

REAL DEAL country profile

Germany



**REAL
DEAL**

RESHAPING CITIZENS'
DELIBERATION FOR THE
EUROPEAN GREEN DEAL



1

Overview

Germany is a federal republic with 16 individual federal states. Many elements of the implementation of the European Green deal are a federal competence and the responsibility of the federal ministry of environment. However, in principle the federal states carry the main legislative power as the German Basic Law (constitution) dictates that all legislative powers lie with the state unless the Basic Law specifically lists it as a federal competence in either articles 71, 72 (exclusive competence) or article 73, 74 (concurring competence). The division of competence in the areas relevant for the European Green deal are complex but as a rule of thumb goes that the federal level interacts with EU law and the state level has competence whenever the federal level did not legislate in a specific area.

Environmental and animal protection is part of German constitutional law via article 20a of the basic law which grant both environmental protection and sustainability policies constitutional backing. While there had been efforts to collate all relevant environmental laws into one environmental code, these failed and German environmental law relevant for access to information, public participation, and access to justice are found in different sectoral and state legislations.

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2

Dimensions of environmental governance

According to the German national sustainable development strategy, the federal public authorities are supposed to further sustainable and environmentally friendly policies. The importance, society attributes to environmental protection has been recognisable in recent elections. The German Green party has been in coalition governments at the federal and state level and environmental values have been embraced by all major political parties to varying degrees.

One particularly polarising topic has been the public debate on nuclear power. The intensity and outcomes of this debate are unique within the European context and have increased the political profile of other environmental conservation concerns as well.

The degree of public participation has long been an important political debate in German society. The federal nature of politics enables public participation at the local and regional level but can have a dampening effect on public participation in national level politics. The environmental ministry has a dedicated unit which is tasked to foster public participation via the production of guidelines, scientific research, and the innovation of new and informal ways of public participation.

Transparency and access to information are guiding principles of the German public authorities but are often in conflict with the importance German culture attributes to personal privacy. While the transparency of public authorities should theoretically not conflict with the protection of personal privacy, there have been spillover effects which have resulted in confidentiality being applied to areas which do not concern personal privacy but rather public policy.

Helpful sources

- https://www.umweltbundesamt.de/sites/default/files/medien/376/publikationen/190722_uba_if_environmentadmin_21x21_bf.pdf

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2.1

Transparency (access to information)

Legally speaking, access to environmental information in Germany is following the spirit of article 4 of the Aarhus Convention both at federal and state level, however the culture of administrative service presupposes a starting position of keeping information non-public unless there is a reason to publish it, rather than a starting position of proactive transparency. The German state does not keep reliable statistics on the access to information requests which makes a proper assessment of the right in Germany difficult. Evaluations which have been carried out of the right to access environmental information have occasionally shown deficits in the assessment and replies by public authorities and there are a host of court judgments on disputes in this matter.

Article 3.1 of the German federal environmental information law (UIG) grants every person the right to free access to environmental information without having to prove a specific interest. Article 25 of the Federal Administrative Procedure Act (VwVfG) provides for a general obligation for public authorities to offer advice and access to information about their obligations and opportunities of public participation in their decision-making processes. Similar obligations exist in all German federal states.

The German state does not keep reliable statistics on the access to information requests.

Separately, with regards to environmental matters, the German federal environmental information law also obliges public authorities to provide information about legal remedies and access to justice to citizens. Similar obligations can also be found in several sectoral pieces of legislation on public participation and emissions.

Administrative costs to be paid by the requestee may not exceed 500 euros as per a specific procedural regulation (UIGGebV) of the UIG. This is a comparatively high threshold.

Geospatial data availability requirements under the EU's INSPIRE directive are well implemented but the progress on making data more widely accessible and prioritisation of important data sets over less important ones has been slow.



Proactive publication

Helpful resources:

- <https://www.bmu.de/themen/bildung-beteiligung/umweltinformation/aarhus-konvention/>
- www.govdata.de/

Up until 2014, Germany had a one-stop-shop for environmental information, “PortalU”, but the project was not renewed, and environmental information is now hosted solely on the official websites of the respective government authorities. The “GovData” portal serves as a semi-substitute but is not limited to environmental information. Additionally, the federal structure of the country makes access to published information and data confusing and user unfriendly. Information on environmental impact assessments is usually more easily accessible at federal and state level.

In the area of education, the German federal nature protection law (BNatSchG) recognizes the special status and mission of environmental organisations and there are several pieces of soft law of the German ministry of the environment that further environmental education.

2.2

Participation

There is no overarching piece of legislation regulating all public participation requirements in environmental decision making. The different requirements and obligations under the Aarhus Convention and EU law are to be found in separate pieces of sectoral legislation. There is, however, a default back to the federal environmental impact assessment act in case of silence in the law or outdated or less strong sectoral legislation.

A large part of the transposition of the public participation requirements for specific projects of article 6 of the Aarhus Convention are to be found in the federal emissions protection law (BImSchG) as part of the permitting procedures for industrial activities. Similar obligations exist in other sectoral pieces of legislation such as the construction law (BauGB) and the permitting obligations in the law on Environmental Impact Assessments (UVPG) as well as regulations on nuclear activity and nuclear waste. The overarching procedural rules can be found in the German federal administrative procedure act (VwVfG).

An interesting initiative has been the German voluntary mediation project “IMPEL-Projekt” which focusses on informal solutions of neighbourhood environmental conflicts via dialogue. While not strictly speaking a question of public participation – especially with regard to public authority decision making – it is nevertheless a fascinating initiative.

Regarding public participation in the spirit of article 7 of the Aarhus Convention, German law has transposed the relevant EU directives in three pieces of legislation. The law on strategic environmental assessments (SUPG), an amendment to a construction law (EAG Bau) and the federal law on public participation. Plans and



Helpful resources:

- <https://www.bmu.de/themen/bildung-beteiligung/umweltinformation/aarhus-konvention/>
- www.bmu.de/WS810
- <https://www.bmu.de/download/leitfaeden-zu-uvp-und-sup/>
- <https://beteiligungportal.baden-wuerttemberg.de/de/startseite>

programmes on the state level are subject to similar state laws on public participation.

The public participation in legislative procedures obligations of article 8 of the Convention are scattered over numerous different laws. In the German context, it is clear that targeted public consultations are much more common than open public consultations. The extent to which stakeholder involvement represents balanced interests or is taken into account in the final decision-making process is not transparent in Germany.

The state of Baden-Württemberg has created a participation portal which is a progressive initiative explaining all possible public participation possibilities in one place.

Civil society representatives are lamenting an alleged systematic attempt of weakening the public participation opportunities and rights over the last years. Acts expediting permitting procedures and the lack of digitalisation of public participation is criticized as an organized limitation of public participation in Germany.

2.3

Access to Justice

There are no specialised environmental courts in Germany, environmental matters are dealt with by administrative, criminal, and civil courts with the administrative courts being in charge of claims against decision making procedures of public authorities. Many courts do, however, have chambers in charge of environmental law. Jurisdiction is divided between federal and state courts.

Germany has implemented the main access to justice requirements via its general administrative law code (VwGO) and the environmental appeals act (UmwRG), which transposes the access to justice part of the EU Directive on public participation (2993/35/EC). The internal administrative appeal is the first and most common instance for access to justice. Due to several limitations in the German system of access to justice in environmental matters, the act on the adaptation of the environmental legal remedies act and other provisions to European and International legal requirements was passed in 2017. The main issue was firstly the Aarhus Convention Compliance Committee Case (ACCC/C/2008/31) on the limitation of the right to complain concerning laws that are intended to protect the environment. Secondly, the Court of Justice of the European Union case C-137/14 had ruled certain preclusions of objections of a factual nature in court proceedings were in breach of EU law.



Helpful resources:

- financial support for legal costs. Instrument for legal aid (article 114 and following ZPO)

NGOs are granted special legal standing under the environmental appeals act and the federal nature conservation act (BNatSchG) including some state acts provide automatic legal standing to registered nature conservation organisations. However, German state recognition of NGOs causes problems which exclude overarching environmental organisations such as Greenpeace and WWF from benefitting from the privileged standing requirements granted to NGOs. It is questionable whether these limitations of personal scope are in line with the obligations under the Aarhus Convention.

Additionally, there are issues with regards to the material scope of the access to justice rights, specifically with regards to plans and programmes. The environmental appeals act limits the type of acts which can be subject to appeal under its law. This means that there are certain national regulatory acts which can only be challenged via a complicated and not yet fully developed system of legal workarounds.

In contrast to the rather accessible system of filing complaints about compliance, the accessibility of access to justice against public authorities is hampered by lack of readily available information which the public can access. The German legal tradition is well known for its depth and level of detail but those need to go hand in hand with better information to the public about their access to justice rights. Simple references to relevant court judgment portals were identified as a priority.

2.4

Compliance assurance, accountability, and effectiveness

With regards to the EU's industrial emissions directive, inspection duties fall upon the state level and not the federal level. In general inspection plans and results are being published at state level but similar to access to documents requests also with regards to inspections no Germany wide annual statistical reports are available which make evaluations difficult.

Similar lack of data issues exists with general enforcement of environmental law. The only statistically relevant data is being recorded in the area of criminal law.

The German legal culture does not include advanced Ombudsman institutions and as a federal state there is no central complaint-handling authority or one size fits all complaint mechanism. Regardless, filing a complaint is generally comparatively simple.

There have been attempts in Germany to collate environmental law in one single code of environmental law, but those efforts have so far not been fruitful.



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Institutional context

German environmental administration is comparatively complex due to the national culture of public service, the legal tradition, and the federal structure of the public authorities. In Germany's federal government, the responsibility for environmental protection lies with the federal ministry for the environment, nature protection, nuclear safety, and consumer protection. All the 16 states have their own ministries charged with environmental matters. The implementation and enforcement of environmental policy varies greatly between states with different public authorities and different systems of devolution.

Besides the state autonomy and legislative prerogatives, the local level also exercises considerable power. The self-government principle means that in general local governments have the autonomy to handle all issues which do not directly touch upon issues regulated by federal or state regulations. Prominent examples of this far ranging self-governing are land use plans, road management and green areas, waste and wastewater disposal, and energy supply.

The federal ministry of environment has four associated federal agencies. Two are working exclusively on nuclear topics (BfS and BASE). The German federal environmental agency (UBA) is in essence a scientific body that measures and analyses environmentally relevant data. But it also advises the political level in environmental decision-making processes and legislation, whereas the German federal agency for environmental protection (BfN) is in charge of distributing and overseeing scientific projects.

Helpful resources:

- Aarhus National Focal Point contacts can be found here: <https://unece.org/environment-policy/public-participation/national-focal-points-and-contact-points>

The implementation and enforcement of environmental policy varies greatly between states.



4

Role of Civil Society

Germany is home to a well-established civil society environment with decades of experience. There are several Civil Society Organisations which span the whole country via memberships in all federal states and sub-organisations at local level as well as representations in European and International political processes. The recent years have been characterised by an increase in the number of NGOs and their influence in environmental policy. However, there are also new voices criticising the role of NGOs, state funding of some organisation, and even undermining the legal registration of certain organisations as NGOs.

Environmental NGOs have been particularly active in the debate around nuclear power and the protection of certain areas from lignite mining activities. NGO organised public protests are common and powerful but German civil society has also established itself as a serious lobbying force at national, European and international level and as a partner in implementing environmental and climate policies on the ground.

While NGO influence is strong overall, Germany has no dedicated system of social partners through which certain civil society organisations would have privileged access to decision making and decision makers. The influence and impact of civil society actors depends on their own political power and resources.

Largest CSOs active in this area

- Bund für Umwelt und Naturschutz
- Deutsche Umwelthilfe
- Deutscher Naturschutzring
- Greenpeace
- NABU – Naturschutzbund Deutschland
- Robin Wood
- WWF Deutschland