are met. In terms of drinking water, the public health department is in charge (see § 9 Drinking Water Regulation (Trinkwasserverordnung, the TrwV)).

### **How does the legislation ensure that delivery of water and sanitation services are economically sustainable, with sufficient expenditure for operation and maintenance?**

Municipal communities and or the management boards of the respective private-law company set water tariffs applicable in their territory and ensure that services involving water are economically sustainable by varying tariffs depending on the regions and circumstances. See Chapter 4, E. Affordability.

## CHAPTER 6. ACCOUNTABILITY

### A. PRELIMINARY QUESTIONS

#### What is the relationship between international law and national law (i.e., is the state a monist or dualist system--how is international law interpreted in relation with domestic law)?

The relationship between international (human rights) law and German national law depends on the nature of the international law.

The general rules of international law, that means the international customary law and general principles of law, are automatically valid under national law and precedent over federal law except for constitutional law (German Basic Law, art. 25).

For international treaties and administrative agreements, there is need to pass additional legislation due to the German Basic Law, art. 59 (2).

Germany follows the principle of the moderate dualist system.<sup>4</sup> That means that international treaties have to be transformed into national law by passing a national law. All state institutions have to accommodate international law to ensure the obligations under international law. The preamble, art. 24, 25, 32 and 59 GG attest, that Germany is intended to accommodate international law.

For the European Convention of Human Rights (the **ECHR**), the Federal Constitutional Court decided, that all statutory entities have to take into due consideration the convention and related jurisdiction of the ECHR whilst applying national law.<sup>5</sup>

#### What is the hierarchical structure of the legal system?

At the top of the hierarchy of norms is the European Union Law. Germany is obliged to give the European Union Law priority of application over conflicting national law. However conflicting national law is not invalid, but must not be applied. The priority of application is not explicitly mentioned in the European Union Law, but decided by the ECJ in settled case law since 1964<sup>6</sup> and can be derived from TEU (Treaty on the European Union), art. 4 (3) (requirement of loyal cooperation).

At the second position stands the German Basic Law (constitution). National law which violates German Basic Law is invalid (German Basic Law, art. 20 (3), art. 1 (3)).

Under the German Basic Law but above federal law the general rules of international law are ranked (German Basic Law, art. 25).

<sup>4</sup> Decision of the Federal Constitutional Court (BVerfGE) 111,307, 319, attachment 57.

<sup>5</sup> Decision of the Federal Constitutional Court (BVerfGE) 111,307, 316, attachment 57.

<sup>6</sup> ECJ, verdict of 15/07/1964, C 6/64, Costa Enel, attachment 58.

Through the transformation, international treaties have the status of the respective statutory law, German Basic Law, art. 59 (1). Most of the cases the Transformation Act is formal federal law and stands in the hierarchical order below the German Basic Law. For the European Convention of Human Rights (the **ECHR**) however, the Federal Constitutional Court has decided, that other German law and even the fundamental rights shall be interpreted within the meaning of the ECHR and the rulings of the ECHR.<sup>7</sup> Therefore it is seen, that the ECHR stands between the German Basic Law and the federal law.

Parliamentary acts take precedence over ordinances following the principle of priority of the law, German Basic Law, art. 20 (3).

State law stands below federal law (German Basic Law, art. 31).

Statutes of municipalities and public entities are on the bottom of the hierarchy of norms.

#### **Has the State ratified the relevant international conventions establishing regional or international complaint mechanisms?**

Yes. Germany has recognized seven out of eight UN-complaint mechanisms. The UN Treaty bodies, which are responsible for the individual complaints, are not courts of Human Rights. They cannot give enforceable judgements. However, their views are normally accepted by States and they are used as an aid for interpretation of national law in other procedures.

Recognized UN-complaint mechanisms:

- International Convention on the Elimination of all Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- International Convention for the Protection of All Persons from Enforced Disappearance

Individuals have also the possibility to lodge a complaint against Germany before the European Court of Human Rights, due to ECHR, art. 34. The ECHR can take binding and enforceable decisions and award damages due to ECHR, art. 41, 46.

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## B. REMEDIES AND COMPLAINT PROCEDURES/ACCOUNTABILITY

### **Are there remedies provided by law to file complaints or other ways of accessing justice in reference to water and sanitation? Who may file them? Are the decisions appealable?**

Yes. Any administrative action or decision can be challenged before an administrative court.

Some states provide for a preliminary administrative appeal before the administrative authority if the objection concerns an administrative act (§ 68 VwGO). Other states do not provide for an appeal on the administrative level; instead, appeals are directly addressed to the court.

If the administrative act is unlawful and the plaintiff's rights are violated thereby, the court shall rescind the administrative act (§ 113 (1) VwGO). Such an action for annulment can be brought before a court, e.g. against conditions and additional stipulations added to a permit to abstract water.

If the rejection or omission of the administrative act is unlawful and the plaintiff's rights violated, the court shall oblige the authority to effect the requested official act if the case is mature for adjudication (§ 113 (5) VwGO).

Decisions can be open for revision (§§ 124 ff. VwGO), and appeal (§§ 132 ff. VwGO).

### **Are such complaint procedures required to be provided in conformity with human rights principles (such as non-discrimination, equity)?**

Any public authority must respect human rights (art. 1 (3), art. 20 (3) German Basic Law). If the administrative bodies fail to apply or properly consider human rights with regard to decisions on water supply and sanitation, their decision is unconstitutional and can therefore be contested before the administrative courts. The court examines whether the administrative body has acted within its discretionary power. Where a human right is affected and the encroachment is not justified (violation), the administrative body has exceeded the limits of its discretionary power (§ 114 VwGO). If human rights have been violated, the decision is incorrect and will be reversed by the courts. Where even the highest administrative court, however, fails to consider human rights correctly, the human right may be invoked before the Federal Constitutional Court.

### **Does the law provide for financial assistance for legal counsel in cases concerning water and sanitation?**

Yes. The legal system provides for assistance for consultation with a lawyer before entering into legal proceedings. The details are governed by the Act on Advisory Assistance and Representation for Citizens with a Low Income (Act on Advisory Assistance and Representation for Citizens with a Low Income, § 1).

Furthermore, the statutory provisions regarding assistance to legal costs provide for assistance for representation by legal counsel in court, however, only in the event that representation by a lawyer is either mandatory or necessary in the specific case.

### Who monitors the administrative level bodies and/or service providers?

Any administrative activity is subject to state supervision. There is an internal control carried out by the supervisory administrative authorities. Supervision is usually carried out by the next higher authorities (district or regional authorities; ministry of the interior). They have to monitor and make sure that the lower state authorities act lawfully. The extent of the supervisory control beyond depends on the legal nature of the task carried out by the lowest authorities. With some of the tasks, the local authorities have more autonomy than with others. In matters of local self-government (e.g. public water supply, wastewater disposal), supervisory authorities are only competent to examine whether decisions have been made within the discretionary power. In other matters, where local authorities simply act as the state's lowest authorities, their supervision rights go further and include the issuance of specific instructions.

In the end, the core part of supervision lies with the judicial control of administrative action before the administrative courts (there are three instances of judicial review: administrative courts, higher administrative courts and the Federal Administrative Court). The judicial control of administrative action is ensured in the German Basic Law, art. 19 (4), irrespective of the administrative action's legal form. There is also a comprehensive system of interim relief in order to prevent consequences which are irreparable.

### What remedies are available at an administrative level?

Citizens have the right to address written requests or complaints to the competent authorities (German Basic Law, art. 17 (Right of petition)). The right of petition includes the right to issue a remonstrance to the decision-making authority for it to re-examine the lawfulness of its action. It also includes an informal appeal to the supervisory authority requesting the annulment or amendment of an administrative action. Complaints can also concern the conduct of individual officials. Such complaints need to be in writing, but other than that are informal and can be issued at any time. The authority is obliged to accept and consider the petition; but other than that no legal consequences are tied to it (e.g. no suspensive effect).

Formally, some states provide for a preliminary objection proceeding before the administrative authorities provided that the objection concerns an administrative act (§ 68 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, the VwGO)).

The objection has a suspensive effect meaning that the decision may not be executed. In this administrative proceeding, the decision-making authority first reviews the lawfulness of the administrative act at issue. If the authority acknowledges its mistake and considers the objection to be well-founded, it changes its decision and provides a remedy itself (§ 72 VwGO). If the decision-making authority, however, confirms its decision, the matter is passed on to the next higher authority, which can uphold, amend or reverse the decision (§ 73 VwGO).

In some states the authority which has issued the administrative act in the first place is also competent for the decision about the objection; decision-making and reviewing authority are then identical and only the same authority reassesses the decision. Only if the authority does not provide a remedy, the complainant may then take the issue before the court.

### Who monitors these administrative-level bodies?

See 4th question of 6.B

### **Are such administrative bodies legally independent entities according to the law?**

Administrative organs acting for an authority are not legal entities on their own. They always act on behalf of a legal body, usually a territorial entity (municipality, district, state). These authorities are legally independent entities according to the law. Municipalities are an entity on their own which is reflected in the constitutional guarantee that they administer all local affairs (art. 28 (2) German Basic Law). This autonomy does, however, not hinder the supervisory control by higher authorities.

### **Is there any evidence (e.g., case law) that courts in the country have (or may have) jurisdiction to enforce any economic, social or cultural rights?**

There is no apparent respective case law.

### **Do courts in the country have jurisdiction to hear cases regarding the obligations to respect, protect and fulfil the human rights to water and sanitation? Is there any existing case law?**

The administrative courts have jurisdiction to hear cases which involve the protection of the rights to water and sanitation as far as they are part of the underlying laws and are subject to measures taken by the administration.

### **Is there a Constitutional /Supreme Court? Cases are heard as the last appeal or may cases be referred directly?**

Yes. The Federal Constitutional Court is at the head of local, regional and higher regional courts. It's jurisdiction is laid out in art.93 of the Basic Law (Constitution, GG), and § 13 of the Act on the Federal Constitutional Court (BVerfGG). Only under specific circumstances may cases be referred directly to the Court.

§ 90 states: "(1) Any person claiming a violation of one of his or her fundamental rights or one of his or her rights under Article 20(4), Articles 33, 38, 101, 103 and 104 of the Basic Law by public authority may lodge a constitutional complaint with the Federal Constitutional Court.

(2) If legal recourse to other courts exists, the constitutional complaint may only be lodged after all remedies have been exhausted. However, the Federal Constitutional Court may decide on a constitutional complaint lodged before all remedies were exhausted if the complaint is of general relevance or if prior recourse to other courts would cause the complainant severe and unavoidable disadvantage."

### **Have domestic courts applied international human rights law in past cases or have they referred to decisions from international human rights bodies?**

Yes. As far as international human rights laws have been ratified and effected in Germany, they form part of the law and therefore must be considered by courts.

### **Are court proceedings conducted in only one principal language, or are they also conducted in local languages, including minority and indigenous languages? Does the law require that information is made available in local languages?**

Court proceedings are conducted in German language only. The only exception is made

with respect to the Sorbian local language (cf. § 184 of the Courts Constitution Act<sup>8</sup>):

*“The language of the court shall be German. The right of the Sorbs to speak Sorbian before the courts in the home districts of the Sorbian population shall be guaranteed.”*

### **Have domestic courts applied (or referenced) recommendations of national human rights institutions?**

No apparent case law has been found during the research that would indicate this.

## **C. NATIONAL HUMAN RIGHTS INSTITUTIONS**

### **Is there an independent national human rights institution?**

Yes, § 1 (1) (Gesetz über die Rechtsstellung und Aufgaben des Deutschen Institutes für Menschenrechte, the **DIMRG**) establishes the German Institute for Human Rights (**DIMR**).

Facultative additional information: The DIMR is accredited with “A status” by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (the **ICC**) (Accreditation status as of 08/03/2001).

### **Does the mandate of the National Human Rights Institution cover the entire human rights framework, including economic, social and cultural rights?**

Yes, the mandate of the DIMR covers the entire human rights framework, including economic, social and cultural rights<sup>9</sup>.

### **Is the national human rights institution authorized to receive and adjudicate complaints of violations of human right to water and sanitation right?**

No, the mandate of the DIMR does not cover the right to deal with human rights on an independent level. If the DIMR receive such complaints it tries to refer to specific help lines and special services.<sup>10</sup>

### **Does the national human rights institution have a legal basis or authority to initiate an action to address systemic human rights violations?**

No, 3 2 of Bylaws of the German Institute for Human Rights (Amended on 22/09/2015) defines purpose and mandate of the DIMR. The Right to initiate an action to address systematic human rights violations is not mentioned.

### **What types of remedies does the national human rights institution have the authority to impose?**

In 3 2 of Bylaws of the German Institute for Human Rights (Amended on 22/09/2015) the following purposes are listed: The DIMR provides records to Informing the public on the human rights situation in Germany and abroad, does academic research and

<sup>8</sup> [https://www.gesetze-im-internet.de/englisch\\_gvg/englisch\\_gvg.html#p0834](https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0834) (accessed 28-03-2017).

<sup>9</sup> <http://www.institut-fuer-menschenrechte.de/en/about-us/faqs/>.

<sup>10</sup> <http://www.institut-fuer-menschenrechte.de/en/about-us/faqs/>

publication, give policy advice, does Human rights-related educational work in Germany, facilitates dialogue as well as national and international cooperation with human rights relevant actors and examines the continued human rights related effects of totalitarian dictatorships as well as situations of armed conflict and post-conflict situations, complementing the work of institutions active in this field

**Is the institution allowed to initiate investigations/hearings?**

No, it is not.

**Does the national human rights institution have the authority to monitor how remedies for violations of rights to water and sanitation are implemented by governmental authorities, service providers or other agencies/entities?**

No, it does not have such authority.

**D. REGULATION**

**Is there a water regulator established by law?**

Responsibility for policy setting in public water supply and sanitation in Germany is shared between the EU, the federal government and state governments (Länder). The EU sets the framework legislation for water quality and water resources management (see EU water policy). The organization of public water supply and sanitation, however, remains a prerogative of EU member states. The German states (Länder) play a key role in the sector by setting, among other things, the legal framework for tariff approvals. Municipalities, legally entrusted with service provision, play an indirect role in influencing policy positions related to water and sanitation through their influential municipal associations (the Deutsche Staedtetag representing the largest cities and towns and the Deutscher Staedte- und Gemeindebund representing smaller cities and towns).

**Is the water regulator an independent entity?**

There are no autonomous regulatory agencies for water and sanitation in Germany at the state or federal level.

Water and sanitation tariffs are approved through different procedures in each state, usually by a department in the state Ministry of Economy after a review of the tariff increase request by an independent auditor. In the case of some private utilities, tariffs are set by a mutually agreed arbitrator based on the professional opinion of an auditor.

**What are the oversight mechanisms and responsibilities related to drinking water supply and sanitation services of the regulator?**

Drinking water quality is monitored by the public health departments of municipalities and counties (Landkreise). Environmental monitoring is largely based on self-monitoring, which has proven to be reliable, and occasional samples by environmental Ministries of the states.

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**Which actors are responsible for ensuring accountability of institutions or entities involved in water supply and sanitation services?**

Primarily state (or Länder) governments set the framework for municipal management as described above, rather than regulating in the usual economic sense of the term. Governments also use general powers to “police” the behaviour of municipalities and their undertakings. For instance, state authorities observe and control the level of debt incurred or carried by municipalities. They intervene if levels of investment or debt finance arrangements threaten to overwhelm a municipality. This supervision includes all public-law municipal undertakings: Their tariffs and prices or charges must either be authorised or are subject to review and revision by state supervisors.

**How are the actions of those entities or institutions monitored and by whom? As much as possible, please inform on the different aspects of water and sanitation services: e.g., water quality, tariff setting, availability of water resources, service delivery, etc.?**

## ACRONYMS

HRBA	Human Rights-Based Approach
HRWS	Human Rights to Water and Sanitation
IWRM	Integrated Water Resources Management
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
SDG	Sustainable Development Goal
WASH	Water, Sanitation and Hygiene
N/A	Not Applicable

