

Allocation of Administrative Responsibilities and Legal Framework Conditions

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Contents

1. Administrative Boundaries and Legislative Competence	125
2. Legal Framework Conditions	125
2.1. European Legal Norms	125
2.2. German Federal Laws	126
2.3. German State Laws	127
3. Areas of Responsibility	128
4. International Agreements	129
5. Coastal Zone Management	130

1. Administrative Boundaries and Legislative Competence

The Basic Constitutional Law of the Federal Republic of Germany defines the Republic as a federal system in which individual states are granted a high degree of autonomy according to the principle of subsidiarity. The consequence of this is that federal administrative boundaries in coastal regions result from historical developments and that areas of responsibility are hence non-homogeneous.

The German coastal zone comprises the federal states of Niedersachsen (Lower Saxony), Bremen, Hamburg, Schleswig-Holstein and Mecklenburg-Vorpommern. The German Federal Republic (or the federal government) is solely responsible for shipping routes in the entire coastal region of the North Sea and Baltic Sea as well as for navigation channels in estuaries. In several task areas the federal government has reserved the legislative competence for centralised framework laws, whereas responsibility is borne by the individual states on a regional level. This includes, e.g. responsibility for water resources management and nature conservation. Moreover, a range of task areas exist for which the federal government has either no legislative competence or does not assume responsibility for. The responsibility for such task areas therefore solely rests with the individual states.

The five coastal states are each responsible for coastal protection and all matters concerning state and municipal ports and harbours.

2. Legal Framework Conditions

2.1 European Legal Norms

By way of the **Directive on the Assessment and Management of Flood Risks** adopted by the European Union with effect from Nov. 20, 2007, legal provisions on flood protection have now been established which also partly apply to coastal protection. So far, however, this does not concern operational tasks but only management tasks. In the next step, a preliminary assessment of flood risk must be drawn up by December 22, 2011. Thereafter, flood hazard maps and flood risk maps must be produced by December 22, 2013.



Fig. 1: Federal states in the coastal zone of Germany

Finally, the member states must produce and publish flood risk management plans by December 22, 2015.

The member states are obliged to put into force their respective national legislative and administrative rules and regulations by November 26, 2009. Thereafter, the afore-mentioned plans and maps must be checked and updated every 6 years.

Additional important EU Directives that have been implemented in national legislation are as follows:

- *Directive for establishing a framework for Community action in the field of water policy (Water Framework Directive)*
This directive is intended to protect the ecological systems of rivers and therefore only concerns coastal protection indirectly. There is, however, a close connection between the latter and the afore-mentioned Flood Risk Directive as far as the area in question and public information and participation are concerned.
- *Environmental Impact Assessment Directive (EIA Directive)*
- *Directive on the conservation of wild birds (Special Protection Area Directive)*
- *Flora-Fauna Habitat Directive (FFH Directive)*

2.2 German Federal Laws

According to the *Basic Constitutional Law of the Federal Republic of Germany (GG)*, Article 74, coastal protection is subject to concurrent legislation. As the German coastal states have effectively regulated coastal protection matters by way of federal laws, there is no cause for the federal government to exercise its legislative powers except for co-financing the construction of protection structures within the framework of the common task of “Improving agrarian structure and coastal protection”, as defined in the German constitution.

According to Article 91a of the GG, coastal protection is defined as one of the tasks of

the states, which is realised with the involvement of the federal government “provided these tasks are important to the community at large, and involvement of the federal government is necessary to improve living conditions (common tasks)”. The law governing the common task “Improvement of agrarian structure and coastal protection” particularly regulates the financial participation of the federal government in investment-related coastal protection measures: today, the federal government bears 70 % of the investment-related costs within the scope of the available budgetary funds.

According to Article 75, Paragraph 1, No. 4 of the GG, the federal government enacted the framework legislation competence for water resources, and on this authorisation basis, decreed the Water Resources Act (WRA). Although this law, as a skeleton law, does not include direct regulations for coastal protection, it must nevertheless be taken into consideration.

Importance is also attached to the intervention regulation as well as to the biotopes protected by the Federal Nature Conservation Act (BNatSchG) as a skeleton law, which is supplemented by the respective state nature conservation acts. Additional provisions of the Federal Nature Conservation Act must also be taken into consideration in individual cases, as outlined in Section 4 with regard to the protection, maintenance and development of certain parts of the natural environment and the landscape.

The layout and operation of the federal waterways as transportation routes are regulated by the Federal Waterways Act (WaStrG). The Federal Administration for Waterways and Navigation (Wasser- und Schifffahrtsverwaltung – WSV) bears responsibility for the latter. The federal government is hence responsible for the upgrading, operation and maintenance of federal waterways, which includes inland waterways, maritime navigation channels and coastal waters. The federal government is also responsible for regulating traffic on these waterways.

Among other things, the federal states are permitted to use the maritime navigation channels and adjoining estuaries of inland waterways, owned by the federal government, free of charge for coastal protection measures.

With regard to the construction and upgrading of coastal protection structures, the Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz – UVPG), which regulates the performance of environmental compatibility checks, must also be observed.

The Water Association Act (WAA) regulates matters pertaining to the water and land associations, which, as dyke associations, have cooperation obligations and duties to partly support coastal protection measures.

The Regional Planning Act (RPA) of the federal government applies to the realisation of coastal protection measures relevant to regional planning as well as to conceptual planning. This act includes provisions governing the development of state and local regional planning programmes as well as regional planning procedures.

2.3 German State Laws

Due to the fact that a federal law governing coastal protection is non-existent at the present time, the federal states have established the necessary legislative policies on coastal protection by way of state laws. The states of Mecklenburg-Vorpommern, Hamburg, Bremen and Schleswig-Holstein have included coastal protection alongside water resources management in their respective state water laws. Besides the Lower Saxony state water law, the Lower Saxony dyke law also exists as a special law. Additional regulations may be drawn up in ordinances (e.g. the Hamburg Dyke Ordinance).

In addition to definitions of terms, these laws include directives on the accord of classification, the specification of dyke dimensions as well as the maintenance and utilization of dykes and other coastal protection structures. They additionally include provisions on rights and obligations relating to dykes, on dyke associations, dyke authorities and dyke defence.

Further state laws which are not mentioned individually here concern nature conservation, regional planning, national parks, disaster control, checks on environmental compatibility, and legal approval procedures.

3. Areas of Responsibility

According to legislation, the areas of responsibility are split between the federal government and the states.

The federal government is responsible for upgrading, operating and maintaining **federal waterways**, which not only include inland waterways but also maritime navigation channels and coastal waters. The federal government is also responsible for regulating shipping traffic on these waterways. The Federal Administration of Waterways and Navigation, which is part of the Federal Ministry for Transport, Building and Urban Affairs, is responsible for technical matters. Within the scope of the above-mentioned operational tasks, the German Federal Waterways Engineering and Research Institute (Bundesanstalt für Wasserbau – BAW) is also responsible for collecting basic hydrological and hydro-morphological data in the coastal zone. Using scientific methods, planning criteria are established for larger construction measures, and these measures as well as their effects are conclusively documented.

Other federal authorities, such as the German National Meteorological Service (Deutscher Wetterdienst – DWD), the German Federal Maritime and Hydrographic Agency (Bundesanstalt für Seeschifffahrt und Hydrographie – BSH) and the Federal Institute of Hydrology (Bundesanstalt für Gewässerkunde – BfG) contribute considerably to the latter.

Different bodies of responsibility exist for **ports and harbours**:

Ports which primarily deal with passenger traffic and the movement of goods are the responsibility of states (state ports) or municipalities (municipal ports). These include all the large German seaports such as e.g. Hamburg, Bremerhaven, Lübeck-Travemünde or Rostock. Today, the handling of cargo is carried out by private companies in several ports, especially the larger ones.

Federal ports are primarily necessary for ensuring the safety and ease of maritime traffic, e.g. as ports of refuge or operational harbours. For this reason, responsibility for these is borne by the Federal Administration for Waterways and Navigation.

The states are responsible for **coastal protection**:

In this case a distinction must be made between official and operational responsibilities. Official responsibility includes the passing of appropriate laws by parliaments, the enactment of additional directives such as ordinances or similar by administrations, the legal approval of measures, and the supervision of facilities and measures. The state governments bear sole responsibility for the latter. Apart from the supreme coastal protection authorities within the ministries responsible, lower coastal protection authorities exist on a local level. These may be state authorities, state offices, municipalities or other public corporations contracted by the state concerned.

Operational responsibility comprises the construction (including strengthening), maintenance and operation of coastal protection structures.

In *Lower Saxony*, 22 dyke boards are mainly responsible for dyke maintenance and

strengthening. Here, as in other federal states, the dyke boards, as water and land boards, are corporations under public law according to the Water Board Act. The owners of all property in dyke-protected areas who benefit from these protected locations are compulsory board members liable to contributions.

The state is responsible for coastal defence and erosion protection on the islands, storm surge barriers, state-owned dykes as well as strategic and general technical planning. In charge is the State Agency for Water Management, Coastal Defence and Nature Conservation (NLWKN – Niedersächsischer Landesbetrieb für Wasserwirtschaft, Küsten- und Naturschutz) subordinated to the State Ministry of Environment and Climate Protection. In state-owned ports, the dykes are maintained by the “Nports” Company.

In the city of *Bremen*, dyke maintenance and conservation is the duty of the two dyke boards on the left-hand and right-hand banks of the Weser. Dykes in Bremerhaven and in the harbour areas of the federal state of Bremen are operated and maintained by the “bremen-ports” Company.

In the port area of *Hamburg*, the Hamburg Port Authority (HPA) bears responsibility under the supervision of the State Ministry for Economic Affairs and Employment while the State Agency for Roads, Bridges and Waters (LSBG – Landesbetrieb für Straßen, Brücken und Gewässer) is responsible in the remaining parts of the city.

In *Mecklenburg-Vorpommern*, the State Agencies for the Environment and Nature Conservation (StAUN – Staatliches Amt für Umwelt und Natur) are responsible for construction and maintenance work in the field of coastal protection. In the long term, it is planned to hand over responsibility for these tasks to coastal protection boards. These boards, however, have not as yet been founded. Secondary dykes are maintained by water and land boards.

In *Schleswig-Holstein*, the State Agency for Coastal Protection, National Parks and Marine Conservation (LKN-SH – Landesbetrieb für Küstenschutz, Nationalpark und Meeresschutz) has been responsible for the construction, maintenance and operation of state-owned coastal protection structures, especially state protection dykes, since Jan. 01, 2008. The water and land boards are responsible for this work on secondary dykes and a number of so-called regional dykes.

Coastal engineering is of supra-regional interest to all departments dealing with such technical matters. For this reason research on coastal engineering is carried out to a large extent on a cooperative basis. In this connection, the federal government and coastal states have set up the German Coastal Engineering Research Council (KFKE – Kuratorium für Forschung im Küsteningenieurwesen) within the framework of an administrative agreement.

The council ascertains the joint need for research, sets priorities for projects, coordinates the research carried out by its partners and makes every effort to financially support coastal research projects. An important partner in the council is the German Federal Ministry of Education and Research, which makes available and awards funds for the promotion of coastal research.

4. International Agreements

Several international agreements contain general specifications which might also be of importance to coastal protection. The following agreements ratified by German federal law must be observed as a law providing guidelines:

- The Ramsar Convention on Wetlands of International Importance, especially as habitats for aquatic and wading birds. The Schleswig-Holstein Wadden Sea National Park and bordering regions are registered international wetlands.

- The Bern Convention on the Conservation of European Wildlife and Natural Habitats. With regard to coastal protection, especially the habitats of certain species of coastal birds and the common porpoise might be of importance.
- The Rio Convention on Biological Diversity, which deals with the conservation and sustainable utilisation of biodiversity in sectoral schemes such as, e.g. those relating to coastal protection.

In addition to the latter, multilateral declarations of intent by the German federal government exist which are binding on administrative action:

- The declarations by the Minister of the Environment at the trilateral government conferences on the protection of the wadden sea as an ecological entity.
- The currently updated “*STADE DECLARATION*” of 1997 contains a wadden sea plan in the enclosure which includes guidelines for the protection of the wadden sea. Besides emphasising the basic need of the local inhabitants for protection against storm surges, care is also taken to ensure that the realisation of the wadden sea plan is not detrimental to safety standards. Recent conferences have concentrated on the realisation of the plan and the integration of those affected by way of a “Trilateral Wadden Sea Forum”.
- The “*HELSINKI CONVENTION*” on the Protection of the Marine Environment of the Baltic Sea Area in the ratified version of January 2000. The Helsinki Commission established within the framework of this convention developed several recommendations aimed at this objective. In three of these HELCOM recommendations, namely: (15/1) “Protection of the coastal strip”, (16/3) “Preservation of natural coastal dynamics”, and (19/1) “Marine sediment extraction in the Baltic Sea Area”, declarations are made which could have consequences for coastal protection. It is, however, recognised (Recommendation 16/3): “that coastal protection measures are necessary at locations where ocean currents, waves or high water levels caused by storms could threaten settlements, human life or high economic assets, or destroy cultural heritage”.
- The *UNESCO PROGRAMME: “MAN AND THE BIOSPHERE”*. The Schleswig-Holstein Wadden Sea National Park is a biosphere reserve.

The objectives of international agreements are sometimes formulated in more detail than other federal and state statutory provisions. The fact that the contents overlap to a large extent, however, means that no additional restrictions are necessary in relation to coastal protection.

5. Coastal Zone Management

A balance between the different utilisation demands placed on the coastal zone is gaining increasing importance in the European context. The aim of Integrated Coastal Zone Management – ICZM is to help preserve and develop the coastal zone as an ecologically intact and economically thriving living space for humans, fauna and flora. A framework for ICZM was established in 2002 by way of the “Recommendation of the European Parliament and Council on the realisation of a strategy for Integrated Coastal Zone Management of European coasts”. A first step in this direction was realised by Germany in 2006 by way of a “National strategy involving an appraisal of the current situation”. The ICZM recommendation explicitly addresses important aspects of coastal protection such as the long-term threat posed on the coastal zone by storm surges, also taking account of anticipated climate changes.

Possible conflicts of objectives include, among others, the aims of nature conservation, economic and touristic land utilisation-as well as communal interests connected with coastal protection structures or proposed measures.