

Ministry for the Environment,  
Nature Conservation and Nuclear Safety  
of the Federal Republic of Germany (Ed.)

# Environmental Code

## (Umweltgesetzbuch – UGB)

### Draft

Prepared by the Independent Expert Commission  
on the Environmental Code at the Ministry for the  
Environment, Nature Conservation and Nuclear Safety  
of the Federal Republic of Germany



Duncker & Humblot · Berlin

# **Environmental Code · Draft**

**(Umweltgesetzbuch – UGB)**



**Ministry for the Environment,  
Nature Conservation and Nuclear Safety  
of the Federal Republic of Germany (Ed.)**

# **Environmental Code**

## **(Umweltgesetzbuch – UGB)**

**Draft**

**Prepared by the Independent Expert Commission  
on the Environmental Code at the Ministry for the  
Environment, Nature Conservation and Nuclear Safety  
of the Federal Republic of Germany**



**Duncker & Humblot · Berlin**

Environmental Research Plan of the Ministry  
for the Environment, Nature Conservation and Nuclear Safety  
of the Federal Republic of Germany  
Federal Environment Agency Project No. (FKZ) 101 06 050 / 00 - 08

Die Deutsche Bibliothek – CIP-Einheitsaufnahme

**Environmental code** : draft = (Umweltgesetzbuch – UGB) / Ministry for the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany (ed.). Prepared by the Independent Expert Commission on the Environmental Code at the Ministry for the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany. – Berlin : Duncker und Humblot, 1998

ISBN 3-428-09227-9

All rights reserved  
© 1998 Duncker & Humblot GmbH, Berlin  
Fotoprint: Berliner Buchdruckerei Union GmbH, Berlin  
Printed in Germany

ISBN 3-428-09227-9

## Preface to the English Edition

This English translation of the Draft for an Environmental Code (Umweltgesetzbuch – UGB) is presented by the Independent Expert Commission on the Environmental Code at the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety of the Federal Republic of Germany to mark the conclusion of its work. The Commission earnestly hopes that this will make a contribution to international and European discussions about the harmonisation and codification of environmental law. The full narrative setting out the reasons for the proposals, which goes far beyond the normal scale of an explanatory memorandum for a bill and makes reference to scientific debate in Germany, will be found in the German version of the Draft, also published by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit [Hrsg.], Umweltgesetzbuch – UGB-KomE – Entwurf der Unabhängigen Sachverständigenkommission zum Umweltgesetzbuch, Duncker & Humblot, Berlin 1998, pp. 400-1643). The introduction to the German edition has been adapted for the English version; the observations it contains about the German legal system and existing environmental legislation should make it easier for readers outside Germany to understand the proposals.

In the German version, articles are identified by §, whereas paragraphs are called *Absatz* (Art. 1 para. 2 would be quoted as § 1 Abs. 2).

Terence Oliver translated the Draft. Hans-Ulrich Marticke, Ekkehart Mast and Gerd Winter adapted the introduction and revised the English translation.

Berlin, January 1998

*The Members of the Independent Expert Commission*



## Preface

It is both a grand task and a worthwhile goal to create an Environmental Code (Umweltgesetzbuch – UGB) that brings together, unifies, harmonises, develops and updates the essential elements of environmental law. It may sound an exaggeration to describe this as one of the major tasks of our century, but there is a good deal of truth in this description. Just as the Civil Code (Bürgerliches Gesetzbuch – BGB) created in the last century codified the principal elements of the private law of civil society in a single work, the same is now to be done for a branch of law that is of central importance for the survival of mankind. This indicates not only the scale, but also the difficulty of the task. The draft of an Environmental Code which is set out in this volume by the Independent Expert Commission on the Environmental Code at the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is an important step in this direction.

The draft was prepared in the course of numerous meetings during the period autumn 1992 to summer 1997. The preparations for these discussions took the form of written proposals submitted by the individual members of the Commission, as a rule in conjunction with their assistants. Two works of considerable importance which greatly assisted the Commission in its work were the results of the “Professors’ Commissions” as set out in the drafts published in 1990 and 1994 for a Environmental Code – General Part (1990) and Specific Part (1994). Owing to their academic study of environmental law and the consequent general similarities in the professional experience of their members, the Professors’ Commissions were working groups of homogeneous composition. They regarded themselves as primarily committed to academic wisdom, and their drafts were intended to make a contribution to updating and developing environmental law from an academic point of view. By contrast, the commission of independent experts set up by former Federal Environment Minister Dr. *Töpfer* and subsequently supported by his successor in office, Federal Environment Minister Dr. *Merkel*, was composed mostly of members from different professions who had gained experience in many and various fields of environmental law, and who could therefore bring different background knowledge, views and ideas to bear on the problems to be solved.

The members of the Expert Commission were Prof. Dr. Horst *Sendler* (chairman, Berlin), Prof. Dr. Michael *Kloepfer* (vice-chairman, Berlin), Prof. Dr. Manfred *Bulling* (Stuttgart), Dr. Günter *Gaentzsch* (Berlin), Prof. Dr. Hubert-Peter *Johann* (Düsseldorf), Dr. Rüdiger *Schweickl* (Munich), Dr. Dieter *Sellner* (Bonn) and Prof. Dr. Gerd *Winter* (Bremen). In addition to two university professors (*Kloepfer*, who as chairman of the Professors’ Commissions played a “hinge” role, and *Winter*) the Commission included the group environmental officer of a large industrial company – the only engineer and the only member who was not a legal expert – (*Johann*); a lawyer specialising in various branches of environmental law (*Sellner*); a former district president with a wealth of experience in the planning and implementation of environmentally relevant infrastructure projects (*Bulling*); the former head of the City of Munich Environmental Protection Department (*Schweickl*); and two judges at the Federal Administrative Court who were or had been largely concerned with matters of environmental law and building and planning law (*Gaentzsch* and *Sendler*).

The Commission’s heterogeneous and pluralistic composition was reflected in the way it worked and the results it produced. Unlike the Professors’ Commissions, in which according



to their members the drafts were mostly approved unanimously and minority opinions were only expressed in a limited number of cases, the situation in the Expert Commission was often quite the reverse. Certainly there was no lack of unanimous decisions. But especially on fundamental issues there was not only lively and controversial discussion, but also controversial voting, which not infrequently went against the member of the Commission who had drawn up the proposals. As a result, every member was outvoted not only once, but several times. Every single member of the Commission nevertheless endorses the Draft as a whole and is convinced of the need for a Environmental Code embracing this content. On occasion, differing opinions are also mentioned in the remarks on individual parts in the explanatory memorandum. Discussion of the explanatory texts was only summary. Where the Draft submitted here differs from the Professors' Drafts, Prof. Dr. Michael Kloepfer – as chairman of the Professors' Commissions and vice-chairman of the Expert Commission – abstains as a matter of principle from expressing any opinion as to which proposal is to be preferred.

Each member of the Commission was assigned a young legal expert as an assistant; in some cases these assistants only worked part-time for the Commission. In addition to coordinating manager Ekkehart *Mast*, these were Harald *Bentlage*, Alexander *Blume*, Dr. Wolfgang *Durner*, Thomas *Elsner*, Dr. Meike *Jörgensen*, Ralf *Krupski*, Jobst *Leibnitz*, Hans-Ulrich *Marticke*, Sandra *Otto*, Markus *Sauer*, Dr. Alexander *Schmidt*, Dr. Christoph *Scholten*, Karin *Schreyer*, Dr. Bettina *Volkens* and Dr. Dirk *Weinreich*. The Commission wishes to thank them once again for their valuable assistance. Thanks are also due to the Commission's secretary, Ilka *Monheimius*, and to technical assistant Anne *Wispler*.

In numerous hearings, both in plenary session and in smaller groups, and many individual discussions with interested parties from a wide range of fields, the Commission received a great variety of suggestions.

The Commission hopes this Draft will lay the foundations for ministerial and government drafts for a Environmental Code. It is convinced that the creation of such a Code is an urgent task of our time in the interests of an integrated approach to safeguarding the environment on a sustainable long-term basis.

Berlin, July 1997

*The Members of the Independent Expert Commission*

## Translator's Note

On the assumption that this text will be read by an international public, many of whom are not native speakers of English, this translation sets out to offer a rendering of the draft Environmental Code that is readable and digestible while preserving the essential German character of the original. It goes without saying that this is a constant tight-rope act, and the only safety net used here is a tendency to err on the literal side.

The biggest single problem in this rapidly developing field is that of terminology. In some cases it has been necessary to put aside personal preferences and bow to established practice. A prime example is the term "immission", which although rarely found in English texts is a central concept in German environmental law. Adapting the German text to the more familiar "emission" would be misleading and has not been attempted. In general, although individual readers will no doubt find the occasional term they consider inappropriate, every effort has been made to avoid confusion by ensuring consistent use of terminology.

Winsen, February 1998

*Terence Oliver*



## Overview

	<b>Introduction</b>	41
	<b>Draft</b>	81
	<b>General Part</b>	83
Chapter One:	General Provisions.....	83
Chapter Two:	Planning.....	106
Chapter Three:	Projects.....	110
Chapter Four:	Products.....	127
Chapter Five:	Intervention Measures and Monitoring.....	132
Chapter Six:	Environmental Protection within Companies, Environmental Liability and Other Economic Instruments.....	142
Chapter Seven:	Environmental Information.....	160
Chapter Eight:	Transboundary Environmental Protection.....	167
	<b>Specific Part</b>	172
Chapter Nine:	Nature Conservation, Landscape Management and Forest Conservation.....	172
Chapter Ten:	Soil Conservation.....	203
Chapter Eleven:	Water Conservation.....	220
Chapter Twelve:	Immission Control and Energy Supply.....	243
Chapter Thirteen:	Nuclear Energy and Radiological Protection.....	260
Chapter Fourteen:	Traffic Infrastructure Projects and Utility Lines.....	289
Chapter Fifteen:	Genetic Engineering and Other Biotechnology.....	296
Chapter Sixteen:	Dangerous Substances.....	309
Chapter Seventeen:	Waste.....	377
	<b>Table of Statutes</b>	397
	<b>Index</b>	403



# Contents

<b>Introduction</b>	41
I. Necessity for and Potential of Codification	41
1. Situation in Germany.....	41
2. Foreign and International Codification Trends .....	42
II. On the Legal Context of an Environmental Code	46
1. International Law .....	46
2. Law in the European Communities .....	48
3. Constitutional Law .....	52
4. Administrative Law and Administrative Courts.....	56
III. Guiding Considerations and Working Methods of the Commission	57
1. Background .....	57
2. Working Methods of the Independent Expert Commission .....	58
3. Guiding Considerations.....	58
IV. Subject and Structure of Draft	59
1. Subject of Draft .....	59
2. Absence of a Chapter on Climate Protection.....	60
3. Subjects Not Included .....	60
4. Chapter Structure.....	62
V. Contents of the Individual Chapters	63
<i>General Part</i>	63
Chapter One: General Provisions.....	63
Chapter Two: Planning .....	65
Chapter Three: Projects .....	66
Chapter Four: Products .....	68
Chapter Five: Intervention Measures and Monitoring .....	69
Chapter Six: Environmental Protection within Companies, Environmental Liability and Other Economic Instruments .....	69
Chapter Seven: Environmental Information .....	70
Chapter Eight: Transboundary Environmental Protection .....	71
<i>Specific Part</i>	72
Chapter Nine: Nature Conservation, Landscape Maintenance and Forest Conservation.....	72
Chapter Ten: Soil Conservation .....	73
Chapter Eleven: Water Conservation .....	74
Chapter Twelve: Immission Control and Energy Supply.....	75
Chapter Thirteen: Nuclear Energy and Radiological Protection.....	76
Chapter Fourteen: Traffic Infrastructure Projects and Utility Lines.....	77
Chapter Fifteen: Genetic Engineering .....	77
Chapter Sixteen: Dangerous Substances .....	78
Chapter Seventeen: Waste .....	78
VI. Outlook for an Environmental Code	79

**Draft** 81

**General Part**

<b>Chapter One: General Provisions</b>	83
Section One: Purpose of the Code, Definitions	83
Art. 1 Purpose of the Code.....	83
Art. 2 Definitions.....	83
Section Two: Principles of Environmental Protection	84
Art. 3 Environmental Responsibility and Environmental Awareness.....	84
Art. 4 Guiding Principles for Sustainable, Environmentally Sound Development.....	84
Art. 5 Precautionary Principle.....	85
Art. 6 Polluter Pays Principle.....	85
Art. 7 Cooperation Principle.....	85
Art. 8 Protection of the Environment as a Whole.....	86
Art. 9 Balancing of Interests and Compensation .....	86
Art. 10 Ownership and Use of Environment .....	86
Section Three: Making Rules and Regulations	86
<i>Subsection One: Statutory Ordinances</i>	86
Art. 11 Authority to Define Limit Values and Guide Values for Environmental Quality .....	86
Art. 12 Principles for Limit Values and Guide Values .....	87
Art. 13 Principles for Requirements for Installations, Modes of Operation, Substances, Preparations and Products .....	87
Art. 14 Implementation of International or Community Legislation .....	88
Art. 15 Recipient of Power to Enact Statutory Ordinances .....	88
Art. 16 Statement of Reasons for and Publication of Drafts.....	89
Art. 17 Environmental Commission .....	89
Art. 18 Hearing and Informing the Environmental Commission.....	90
Art. 19 Right to Make Proposals.....	90
Art. 20 Public Participation.....	90
Art. 21 Participation by the <i>Bundesrat</i> .....	90
Art. 22 Participation by the <i>Bundestag</i> .....	90
Art. 23 Urgent Ordinances.....	91
Art. 24 Periodic Review.....	91
<i>Subsection Two: Administrative Rules</i>	91
Art. 25 Limit Values and Guide Values for Environmental Quality and Requirements for Installations and Modes of Operation .....	91
Art. 26 Presumption regarding Administrative Rules.....	91
Art. 27 Recipient of Power to Enact Administrative Rules .....	91
Art. 28 Participation by the <i>Bundesrat</i> .....	92
Art. 29 Procedure, Publication.....	92
Art. 30 Periodic Review.....	92
<i>Subsection Three: Technical Rules</i>	92
Art. 31 References to Technical Rules.....	92
Art. 32 Official Introduction of Technical Rules.....	92
Art. 33 Presumption concerning Technical Rules .....	93

	<i>Subsection Four: Targets, Voluntary Undertakings, Covenants, Bylaws</i>	93
Art. 34	Targets .....	93
Art. 35	Voluntary Undertakings .....	94
Art. 36	Covenant in lieu of Legislation .....	94
Art. 37	Declaration of General Application.....	95
Art. 38	Public-Law Environmental Covenants.....	95
Art. 39	Private Environmental Covenants, Environmental Protection Cartels.....	96
Art. 40	Bylaws of Public-Law Regional Environmental Corporations .....	96
	<b>Section Four: Participation by Associations</b>	97
Art. 41	Recognition of Associations.....	97
Art. 42	Participation by Associations .....	98
	<b>Section Five: Judicial Review</b>	98
Art. 43	Review of Forecasts and Assessments .....	98
Art. 44	Protection of Third Parties with regard to Precautionary Limit Values .....	99
Art. 45	Cause of Action for Associations .....	99
Art. 46	Legal Action by Competitors.....	99
Art. 47	Judicial Review of Procedural Regulations under <i>Land</i> Legislation.....	100
Art. 48	Suspensive Effect .....	100
Art. 49	Recourse to Administrative Courts.....	100
	<b>Section Six: Environmental Obligations of Public Administration</b>	100
Art. 50	Principle.....	100
Art. 51	Sourcing Duties .....	100
Art. 52	Premises of the Federal and <i>Land</i> Authorities.....	101
	<b>Section Seven: Organisation and Competences</b>	101
	<i>Subsection One: Organisation and Competences of Public Authorities</i>	101
Art. 53	General Provisions.....	101
Art. 54	Federal Environmental Agency .....	102
Art. 55	Federal Nature Conservation Agency.....	103
Art. 56	Federal Radiological Protection Agency.....	103
Art. 57	Supervisory Control and Reporting Obligations .....	104
Art. 58	Promulgations.....	104
	<i>Subsection Two: Advisory Commissions</i>	104
Art. 59	Composition and Constitution Procedures .....	104
Art. 60	Working Methods.....	104
Art. 61	Relations with Competent Authorities.....	104
Art. 62	Power to Enact Ordinances.....	105
Art. 63	Council of Environmental Experts .....	105
	<b>Section Eight: Administrative Offences</b>	105
Art. 64	Determination of Fines and Use of Revenue.....	105
Art. 65	Environmental Education .....	106
Art. 66	Administrative Offences.....	106



<b>Chapter Two: Planning</b>		106
Section One: General Provisions		106
Art. 67	Planning Principles of Environmental Law .....	106
Art. 68	Participation by Environmental Protection Authorities.....	106
Section Two: Basic Environmental Planning		107
Art. 69	Purpose and Subject Matter of Basic Environmental Planning.....	107
Art. 70	Preparing, Amending and Supplementing Basic Environmental Plans.....	107
Art. 71	Significance of Basic Environmental Planning for Other Plans.....	107
Art. 72	Representations in the Regional Basic Environmental Plans .....	108
Art. 73	Federal Environmental Programmes, Technical Programmes.....	108
Section Three: Environmental Impact Assessment in Plans and Programmes		108
Art. 74	Purpose .....	108
Art. 75	Scope .....	108
Art. 76	Scope of Investigation .....	109
Art. 77	Environmental Description.....	109
Art. 78	Public Participation.....	110
Art. 79	Administrative Decision .....	110
<b>Chapter Three: Projects</b>		110
Section One: General Provisions		110
Art. 80	Subject Matter .....	110
Art. 81	Projects Requiring Authorisation .....	111
Art. 82	Project Developers and Licensing Authority.....	111
Section Two: Non-discretionary Project Authorisation		112
Art. 83	Basic Duties.....	112
Art. 84	Prerequisites for Authorisation.....	112
Art. 85	Application Meeting and Scoping.....	113
Art. 86	Application .....	113
Art. 87	Participation Procedure.....	114
Art. 88	Inquiry .....	114
Art. 89	Reconciliation.....	115
Art. 90	Decision .....	115
Art. 91	Provisions as to Contents and Conditions and Supplementary Requirements.....	116
Art. 92	Statutory Ordinance concerning Authorisation Procedure .....	117
Art. 93	Partial Authorisation.....	117
Art. 94	Preliminary Decision .....	118
Art. 95	Early Commencement .....	118
Art. 96	Substantial Modifications .....	119
Art. 97	Duties of Notification and Information .....	119
Art. 98	Review of Authorisations and Installations.....	120
Art. 99	Legal Effects of Project Authorisation .....	120
Art. 100	Expiry of Project Authorisation.....	120
Section Three: Discretionary Project Authorisation		121
Art. 101	Scope .....	121
Art. 102	Prerequisites for Authorisation.....	121

Art. 103	Preparatory Work .....	121
Art. 104	Procedure .....	122
Art. 105	Decision and Legal Effects.....	122
Art. 106	Division into Sections, Partial Authorisation and Preliminary Decision.....	122
Art. 107	Validity of Specific Provisions.....	123
Art. 108	Cancellation of Project Authorisation .....	123
	<b>Section Four: Simple Project Authorisation</b>	<b>123</b>
Art. 109	Scope .....	123
Art. 110	Prerequisites and Procedures.....	124
	<b>Section Five: Environmental Impact Assessment in the case of Prior Procedures and Other Projects</b>	<b>124</b>
Art. 111	Environmental Impact Assessment in the case of Prior Procedures and Project- Specific Plans .....	124
Art. 112	Environmental Impact Assessment in the case of Other Projects.....	125
	<b>Section Six: Common Provisions and Administrative Offences</b>	<b>126</b>
Art. 113	Transitional Provisions.....	126
Art. 114	Administrative Offences.....	127
	<b>Chapter Four: Products</b>	<b>127</b>
	<b>Section One: General Provisions</b>	<b>127</b>
Art. 115	Purpose and Scope.....	127
Art. 116	Definitions .....	128
Art. 117	Principles.....	128
	<b>Section Two: Duties of Manufacturers, Marketers and Users</b>	<b>128</b>
Art. 118	Development and Manufacture .....	128
Art. 119	Environmental Impact Analysis .....	129
Art. 120	Marketing and Use .....	129
Art. 121	Prohibitions, Restrictions, Labelling .....	129
Art. 122	Reacceptance and Waste Management.....	130
Art. 123	Self-Monitoring.....	131
	<b>Section Three: Environment Seal</b>	<b>131</b>
Art. 124	Environment Seal .....	131
	<b>Section Four: Administrative Offences</b>	<b>131</b>
Art. 125	Administrative Offences.....	131
	<b>Chapter Five: Intervention Measures and Monitoring</b>	<b>132</b>
	<b>Section One: Intervention Measures</b>	<b>132</b>
	<i>Subsection One: Activities Requiring Authorisation</i>	<i>132</i>
Art. 126	Subsequent Orders in the case of Activities Requiring Authorisation .....	132
Art. 127	Prohibition of Activities Requiring Authorisation .....	132
Art. 128	Withdrawal and Revocation of Authorisations.....	133

Art. 129	Emergency Measures in connection with Activities Requiring Authorisation.....	133
	<i>Subsection Two: Activities Not Requiring Authorisation</i>	134
Art. 130	Orders in the case of Activities Not Requiring Authorisation.....	134
	<i>Subsection Three: Common Provisions</i>	134
Art. 131	Redressing Adverse Impacts on Nature and Landscape.....	134
Art. 132	Remediation Concept .....	135
	Section Two: Monitoring	136
	<i>Subsection One: General Provisions</i>	136
Art. 133	Functions and Principles.....	136
	<i>Subsection Two: Administrative Monitoring</i>	136
Art. 134	Competence and Monitoring by Third Parties.....	136
Art. 135	Admissibility of Monitoring Measures.....	136
Art. 136	Authorities' Duty to Monitor.....	136
Art. 137	Liability to Monitoring.....	137
Art. 138	Involvement of Parties Not Liable to Monitoring .....	137
Art. 139	Entering Properties and Premises .....	137
Art. 140	Taking Samples, Surrender of Objects .....	138
Art. 141	Duty to Furnish Information.....	138
Art. 142	Restricted Duty of Assistance and Notification in relation to Tax Authorities .....	138
	<i>Subsection Three: Self-Monitoring</i>	139
Art. 143	Monitoring of Installations Requiring Authorisation .....	139
Art. 144	Measures for Special Reasons .....	140
Art. 145	Safety Checks .....	140
Art. 146	Recognition of Expert Agencies.....	140
Art. 147	Duty to Inform.....	140
	<i>Subsection Four: Common Provisions</i>	141
Art. 148	Cost of Monitoring .....	141
Art. 149	Service .....	141
	Section Three: Administrative Offences	141
Art. 150	Administrative Offences.....	141
	<b>Chapter Six: Environmental Protection within Companies, Environmental Liability and Other Economic Instruments</b>	142
	Section One: Environmental Protection within Companies	142
	<i>Subsection One: General Provisions</i>	142
Art. 151	Purpose .....	142
Art. 152	Definitions .....	142
	<i>Subsection Two: Company Organisation and Environmental Protection Director</i>	142
Art. 153	Duty to Inform about Company Organisation .....	142
Art. 154	Environmental Protection Director.....	143
	<i>Subsection Three: Environmental Officer</i>	143
Art. 155	Functions .....	143
Art. 156	Appointment of Environmental Officer.....	145

Art. 157	Appointment of several Environmental Officers.....	145
Art. 158	Dismissal of Environmental Officer.....	145
Art. 159	Duties in relation to the Environmental Officer.....	146
Art. 160	Statement of Opinion on Decisions by Obligees.....	146
Art. 161	Right of Presentation.....	146
Art. 162	Technical Independence.....	146
Art. 163	Ban on Discrimination, Protection against Dismissal.....	146
	<i>Subsection Four: Eco-Audit</i>	147
Art. 164	Scope.....	147
Art. 165	Register of Sites.....	147
Art. 166	Entry in the Register of Sites.....	147
Art. 167	Deletion and Temporary Suspension of the Entry.....	148
Art. 168	Bans on Use of Statements of Participation.....	148
Art. 169	Registration Procedure and Environmental Verifiers.....	148
	<i>Subsection Five: Environmental Information within Companies</i>	149
Art. 170	Disclosure of Environmental Information within Companies.....	149
Art. 171	Mailing of Environmental Statement and Environmental Report.....	150
	<b>Section Two: Environmental Liability</b>	150
	<i>Subsection One: Liability for Behaviour in Breach of the Duty of Care</i>	150
Art. 172	Liability for Infringements of Regulatory Requirements Regarding the Environment.....	150
	<i>Subsection Two: Strict Liability</i>	151
Art. 173	Liability for the Operation of Certain Installations.....	151
Art. 174	Liability for Genetically Modified Organisms.....	151
Art. 175	Liability for Changing the Quality of Water.....	151
	<i>Subsection Three: Common Provisions</i>	152
Art. 176	Presumption of Cause.....	152
Art. 177	Multiple Causes.....	152
Art. 178	Contributory Fault.....	152
Art. 179	Injured Party's Claim to Information from Responsible Party.....	152
Art. 180	Injured Party's Claim to Information from Authorities.....	153
Art. 181	Responsible Party's Claim to Information.....	153
Art. 182	Scope of Duty to Compensate.....	153
Art. 183	Costs of Emergency Measures.....	154
Art. 184	Limits of Liability.....	154
Art. 185	Limitation Periods.....	154
Art. 186	Financial Cover.....	154
Art. 187	Details of Liability.....	155
Art. 188	Relationship to Other Liability Provisions.....	155
Art. 189	Transitional Provision.....	155
	<b>Section Three: Environmental Charges</b>	155
Art. 190	Principles.....	155
Art. 191	Party Liable to Pay Charges.....	155
Art. 192	Level of Charges.....	155
Art. 193	Determination and Collection.....	155
Art. 194	Use of Revenue from Charges.....	156
Art. 195	Report to the <i>Bundestag</i> .....	156

	<b>Section Four: Environmental Subsidies</b>	157
Art. 196	Principle.....	157
Art. 197	Requirements for Promotion Programmes and Promotion Guidelines.....	157
Art. 198	Procedure.....	157
Art. 199	Prerequisites for Allocation; Conditions and Supplementary Requirements.....	157
Art. 200	Report to the <i>Bundestag</i> .....	157
Art. 201	Application of the Provisions of the Subsidies Act.....	158
	<b>Section Five: Off-setting, Preferential Treatment, Joint Use</b>	158
Art. 202	Off-setting within the Framework of Precautions .....	158
Art. 203	Off-setting in Impaired Areas.....	158
Art. 204	Preferential Treatment for Use .....	158
Art. 205	Joint Use of Installations .....	159
	<b>Section Six: Administrative Offences</b>	159
Art. 206	Administrative Offences.....	159
	<b>Chapter Seven: Environmental Information</b>	160
	<b>Section One: Governmental Environmental Information</b>	160
Art. 207	Governmental Environmental Research.....	160
Art. 208	Environmental Observation.....	160
Art. 209	Federal Environmental Information Systems .....	160
Art. 210	Preparation and Provision of Data.....	161
Art. 211	Environmental Statistics.....	161
Art. 212	National Environmental Accounting.....	162
Art. 213	Informing the Public about the Environment .....	162
Art. 214	Information and Advice.....	163
Art. 215	Environmental Instruction.....	163
Art. 216	Enforcement Data.....	163
	<b>Section Two: Access to Environmental Information</b>	164
Art. 217	Right of Access to Environmental Information.....	164
Art. 218	Procedure.....	164
Art. 219	Representatives in the case of Uniform Applications.....	165
Art. 220	Exclusion and Limitation of Right .....	165
Art. 221	Register.....	165
Art. 222	Rolls and Inventories.....	165
Art. 223	Costs .....	165
	<b>Section Three: Confidentiality</b>	166
Art. 224	Person-Related Data .....	166
Art. 225	Business Secrets .....	166
Art. 226	Information on Measures against Third-Party Interference.....	166
	<b>Section Four: Commissions on Access to Information</b>	166
Art. 227	Commissions on Access to Information.....	166

<b>Chapter Eight: Transboundary Environmental Protection</b>	<b>167</b>
<b>Section One: General Provisions</b>	<b>167</b>
Art. 228 International Responsibility.....	167
Art. 229 International Cooperation.....	167
<b>Section Two: Procedure in cases of Transboundary Environmental Impacts</b>	<b>167</b>
Art. 230 Transboundary Participation of Authorities .....	167
Art. 231 Transboundary Public Participation .....	168
Art. 232 Announcement of Foreign Projects in Germany .....	168
Art. 233 Duty to Notify Major Accidents.....	168
<b>Section Three: Implementation of Projects Outside     the Territorial Scope of this Code</b>	<b>168</b>
Art. 234 Exploitation of Seabed Mineral Resources.....	168
Art. 235 Environmental Protection in Technical and Financial Development Cooperation.....	168
<b>Section Four: Imports and Exports of Products</b>	<b>169</b>
Art. 236 Labelling for Export Products .....	169
Art. 237 Notification of Exportation of Products .....	169
Art. 238 Notification in Cases of Release of Genetically Modified Organisms Outside Germany ..	169
Art. 239 Advising Foreign Agencies .....	170
Art. 240 Testing of Other Product Properties .....	170
Art. 241 Ban on Exports of Products and Installations.....	170
Art. 242 Imports of Products .....	170
Art. 243 Competence .....	171
<b>Section Five: Administrative Offences</b>	<b>171</b>
Art. 244 Administrative Offences.....	171

## Specific Part

<b>Chapter Nine: Nature Conservation, Landscape Management and Forest Conservation</b>	<b>172</b>
<b>Section One: General Provisions of Nature Conservation     and Landscape Management</b>	<b>172</b>
Art. 245 Objectives of Nature Conservation and Landscape Management.....	172
Art. 246 Definitions .....	172
Art. 247 Principles of Nature Conservation and Landscape Management .....	174
Art. 248 Nature Conservation under Community Legislation .....	175
Art. 249 Nature Conservation Duties.....	175
Art. 250 Agriculture and Forestry.....	175
Art. 251 Nature Conservation and Recreation.....	176
<b>Section Two: General Protection of Ecosystems</b>	<b>176</b>
<i>Subsection One: Nature Maintenance Plans</i>	<i>176</i>
Art. 252 Purpose of Nature Maintenance Plans.....	176

Art. 253	Types and Contents of Nature Maintenance Plans .....	176
Art. 254	Nature Programme .....	177
Art. 255	Nature Framework Plans .....	177
Art. 256	Nature Plans .....	177
Art. 257	Green Space Development Plans .....	177
Art. 258	Special Arrangements for the City States .....	177
Art. 259	Preparation Procedure .....	177
	<i>Subsection Two: Encroachments on Nature and Landscape</i>	178
Art. 260	Encroachments on Nature and Landscape .....	178
Art. 261	Admissibility of Encroachments .....	178
Art. 262	Duties of the Originator .....	179
Art. 263	Procedure .....	179
Art. 264	Register of Encroachments .....	180
Art. 265	Relationship to Plans Preparing for Encroachments and to Building Law .....	180
Art. 266	Implementation of Compensation and Substitute Measures .....	181
	<i>Subsection Three: Management</i>	181
Art. 267	Duty to Tolerate .....	181
Art. 268	Maintenance and Development Measures .....	181
	<b>Section Three: Protection for Biotopes and Special Areas</b>	<b>182</b>
	<i>Subsection One: Biotope Protection</i>	182
Art. 269	Protection of Certain Biotopes .....	182
Art. 270	Measures by the <i>Länder</i> .....	182
	<i>Subsection Two: Protection for Special Areas</i>	183
Art. 271	General Provisions .....	183
Art. 272	Nature Conservation Area .....	183
Art. 273	National Park .....	183
Art. 274	Biosphere Park .....	184
Art. 275	Landscape Protection Area .....	184
Art. 276	Nature Park .....	185
Art. 277	Natural Monument .....	185
Art. 278	Protected Landscape Element .....	185
	<i>Subsection Three: Protected Areas of European Significance</i>	186
Art. 279	Selection and Declaration of Protected Area .....	186
Art. 280	Promulgations .....	186
Art. 281	Projects of Relevance to Protected Areas .....	186
Art. 282	Assessment of Impact on Protected Areas .....	187
Art. 283	Admissibility of Projects of Relevance to Protected Areas, Originator's Duties .....	187
Art. 284	Procedure .....	187
Art. 285	Plans of Relevance to Protected Areas .....	188
	<b>Section Four: Conservation of Wild Animals and Plants</b>	<b>188</b>
	<i>Subsection One: General Provisions</i>	188
Art. 286	Objectives of Species Conservation .....	188
Art. 287	<i>Länder</i> Provisions on Species Conservation .....	189
Art. 288	Definitions .....	189
Art. 289	Promulgations .....	190
Art. 290	Species Conservation Seal .....	190

	<i>Subsection Two: Conservation Provisions</i>	190
Art. 291	General Conservation of Wild Animals and Plants.....	190
Art. 292	Release and Settlement of Animals and Plants.....	190
Art. 293	Poisonous Animals and Plants.....	190
Art. 294	Wildlife Reserves .....	191
Art. 295	Bans on Interference with and Disturbance of Specially Protected Animal and Plant Species.....	191
Art. 296	Bans on Possession and Marketing of Specially Protected Species and Certain Other Animal and Plant Species .....	192
Art. 297	Authority to Enact Ordinances .....	193
Art. 298	Other <i>Länder</i> Provisions.....	193
	<i>Subsection Three: Supplementary Provisions</i>	194
Art. 299	Competence and Procedures.....	194
Art. 300	Burden of Proof, Seizure .....	194
Art. 301	General Administrative Rules.....	195
	Section Five: Forest Conservation	195
	<i>Subsection One: General Provisions</i>	195
Art. 302	Objectives of Forest Conservation .....	195
Art. 303	Definitions .....	195
Art. 304	Forest Management .....	195
Art. 305	Management of Federal and <i>Land</i> Forests.....	196
Art. 306	Federal Forest Inventory.....	196
	<i>Subsection Two: Forest Preservation</i>	196
Art. 307	Purpose of Forestry Master Plans.....	196
Art. 308	Principles of Forestry Master Plans.....	197
Art. 309	Types and Content of Forestry Master Plans.....	197
Art. 310	Preparation Procedure .....	197
Art. 311	Forest Conversion.....	197
Art. 312	Initial Afforestation .....	198
	<i>Subsection Three: Specially Protected Forest</i>	198
Art. 313	Protective Forest.....	198
Art. 314	Recreational Forest.....	199
Art. 315	Supplementary <i>Land</i> Legislation.....	199
	<i>Subsection Four: Common Provisions</i>	199
Art. 316	Safeguarding Forest Functions .....	199
Art. 317	General Administrative Rules.....	200
	Section Six: Expropriation, Indemnification and Compensation for Hardship	200
Art. 318	Expropriation.....	200
Art. 319	Special Restrictions on Ownership.....	200
Art. 320	Other Restrictions.....	200
	Section Seven: Common Provisions	200
Art. 321	Functions of Authorities and Public Agencies .....	200
Art. 322	Exemptions .....	200
Art. 323	Administrative Offences.....	201
Art. 324	Investigations by Customs Authorities.....	203
Art. 325	Provisions for <i>Land</i> Legislation .....	203



<b>Chapter Ten: Soil Conservation</b>		203
Section One: General Provisions		203
Art. 326	Purpose .....	203
Art. 327	Definitions .....	203
Art. 328	Principles .....	204
Art. 329	Basic Duties.....	205
Art. 330	Determination of Soil Condition Values .....	205
Art. 331	Competent Authorities.....	206
Section Two: Agricultural and Silvicultural Land Use		206
Art. 332	Rules of Good Agricultural or Silvicultural Practice.....	206
Art. 333	Use of Plant Protection Agents.....	207
Art. 334	Use of Fertilisers.....	208
Art. 335	Promotion of Organic Farming.....	208
Art. 336	Nitrogen Charge .....	209
Section Three: Extraction of Mineral Resources		210
Art. 337	Basic Duties.....	210
Art. 338	Planning of Mining Requirements and Locations .....	210
Section Four: Soil Quality Monitoring and Avoidance of Soil Impairment		211
Art. 339	Functions of the Authorities .....	211
Art. 340	Duties to Inform and Cooperate .....	211
Art. 341	Duty to Notify.....	212
Art. 342	Soil Information Systems .....	212
Art. 343	Powers of the Authorities .....	212
Art. 344	Selection in the case of Multiple Responsible Parties .....	213
Art. 345	Compensation among Multiple Responsible Parties .....	213
Art. 346	Soil Conservation Plans.....	214
Section Five: Soil Remediation and Recultivation		215
Art. 347	Duty of Remediation and Recultivation .....	215
Art. 348	Parties Responsible for Remediation and Recultivation.....	215
Art. 349	Military Contaminated Sites.....	216
Art. 350	Duty to Tolerate.....	217
Art. 351	Orders and Measures by Authorities .....	217
Art. 352	Entities Responsible for Remediation .....	218
Art. 353	Compensation for Appreciation in Value.....	219
Section Six: Administrative Offences		219
Art. 354	Administrative Offences.....	219
<b>Chapter Eleven: Water Conservation</b>		220
Section One: General Provisions		220
Art. 355	Purpose .....	220
Art. 356	Definitions .....	221
Art. 357	Limits of Property Ownership .....	222
Art. 358	Principles .....	222
Art. 359	Water Resources Management Planning.....	222

Art. 360	Basic Duties.....	223
Section Two: Authorisation		223
Art. 361	Necessity for and Content of Authorisation .....	223
Art. 362	Prerequisites for Authorisation.....	224
Art. 363	Conditions, Supplementary Requirements and Early Commencement .....	224
Art. 364	Compensation for Rights and Powers .....	225
Art. 365	Withdrawal of Authorisation.....	225
Art. 366	Subsequent Decisions by Water Authority.....	225
Art. 367	Participation by Water Authority .....	225
Art. 368	Continued Validity of Permits and Consents; Existing Rights and Existing Powers .....	225
Section Three: Surface Waters		226
<i>Subsection One: Management</i>		226
Art. 369	Load Reduction Programmes and Management Objectives for Surface Waters.....	226
Art. 370	Minimum Requirements for Discharging Waste Water .....	226
Art. 371	Special Uses of Surface Waters.....	226
Art. 372	Dumping, Storage and Carriage of Substances .....	227
<i>Subsection Two: Authorisation-Free Uses</i>		227
Art. 373	Public Use.....	227
Art. 374	Proprietary Use by Owners and Residents .....	227
Art. 375	Use for Fishing Purposes.....	227
Art. 376	Uses in the case of Exercises and Trials.....	227
<i>Subsection Three: Development, Maintenance, Flood Protection</i>		228
Art. 377	Development.....	228
Art. 378	Maintenance .....	228
Art. 379	Flood Areas .....	228
Section Four: Coastal Waters and High Seas		229
<i>Subsection One: Coastal Waters</i>		229
Art. 380	Management Objectives for Coastal Waters .....	229
Art. 381	Minimum Requirements for Discharging of Waste Water, Storage and Transportation of Substances.....	229
Art. 382	Authorisation-Free Uses.....	229
<i>Subsection Two: Introducing and Discharging Waste into the High Seas and into Coastal Waters</i>		229
Art. 383	Scope and Definitions.....	229
Art. 384	Ban on Introduction, Discharging and Incineration of Waste.....	230
Art. 385	Authorisation .....	230
Art. 386	Introduction and Discharging of Dredged Material.....	230
Art. 387	Distress Clause .....	230
Art. 388	Implementation of the Provisions for the High Seas .....	231
Section Five: Ground Water		231
Art. 389	Management Objectives for Ground Water.....	231
Art. 390	Quality Maintenance and Remediation.....	232
Art. 391	Special Uses of Ground Water .....	232
Art. 392	Authorisation-Free Uses.....	232
Art. 393	Exploratory Earthworks.....	233

	Section Six: Area-Specific Water Conservation	233
Art. 394	Water Conservation Areas.....	233
	Section Seven: Waste Water Disposal	234
Art. 395	Waste Water Disposal Duty and Waste Water Disposal Plans .....	234
Art. 396	Construction and Operation of Waste Water Installations .....	234
Art. 397	Authorisation of Waste Water Treatment Installations .....	234
	Section Eight: Installations for Handling Substances Harmful to Water and Soil	235
Art. 398	Requirements.....	235
Art. 399	Determination of Suitability ( <i>Eignungsfeststellung</i> ) and Type Approval ( <i>Bauartzulassung</i> ).....	235
Art. 400	Duties and Specialist Enterprises.....	236
	Section Nine: Monitoring and Environmental Officer	236
Art. 401	Duty to Monitor.....	236
Art. 402	Environmental Officer.....	237
	Section Ten: Water Use Charges	237
	<i>Subsection One: Waste Water Charge</i>	237
Art. 403	Liability for Charges.....	237
Art. 404	Basis for Assessment.....	238
Art. 405	Determining Pollution Units on the Basis of the Notice .....	238
Art. 406	Increase in the Number of Pollution Units .....	238
Art. 407	Declaration concerning Deviations from Notice.....	239
Art. 408	Calculating Pollution Units in Other Cases.....	239
Art. 409	Charge Rate .....	240
Art. 410	Offsetting against Expenditure on Waste Water Purification.....	240
Art. 411	Levying.....	241
Art. 412	Use of Waste Water Charge .....	241
	<i>Subsection Two: Charge for Ground Water Abstraction</i>	241
Art. 413	Liability for Charges.....	241
Art. 414	Assessment Basis and Charge Rate .....	242
Art. 415	Use of Charge.....	242
	Section Eleven: Common Provisions	242
Art. 416	Water Register.....	242
Art. 417	Administrative Offences.....	242
Art. 418	Provisions for <i>Land</i> Legislation .....	243
	<b>Chapter Twelve: Immission Control and Energy Supply</b>	243
	Section One: General Provisions on Immission Control	243
Art. 419	Purpose and Scope.....	243
Art. 420	Principles.....	244

Section Two: Immission Control relating to Installations	244
<i>Subsection One: Construction and Operation of Installations Requiring Authorisation</i>	244
Art. 421 Requirement of Authorisation .....	244
Art. 422 Basic Duties for Construction and Operation .....	245
Art. 423 Statutory Ordinances concerning Basic Duties .....	245
Art. 424 Special Prerequisites for Authorisation .....	246
Art. 425 Environmental Officer .....	246
<i>Subsection Two: Construction and Operation of Installations Not Requiring Authorisation</i>	246
Art. 426 Basic Duties for Construction and Operation .....	246
Art. 427 Statutory Ordinance concerning Requirements for Installations Not Requiring Authorisation .....	247
Art. 428 Orders in Individual Cases .....	247
<i>Subsection Three: Marketing of Installations</i>	247
Art. 429 Requirements for Installations and Parts Thereof .....	247
Art. 430 Type Approval ( <i>Bauartzulassung</i> ) .....	247
<i>Subsection Four: Advisory Commissions</i>	248
Art. 431 Installation Safety Commission .....	248
Art. 432 Technical Committee on Installation Safety .....	248
Section Three: Immission Control relating to Traffic	249
<i>Subsection One: Properties and Operation of Vehicles</i>	249
Art. 433 Basic Duties .....	249
Art. 434 Statutory Ordinance concerning Properties and Operation of Vehicles .....	249
<i>Subsection Two: Traffic Infrastructure Projects (Verkehrsanlagen), Traffic Charges</i>	249
Art. 435 Basic Duties relating to the Construction and Operation of Traffic Infrastructure Projects .....	249
Art. 436 Orders upon Authorisation of Traffic Infrastructure Projects .....	249
Art. 437 Subsequent Orders in cases of Harmful Immissions from Existing Traffic Infrastructure Projects .....	250
Art. 438 Road Traffic Charge .....	250
Art. 439 Air Traffic Charge .....	251
Art. 440 Ascertaining Immissions .....	251
Art. 441 Programme of Measures .....	251
Art. 442 Statutory Ordinance .....	251
Section Four: Immission Control relating to Areas	252
Art. 443 Observation Areas .....	252
Art. 444 Air Quality Control Plans .....	252
Art. 445 Noise Abatement Plans .....	253
Art. 446 Measures in Inversion Weather Conditions .....	253
Art. 447 Measures in High-Ozone Situations .....	253
Section Five: Energy Supply and Energy Use	254
<i>Subsection One: General Provisions</i>	254
Art. 448 Purpose .....	254
Art. 449 Definitions .....	254
Art. 450 Principles .....	255
Art. 451 Basic Duties .....	255

Art. 452	Local Authority Energy Plans .....	255
	<i>Subsection Two: Preferential Arrangements</i>	
	<i>for Environmentally Sound Generation of Electricity</i> .....	255
Art. 453	Electricity from Renewable Energy Sources .....	255
Art. 454	Environmentally Sound Generation of Electricity .....	256
Art. 455	Review of Preferential Arrangements .....	256
	<i>Subsection Three: Saving Energy</i> .....	256
Art. 456	Thermal Insulation for Buildings Not Yet Constructed .....	256
Art. 457	Requirements for Heating and Air-Conditioning Systems and Process Water Systems ...	257
Art. 458	Requirements for the Operation of Heating and Air-Conditioning Systems and of Process Water Systems .....	257
Art. 459	Divergent Requirements and Extension to Existing Buildings .....	257
Art. 460	Distribution of Operating Costs .....	258
Art. 461	Common Provisions for Statutory Ordinances .....	258
Art. 462	Reference Date .....	258
Art. 463	Monitoring .....	258
	Section Six: Administrative Offences .....	258
Art. 464	Administrative Offences .....	258
	<b>Chapter Thirteen: Nuclear Energy and Radiological Protection</b> .....	260
	Section One: General Provisions .....	260
Art. 465	Purpose .....	260
Art. 466	Scope .....	260
Art. 467	Definitions .....	260
	Section Two: Authorisation and Monitoring .....	261
	<i>Subsection One: Authorisation of Installations</i> .....	261
Art. 468	Nuclear Installations Requiring Authorisation .....	261
Art. 469	Basic Duties .....	261
Art. 470	Special Prerequisites for Authorisation .....	262
Art. 471	Safety of Installations .....	262
Art. 472	Closure .....	263
Art. 473	Installations Producing Ionising Radiation .....	263
	<i>Subsection Two: Other Authorisations</i> .....	264
Art. 474	Handling of Radioactive Substances .....	264
Art. 475	Imports and Exports of Radioactive Substances .....	265
Art. 476	Carriage of Radioactive Substances .....	265
	<i>Subsection Three: Waste Management</i> .....	266
Art. 477	Duties of Possessor of Waste .....	266
Art. 478	Duties of the State .....	267
Art. 479	Authorisation of Disposal Facilities .....	267
	<i>Subsection Four: Monitoring and Intervention Measures</i> .....	267
Art. 480	Administrative Monitoring .....	267
Art. 481	Review of Reliability .....	268
Art. 482	Periodic Safety Review .....	268
Art. 483	Subsequent Orders in Special Cases .....	269
Art. 484	Revocation .....	269

Art. 485	Compensation.....	269
	<i>Subsection Five: Common Provisions</i>	270
Art. 486	Exemption from Authorisation Requirement .....	270
Art. 487	Power to Enact Statutory Ordinances concerning Administrative Control .....	270
Art. 488	Independent Experts.....	271
Art. 489	Advisory Commissions.....	271
Art. 490	Competence concerning Measures relating to Imports and Exports and Carriage.....	271
Art. 491	Competence of Federal Authorities.....	272
Art. 492	Competence of <i>Land</i> Authorities.....	272
	<b>Section Three: Radiological Protection</b>	<b>273</b>
	<i>Subsection One: Functions and Basic Duties</i>	273
Art. 493	Authorities' Functions.....	273
Art. 494	Basic Duties.....	273
	<i>Subsection Two: Protective Measures within Companies and Company Organisation</i>	273
Art. 495	Power to Enact Statutory Ordinances concerning Protective Measures.....	273
Art. 496	Party Responsible for Radiological Protection, Environmental Officer for Radiological Protection.....	274
	<i>Subsection Three: Administrative Observation of Radioactivity, Radiological Protection Register</i>	275
Art. 497	Federal Functions .....	275
Art. 498	<i>Länder</i> Functions.....	276
Art. 499	Information Duties of the Federation .....	276
Art. 500	Federal Administrative Authorities .....	276
Art. 501	Radiological Protection Register.....	276
Art. 502	Damage of Unexplained Origin.....	277
	<i>Subsection Four: Statutory Ordinances and Administrative Measures</i>	277
Art. 503	Maximum Doses and Maximum Contamination Levels .....	277
Art. 504	General Prohibitions and Restrictions .....	277
Art. 505	Powers in Transboundary Traffic .....	278
Art. 506	Recommendations .....	278
	<i>Subsection Five: Delegated Administration</i>	278
Art. 507	<i>Länder</i> Administration on behalf of the Federation ( <i>Auftragsverwaltung</i> ).....	278
	<b>Section Four: Liability and Financial Cover</b>	<b>279</b>
	<i>Subsection One: General Provisions</i>	279
Art. 508	Fundamentals of Liability.....	279
Art. 509	Definitions .....	279
	<i>Subsection Two: Liability</i>	280
Art. 510	Liability for Nuclear Installations.....	280
Art. 511	Liability for Nuclear Ships .....	281
Art. 512	Liability in Other Cases.....	281
Art. 513	Contributory Fault.....	282
Art. 514	Extent of Liability.....	282
Art. 515	Limits of Liability.....	282
Art. 516	Limitation Periods .....	283
Art. 517	Multiple Parties Liable for Compensation.....	283
Art. 518	Indemnity Obligation.....	284

Art. 519	Division of Indemnity between Federation and <i>Länder</i> .....	284
Art. 520	Recourse in Cases of Indemnity .....	284
Art. 521	Compensation by the Federation .....	285
Art. 522	Exceptions to Payments by the Federation and the <i>Länder</i> .....	286
Art. 523	Foreign Nuclear Installations.....	286
Art. 524	Liability Exemption Limits.....	286
Art. 525	Decisions by the Steering Committee.....	287
	<i>Subsection Three: Financial Cover</i> .....	287
Art. 526	Financial Cover .....	287
Art. 527	Application of the Insurance Contracts Act.....	288
Art. 528	Order of Precedence for Satisfaction from Financial Cover.....	288
	<b>Section Five: Administrative Offences</b> .....	288
Art. 529	Administrative Offences.....	288
	<b>Chapter Fourteen: Traffic Infrastructure Projects and Utility Lines</b> .....	289
	<b>Section One: Traffic Infrastructure Projects</b> .....	289
	<i>Subsection One: General Provisions</i> .....	289
Art. 530	Purpose .....	289
Art. 531	Principle of Taking into Account the Consequences of Traffic .....	290
	<i>Subsection Two: Planning of Supraregional Traffic Infrastructure Projects</i> .....	290
Art. 532	Scope .....	290
Art. 533	Planning Principles.....	290
Art. 534	Subjects and Effects of Federal Traffic Infrastructure Planning .....	291
Art. 535	Regional Policy Procedures.....	291
Art. 536	Discretionary Project Authorisation .....	291
	<b>Section Two: Utility Lines</b> .....	292
	<i>Subsection One: General Provisions</i> .....	292
Art. 537	Purpose .....	292
Art. 538	Definitions .....	292
Art. 539	Scope .....	292
Art. 540	Principles .....	292
Art. 541	Basic Duties.....	293
	<i>Subsection Two: Construction and Operation of Utility Lines</i> .....	293
Art. 542	Utility Lines Requiring Authorisation .....	293
Art. 543	Decision by the Licensing Authority.....	293
Art. 544	Determination of Suitability and Type Approval ( <i>Bauartzulassung</i> ).....	294
Art. 545	Specialist Enterprises.....	294
Art. 546	Monitoring.....	294
Art. 547	Environmental Officer.....	294
Art. 548	Cessation of Operation of Installation .....	294
Art. 549	Closure of Installation .....	295
Art. 550	Authority to Enact Statutory Ordinances.....	295
	<i>Subsection Three: Common Provisions</i> .....	295
Art. 551	Administrative Offences.....	295

<b>Chapter Fifteen: Genetic Engineering and Other Biotechnology</b>	<b>296</b>
<b>Section One: General Provisions on Genetic Engineering</b>	<b>296</b>
Art. 552 Purpose .....	296
Art. 553 Scope .....	296
Art. 554 Definitions .....	296
Art. 555 Basic Duties for the Handling of Genetically Modified Organisms.....	297
Art. 556 Duty to Inform.....	297
Art. 557 Monitoring.....	297
Art. 558 Genetic Engineering Commission .....	298
<b>Section Two: Genetic Engineering Operations in Closed Systems</b>	<b>298</b>
Art. 559 Risk Levels, Safety Measures.....	298
Art. 560 Special Basic Duties .....	299
Art. 561 Monitoring, Environmental Officers .....	299
Art. 562 Registration and Authorisation Requirements for Installations and Operations.....	299
Art. 563 Operations after Authorisation for Release or Marketing .....	300
Art. 564 Authorisation Procedures for Installations .....	300
Art. 565 Authorisation Procedures for Operations .....	300
Art. 566 Registration Procedure .....	301
Art. 567 Prerequisites for Authorisation.....	301
<b>Section Three: Release of Genetically Modified Organisms</b>	<b>302</b>
Art. 568 Special Basic Duties .....	302
Art. 569 Monitoring, Environmental Officers .....	302
Art. 570 Requirement of Authorisation .....	303
Art. 571 Release after Authorisation for Marketing .....	303
Art. 572 Authorisation Procedures for Releases .....	303
Art. 573 Content of Authorisation, Requirements .....	304
<b>Section Four: Marketing of Genetically Modified Products</b>	<b>304</b>
Art. 574 Special Basic Duties .....	304
Art. 575 Requirement of Authorisation .....	304
Art. 576 Authorisation Procedure.....	305
Art. 577 Prerequisites for Authorisation.....	305
Art. 578 Content of Authorisation, Requirements .....	305
Art. 579 Subsequent Decisions .....	306
Art. 580 Novel Foods and Food Ingredients.....	306
<b>Section Five: Requirements regarding Other Biotechnology</b>	<b>306</b>
Art. 581 Biotechnologically Modified Organisms.....	306
Art. 582 Environmental Maintenance with the Aid of Biotechnology .....	307
<b>Section Six: Common Provisions</b>	<b>307</b>
Art. 583 Non-Confidential Documents.....	307
Art. 584 Measures for the Protection of Employees.....	307
Art. 585 Administrative Offences.....	308



<b>Chapter Sixteen: Dangerous Substances</b>		<b>309</b>
Section One: General Provisions		309
Art. 586	Purpose .....	309
Art. 587	Definitions .....	309
Art. 588	Dangerous Substances, Preparations and Products; Substances Hazardous to Health .....	310
Art. 589	Scope .....	311
Art. 590	Principles .....	312
Art. 591	Basic Duties .....	313
Section Two: Registration of New Substances		313
Art. 592	Duty to Register .....	313
Art. 593	Exemptions from Duty to Register .....	314
Art. 594	Content of Registration .....	314
Art. 595	Simplified Registration .....	315
Art. 596	Procedure after Receipt of Registration, Marketing of Registered Substance .....	315
Art. 597	Additional Testing First and Second Stage .....	316
Art. 598	Special Provisions for Importer Registrations .....	316
Art. 599	Powers of the Registration Body .....	317
Art. 600	Evaluation .....	318
Section Three: Classification, Packaging and Labelling of Dangerous Substances, Preparations and Products		318
Art. 601	Classification, Packaging and Labelling of Dangerous Substances .....	318
Art. 602	Classification, Packaging and Labelling of Preparations and Products .....	319
Art. 603	Safety Data Sheet .....	319
Art. 604	Authorisation to Enact Classification, Packaging and Labelling Provisions .....	319
Art. 605	Duties of Marketer .....	320
Art. 606	Advertising .....	320
Section Four: Duty to Inform		320
Art. 607	Registered Substances .....	320
Art. 608	Substances Exempted from the Duty to Register .....	320
Art. 609	New Substances which are Not Marketed or Only Marketed Outside the European Economic Area .....	321
Art. 610	Existing Substances .....	321
Art. 611	Preparations and Products .....	322
Art. 612	Poison Information and Treatment Centres .....	322
Art. 613	Dangerous Substances Inventory .....	323
Section Five: Protection of Employees		324
Art. 614	Measures for the Protection of Employees .....	324
Section Six: Good Laboratory Practice		325
Art. 615	Principles of Good Laboratory Practice .....	325
Section Seven: Procedures and Organisation		326
Art. 616	Submission of Test Certificates .....	326
Art. 617	Use of Third-Party Test Certificates, Duty of Preliminary Inquiry .....	327
Art. 618	Information Duties of the Registration Body .....	328
Art. 619	Confidentiality .....	329

Art. 620	Advisory Commissions.....	329
Art. 621	Implementation, Monitoring.....	330
Art. 622	Administrative Orders .....	330
Art. 623	Costs .....	330
<b>Section Eight: Plant Protection Agents</b>		<b>331</b>
<i>Subsection One: General Provisions</i>		<i>331</i>
Art. 624	Purpose .....	331
Art. 625	Definitions .....	331
Art. 626	Scope .....	332
Art. 627	Principles.....	333
Art. 628	Basic Duties.....	333
<i>Subsection Two: Approval of Plant Protection Agents</i>		<i>333</i>
Art. 629	Requirement of Approval .....	333
Art. 630	Application for Approval .....	334
Art. 631	Utilisation of Documents of Other Applicants or Approval Holders .....	334
Art. 632	Approval.....	335
Art. 633	Supplementary Demands.....	337
Art. 634	Approval of Plant Protection Agents Approved in Other Member States.....	337
Art. 635	Approval before Decision by European Community .....	338
Art. 636	Duration of Approval .....	338
Art. 637	Amendment; Revocation; Withdrawal; Suspension of Approval.....	339
Art. 638	Extension of the Field of Application.....	339
Art. 639	Duty to Inform.....	340
Art. 640	Confidentiality.....	340
Art. 641	Details of the Procedure; Promulgations.....	340
<i>Subsection Three: Marketing of Plant Protection Agents</i>		<i>341</i>
Art. 642	Packaging and Labelling .....	341
Art. 643	Prohibited Statements.....	342
Art. 644	Duty to Notify.....	342
Art. 645	Retail Sales.....	342
<i>Subsection Four: Use of Plant Protection Agents</i>		<i>342</i>
Art. 646	Use of Plant Protection Agents.....	342
Art. 647	Duty to Notify.....	343
Art. 648	Personal Prerequisites.....	343
<i>Subsection Five: Plant Protection Appliances</i>		<i>343</i>
Art. 649	Marketing .....	343
Art. 650	Declaration .....	343
Art. 651	Testing of Plant Protection Appliances .....	343
Art. 652	Delegated Powers .....	344
Art. 653	Testing of Existing Plant Protection Appliances.....	344
<i>Subsection Six: Plant Resistance Improvers; Active Ingredients</i>		<i>344</i>
Art. 654	Marketing of Plant Resistance Improvers.....	344
Art. 655	Inclusion in the List of Plant Resistance Improvers .....	345
Art. 656	Marketing of Active Ingredients of Plant Protection Agents .....	345
<i>Subsection Seven: Other Plant Protection Measures</i>		<i>345</i>
Art. 657	Implementation of Other Plant Protection Measures.....	345
Art. 658	Plant Protection Measures .....	346
Art. 659	Protection against Accidental Introduction of Harmful Organisms .....	347
Art. 660	Urgent Cases.....	348

	<i>Subsection Eight: Compensation</i>	348
Art. 661	Compensation .....	348
	<i>Subsection Nine: Common Provisions</i>	348
Art. 662	Federal Biological Institute for Agriculture and Forestry .....	348
Art. 663	Descriptive Plant Protection List .....	349
Art. 664	Expert Commission on Plant Protection Agents .....	349
Art. 665	Implementation in the <i>Länder</i> .....	350
Art. 666	Costs .....	350
Art. 667	Duties to Inform and Tolerate .....	350
Art. 668	Communication of Data .....	350
Art. 669	Cooperation with Other Member States and with the Commission of the European Communities .....	351
	<b>Section Nine: Biocides</b>	<b>351</b>
	<i>Subsection One: General Provisions</i>	351
Art. 670	Purpose .....	351
Art. 671	Definitions .....	351
Art. 672	Scope .....	351
Art. 673	Principles .....	352
Art. 674	Basic Duties .....	352
	<i>Subsection Two: Approval of Biocides</i>	352
Art. 675	Requirement of Approval; Application for Approval .....	352
Art. 676	Utilisation of Documents of Other Applicants or Approval Holders .....	353
Art. 677	Approval .....	353
Art. 678	Delegated Powers .....	354
	<i>Subsection Three: Marketing of Biocides</i>	354
Art. 679	Packaging and Labelling; Prohibited Statements; Duty to Notify; Restrictions on Sales .....	354
	<i>Subsection Four: Use of Biocides; Appliances for Applying Biocides</i>	355
Art. 680	Use of Biocides .....	355
Art. 681	Restrictions on Use .....	355
Art. 682	Appliances for Applying Biocides .....	356
	<i>Subsection Five: Common Provisions</i>	356
Art. 683	Approval Body; Expert Commission .....	356
Art. 684	Costs, Cooperation, Communication of Data .....	357
	<b>Section Ten: Detergents and Cleaners</b>	<b>357</b>
	<i>Subsection One: General Provisions</i>	357
Art. 685	Purpose .....	357
Art. 686	Definitions .....	357
Art. 687	Scope .....	357
Art. 688	Principles .....	358
Art. 689	Basic Duties .....	358
	<i>Subsection Two: Marketing of Detergents and Cleaners</i>	358
Art. 690	Requirements for Detergents and Cleaners .....	358
Art. 691	Packaging, Labelling, especially as regards Recommended Dosage, Details of Water Hardness Ranges .....	358
Art. 692	Information on Environmentally Relevant Properties .....	359

	Section Eleven: Fertilisers	360
	<i>Subsection One: General Provisions</i>	360
Art. 693	Purpose .....	360
Art. 694	Definitions .....	360
Art. 695	Scope .....	360
	<i>Subsection Two: Marketing of Fertilisers</i>	361
Art. 696	Approval of Fertiliser Types.....	361
Art. 697	Packaging and Labelling .....	361
Art. 698	Restrictions on Marketing .....	362
	<i>Subsection Three: Compensation Fund</i>	362
Art. 699	Establishment of a Compensation Fund .....	362
	<i>Subsection Four: Closing Provisions</i>	363
Art. 700	Expert Commission on Fertiliser Matters.....	363
Art. 701	Tolerances.....	363
	Section Twelve: Carriage of Dangerous Goods	363
	<i>Subsection One: General Provisions</i>	363
Art. 702	Purpose .....	363
Art. 703	Definitions .....	363
Art. 704	Scope .....	363
Art. 705	Principles.....	364
Art. 706	Basic Duties.....	364
	<i>Subsection Two: Requirements for the Carriage of Dangerous Goods</i>	364
Art. 707	Approval for Carriage; Transport Containers and Vehicles.....	364
Art. 708	Packaging and Labelling; Transport Documents.....	365
Art. 709	Power to Enact Statutory Ordinances.....	365
Art. 710	Exemptions.....	366
Art. 711	Emergency Measures.....	366
Art. 712	Hearing of Experts.....	366
	<i>Subsection Three: Environmental Officer</i>	366
Art. 713	Environmental Officer.....	366
	<i>Subsection Four: Competence, Safety Measures, Monitoring, Costs</i>	367
Art. 714	Competence .....	367
Art. 715	Monitoring.....	368
Art. 716	Costs .....	368
	Section Thirteen: Administrative Offences	368
Art. 717	Administrative Offence Provisions for Sections One to Seven.....	368
Art. 718	Administrative Offence Provisions for Section Eight .....	369
Art. 719	Administrative Offence Provisions for Section Nine .....	371
Art. 720	Administrative Offence Provisions for Section Ten.....	373
Art. 721	Administrative Offence Provisions for Section Eleven.....	373
Art. 722	Administrative Offence Provisions for Section Twelve.....	374
	Section Fourteen: Transitional Provisions	375
Art. 723	Transitional Provisions for Sections One to Seven .....	375
Art. 724	Transitional Provisions for Section Eight.....	376

Art. 725	Transitional Provisions for Section Nine.....	376
<b>Chapter Seventeen: Waste</b>		<b>377</b>
Section One: General Provisions		377
Art. 726	Purpose .....	377
Art. 727	Definitions .....	377
Art. 728	Scope .....	377
Art. 729	Basic Duties.....	378
Section Two: Duties relating to Waste		378
<i>Subsection One: Producers and Possessors of Waste</i>		378
Art. 730	Duties of Producers and Possessors of Waste .....	378
Art. 731	Company Waste Concepts.....	379
Art. 732	Company Waste Accounting.....	379
Art. 733	Return .....	380
Art. 734	Relinquishment Duties .....	380
Art. 735	Property Owners' and Occupiers' Duty to Tolerate.....	381
<i>Subsection Two: Waste Managers</i>		381
Art. 736	Duties of Waste Managers.....	381
Art. 737	Requirements for Waste Recovery .....	381
Art. 738	Requirements for Waste Disposal .....	382
Art. 739	Duty to Inform and Advise.....	382
Art. 740	Exercise of Duties by Public-Law Entities Responsible for Waste Management .....	382
Art. 741	Exercise of Duties by Associations .....	383
Art. 742	Exercise of Duties by Self-Government Corporations.....	383
Art. 743	Exercise of Duties by Third Parties.....	384
Section Three: Organisation and Planning of Waste Management		384
Art. 744	Organisation of Disposal .....	384
Art. 745	Waste Strategy Planning.....	384
Art. 746	Informing the Public.....	385
Section Four: Authorisation and Closure of Landfill Sites		385
Art. 747	Requirement of Authorisation .....	385
Art. 748	Basic Duties relating to Construction, Operation and Closure.....	385
Art. 749	Prerequisites for Authorisation.....	386
Art. 750	Existing Landfill Sites .....	386
Art. 751	Closure.....	386
Section Five: Monitoring and Environmental Officer		386
Art. 752	General Monitoring .....	386
Art. 753	Evidence Procedure .....	387
Art. 754	Environmental Officer.....	387
Section Six: Shipment of Waste		388
<i>Subsection One: Authorisation of Carriers, Dealing and Brokering</i>		388
Art. 755	Authorisation of Carriers.....	388
Art. 756	Authorisation of Dealing and Brokering.....	389

Art. 757	Carriage of Hazardous Waste .....	389
Art. 758	Specialist Waste Management Enterprise, Waste Management Syndicate .....	389
	<i>Subsection Two: Transboundary Shipment of Waste</i> .....	389
Art. 759	Transboundary Shipment.....	389
Art. 760	Competent Authority .....	390
Art. 761	Cooperation by Other Authorities .....	390
Art. 762	Specifications for Transboundary Shipment .....	390
Art. 763	Reimportation .....	391
Art. 764	Security.....	391
Art. 765	Waste Repatriation Fund .....	392
Art. 766	Point of Contact.....	393
Art. 767	Authority to Enact Statutory Ordinances.....	393
	<b>Section Seven: Waste Charge</b> .....	394
Art. 768	Waste Charge.....	394
Art. 769	Waste Liable to Charges.....	394
Art. 770	Liability for Charges.....	394
Art. 771	Charge Rate and Assessment Basis .....	395
Art. 772	Determination .....	395
Art. 773	Use of Revenue from Charges.....	395
	<b>Section Eight: Common Provisions</b> .....	396
Art. 774	Administrative Offences.....	396
Art. 775	Transitional Provisions.....	396
	<b>Table of Statutes</b> .....	397
	<b>Index</b> .....	403

## Abbreviations

AN	Assemblée Nationale (France)
Art.	Article
Arts.	Articles
BBl.	Bundesblatt (Switzerland)
BGB	Bürgerliches Gesetzbuch – Civil Code
BGBI.	Bundesgesetzblatt (Germany)
BGHZ	Amtliche Sammlung der Entscheidungen des Bundesgerichtshofes in Zivilsachen (Germany)
BOD <sub>5</sub>	biochemical oxygen demand
BPEO	Best Practical Environmental Option
BVerfGE	Amtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts (Germany)
cf.	confer
CITES	Washington Convention on International Trade in Endangered Species
Doc.	Document
DVBl.	Deutsches Verwaltungsblatt (Germany)
EC	European Community
ed.	edition
Ed.	Editor
Eds.	Editors
EEC	European Economic Community
e.g.	exempli gratia, for example
EIA	Environmental Impact Assessment
EU	European Union
GATT	General Agreement on Tariffs and Trade
GBI.	Gesetzblatt (GDR)
GDR	German Democratic Republic
GG	Grundgesetz – Basic Law
HMIP	Her Majesty's Inspectorate of Pollution (Great Britain)
ibid.	ibidem
i.e.	id est, that is to say
IPPC	Integrated Pollution Prevention and Control
IUCN	International Union for Conservation of Nature and Natural Resources
Jb. UTR	Jahrbuch des Umwelt- und Technikrechts (Germany)
n°	numéro
NJW	Neue Juristische Wochenschrift (Germany)

no.	number
NVwZ	Neue Zeitschrift für Verwaltungsrecht (Germany)
op. cit.	opus citatum, the work quoted
OJ EC	Official Journal of the European Community
p.	page
para.	paragraph
paras.	paragraphs
pp.	pages
SCE	Secretariat of the European Commission
SOU	Statens Offentliga Utredningar (Sweden)
SRU	Rat von Sachverständigen für Umweltfragen (Germany)
UBA	Umweltbundesamt (Germany)
UGB	Umweltgesetzbuch – Environmental Code
UGB-KomE	Entwurf der Unabhängigen Sachverständigenkommission für ein Umweltgesetzbuch – Draft of an Environmental Code prepared by the Independent Expert Commission
UGB-ProfE	Entwurf der Professorenkommission für ein Umweltgesetzbuch – Draft of an Environmental Code prepared by the Professors' Commission
USA	United States of America
USG	Umweltschutzgesetz (Switzerland)
vol.	volume
vols.	volumes





## Introduction\*

### I. Necessity for and Potential of Codification

#### 1. Situation in Germany

Environmental legislation in the Federal Republic of Germany<sup>1</sup> has established a comparatively *high level of environmental protection*. This was also partly true – on paper, though hardly in practice – of environmental legislation in the former German Democratic Republic.<sup>2</sup> West German environmental legislation has been relatively successful in the fields of reduction of emissions from industrial installations, quality maintenance of waters, and the recovery and disposal of waste. For various reasons, however, – both legal and factual – *unsolved problems still exist*; these relate in particular to soil pollution, threats to habitats and species as a result of development measures, air pollution due to traffic, and diffuse pollution of all environmental media.

German environmental legislation is characterised by an approach that is described as regulatory: The actors are subject to far-reaching administrative control which is expressed in a variety of instruments, elaborated in procedures for comprehensive investigation of the facts and for participation, and is geared to statutory and sub-statutory material standards that are defined as clearly as possible. Important modern elements in this are a planned approach, the precautionary principle and public participation.

The instruments, standards and procedures, however, take very different forms in the many individual environmental acts. This diversity is increased by the fact that here and there the regulatory forms are joined by forms of steering that make use of self-organisation and economic incentives.

The *complexity* of this pattern is explained by the fact that environmental law in its present form is still young. It has frequently reflected the results of short-term initiatives taken at the level of day-to-day politics as a reaction to topical ecological problems – dying forests, major accidents, waste disposal problems, occurrences of acute damage due to chemicals. Moreover, legislation has repeatedly adopted new regulatory strategies without ensuring suitable harmonisation with the existing regulatory approaches. Finally, the doctrinal work of court practice and jurisprudence, far from simplifying the legal material, has often resulted in the differentiation of even finer ramifications.

---

\* Provisions cited without naming a specific law relate to the Commission's Draft.

<sup>1</sup> Text collections are to be found in *Kloepfer* (Ed.), *Umweltschutz*, Munich, loose-leaf collection, status: August 1997; *Storm* (Ed.), *Umweltrecht*, 10<sup>th</sup> ed., Munich 1997; (in English) *G. Winter* (Ed.), *German Environmental Law*, Dordrecht 1994. Of the many textbooks on environmental law, mention is made here only of *Kloepfer*, *Umweltrecht*, 2<sup>nd</sup> ed. Munich 1998, and the short textbook by *Bender/Sparwasser/Engel*, *Umweltrecht*, 3<sup>rd</sup> ed., Stuttgart 1995; also, in English, *Scherer*, *Environmental Law*, in: B. Ruster (general editor) *Business Transactions in Germany (FRG)*, loose-leaf, New York, status: April 1997.

<sup>2</sup> In the Land Conservation Act (*Landeskultugesetz*) of 1970 (GBl. I No. 12, p. 67) the former GDR had a comprehensive environmental protection act. A retrospective survey can be found in *E. Oehler et al.* (Eds.), *Grundriß Landeskulturrecht*, Berlin (East) 1982.

After developing rapidly for about a quarter of a century, environmental law today is increasingly showing signs of the *lack of harmonised design*. The diversity of forms leads in some cases to a lack of transparency, a lack of predictability and a lack of coordination of administrative control. Furthermore, the predominance of the regulatory approach results in failure to take full advantage of the potential of self-organisation and economic incentives.

It is therefore *time to reform environmental law as a whole*. This is the intention of the present draft codification. It pursues the dual aim of creating simpler structures and at the same time improving the level of protection where necessary.

In its work the Expert Commission was conscious of the fact that environmental legislation since the end of the sixties has been of varying political importance. Phases of support and expansion have alternated with phases in which environmental law was seen more as an obstacle to economic growth and came under pressure. The work on this draft, extending over a five-year period, was also affected by one of these swings of the pendulum. The Commission has attempted to free itself from these swings and to adopt a long-term perspective, because it believes that environmental protection must not be dependent on the short-term ups and downs of the economy.

## 2. Foreign and International Codification Trends

Whereas sceptical opinions are sometimes voiced in Germany about the practicability of an Environmental Code, a glance beyond Germany's borders reveals that the *idea of codification* has now *spread worldwide* and in some countries has already produced tangible results or at least found expression in quite advanced preliminary work.<sup>3</sup> Despite various differences in points of detail, the examples are evidence of a *codification trend in Europe*.

It is however important to distinguish here between different conceptions of codification. Codification can mean that provisions which are scattered through a large number of separate laws are systematised in a thematic context without any change in the content of the provisions. In France, for example, this kind of "*codification à droit constant*" is currently being discussed.<sup>4</sup>

It is also possible to speak of codification in cases where a multiplicity of individual environmental laws are preceded by a general law which summarises the main principles and instruments but does not have any effect of its own in relation to the individual laws<sup>5</sup>.

In the present context, by contrast, codification is understood to mean a constitutive systematisation and further development of the law. One should not, however, expect too much with regard to the completeness and unity of such a Code. For even after codification, there will still be a need to put environmental law into more specific terms by means of provisions at the sub-statutory level such as ordinances and administrative provisions. Neither

---

<sup>3</sup> Cf. with regard to the following remarks, and also the necessary distinction between federal and unitarian state codifications, *Kloepfer/Mast*, *Das Umweltrecht des Auslandes*, Berlin 1995, pp. 329 ff. and *passim*.

<sup>4</sup> *Projet de Loi*, Doc. AN n° 2583 of 21 February 1996; the draft, which must not be confused with private text collections such as the *Code de l'environnement* by the publishers Dalloz, comprises six books with a total of 860 articles. The First Book contains general provisions, *inter alia* on the general principles of environmental protection, environmental information and public participation, and provisions regarding competence. The Second Book is devoted to the environmental media water and air, the Third to nature conservation, the Fourth to species conservation and the Fifth to environmentally relevant activities such as, in particular, the authorisation of installations representing a threat to the environment. The Sixth Book contains special provisions for the overseas territories.

<sup>5</sup> Examples of this are the New Zealand Resource Management Act of 1992 and the Japanese Basic Environmental Protection Act of 1993.

does codification in any way restrict the interpretation of individual cases by the courts.<sup>6</sup> On the contrary, the courts would perform an important function by defining more precisely the numerous unspecified legal terms in the Commission's Draft.

#### a) Codification abroad

Codification efforts are found not exclusively, but primarily in the European region. Since the situation with regard to ecological and economic development in nearby European countries is similar to that in Germany, the following overview is for the sake of comparability confined to trends in those countries.

##### aa) Switzerland

In Switzerland a codification has existed since as long ago as 1983 in the shape of the *Umweltschutzgesetz* (USG)<sup>7</sup>, which following extensive revision in 1995 now comprises some 100 articles. The USG is a principles act or "delegation act" which requires a considerable degree of fleshing out by the body responsible for enacting ordinances. A first key area is the regulation of general issues of environmental protection. Legal definitions and objects are established, guiding principles laid down in binding form and the environmental impact assessment is regulated. The USG then turns to the individual areas of environmental protection. In its overarching provisions on immission control, it creates an important stimulus for setting standards. It also contains regulations on hazardous substances and organisms, on soil protection and waste management including the planning and remediation of landfill sites. It excludes nature conservation, radiological protection and water conservation. Finally the USG contains provision for a levy on light heating oil, regulates environmental liability and execution of the Act, and creates the possibility of legal action by associations.

##### bb) Netherlands

In the Netherlands the *Wet milieubeheer*<sup>8</sup> entered into force in 1992, superseding the general environmental protection act, the *Wet Algemeene Bepalingen Milieuhygiëne*, which came into force as long ago as 1980. The new environmental protection act brings together the main instruments of environmental law, namely environment-related planning, the establishment of environmental standards, the environmental impact assessment, the authorisation of environmentally relevant activities and its revocation. It also contains general rules on projects requiring and projects not requiring authorisation, procedural rules and indirect instruments (environmental levies and environmental subsidies). Unlike its precursor, it also regulates individual areas of specific environmental law, such as substances hazardous to health, and waste. A special feature of the *Wet milieubeheer* is its phased entry into force. Initially only the general provisions entered into force, to be followed later by the provisions on waste. Substances hazardous to health are still governed by specific legislation and are to be incorporated at a later stage.

##### cc) Flanders

In the Belgian province of Flanders, following the extensive regionalisation of environmental competence, a working group consisting of university teachers was entrusted with the task of preparing a draft of an environmental act of quite a comprehensive nature, the *Decret*

<sup>6</sup> For a different point of view, that of a British lawyer "schooled" in case law, cf. *Jones*, in: Bocken/Ryckbost (Eds.) *Codification of Environmental Law*, Deventer 1996, pp. 127, 129 ff.

<sup>7</sup> Bundesgesetz über den Umweltschutz vom 7. Oktober 1983 in der Fassung des Bundesgesetzes vom 21. Dezember 1995 (see also the referendum submission, BBl. 1996 I p. 233), *Systematische Sammlung des Schweizerischen Rechts* (SR) 814.01; cf. *H.-U. Müller*, in: Kölz/Müller, *Kommentar zum Umweltschutzgesetz*, loose-leaf, Vol. I, Zürich, status: January 1992, Part III – Introduction.

<sup>8</sup> Act of 15 October 1992, *Staatsblad* 1992, p. 551; cf. *van Buuren*, *Jb. UTR* 1992, pp. 207 ff.