

Waste Management Planning

Germany

Legal Analysis

Justice and Environment 2011

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Introduction

[Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on **waste** and repealing certain Directives regulates in a general manner the waste management planning framework in the Member States. The purpose of the current questionnaire is **to have a snapshot view by answering 5 + 1 questions** on the status of waste management planning in the respective Member State.

Q1

Please describe the legal framework regulating waste management planning in your country!

Please list relevant national laws and the most important provisions relating to government-organized waste management planning!

Waste law is part of the concurrent legislation in Germany. That means that the federal states (Länder) can only adopt legislation, where the federation (Bund) has not regulated the issue. Until the last reform of federalism waste law was part of the concurrent legislation but the Bund needed to prove a special necessity to create equal living conditions in all Länder (so called “stipulation of necessity”). With the reform this clause was abolished for waste legislation¹.

Waste law is further regulated by the Closed Substance Cycle Waste Management Act (Kreislaufwirtschafts-/ Abfallgesetz –KrW-/AbfG) with the long title: Act for Promoting Closed Substance Cycle Waste Management and Ensuing Environmentally Compatible Waste Disposal (Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Beseitigung von Abfällen)

§ 29 of the KrW-AbfG is dealing with Waste Management Planning. It regulates, that the Länder shall prepare waste management plans for their respective areas and sets out minimal criteria what the plans shall contain and what perspectives it shall take (par. 1-2, 5-6). The Länder can freely regulate the process of preparation and the binding nature of the plan. The Article further elaborates on which areas are suitable for waste disposal (par. 3-4). It stipulates that cities and communities and waste management institutions governed by public law (öffentlich-rechtliche Entsorgungsträger – mainly enterprises operated by municipalities or counties) can participate in the preparation of the plan and that they have to submit waste management concepts and waste records for the purpose of waste management planning (Par. 8-9).

¹ <http://www.umweltbundesamt.de/umweltrecht/foederalismusreform.pdf>

§ 29a regulates the public participation procedure of the preparation of a waste management plan.

A national waste management plan is not foreseen in Germany – with the delegation of the task to the Länder, the details on waste management planning legislation can only be found in the perspective laws of the Länder. (As listed below – with online source)

Bund: Kreislaufwirtschafts- und Abfallgesetz (KrW-/AbfG)²

Länder:

Baden-Württemberg : Landesabfallgesetz (LAbfG)³ - § 15

Bayern: Bayerisches Abfallwirtschaftsgesetz (BayAbfG)⁴ - Art. 11

Berlin: Kreislaufwirtschafts- und Abfallgesetz Berlin (KrW-/AbfG Bln)⁵ - § 14

Brandenburg: Brandenburgisches Abfall- und Bodenschutzgesetz (BBg AbfBodG)⁶ - §17

Bremen: Bremer Ausführungsgesetz zum Kreislaufwirtschafts- Abfallgesetz (BremAGKrW-/AbfG)⁷ - §4

Hamburg: Hamburgisches Abfallwirtschaftsgesetz (HmbAbfG)⁸ -§6

Hessen: Hessisches Ausführungsgesetz zum Kreislaufwirtschafts- Abfallgesetz (HAKA)⁹ - §16

Mecklenburg-Vorpommern: Abfallwirtschafts- und Altlastengesetz MV (AbfAlG)¹⁰ - §9

Niedersachsen: Niedersächsisches Abfallgesetz (NAbfG)¹¹ - §21-22

Nordrhein-Westfalen: Landesabfallgesetz NRW (LAbfG)¹² - §16-18

Rheinland-Pfalz: Landesabfallwirtschaftsgesetz (LAbfWG)¹³ - §11

Saarland: Saarländisches Abfallwirtschaftsgesetz (SAWG)¹⁴ - §18-19

² <http://www.gesetze-im-internet.de/krw-abfg/index.html#BJNR270510994BJNE003505308>

³ http://www.um.baden-wuerttemberg.de/servlet/is/3110/Landesabfallgesetz_-_LAbfG.pdf?command=downloadContent&filename=Landesabfallgesetz_-_LAbfG.pdf

⁴ <http://www.gesetze-bayern.de/jportal/portal/page/bsbayprod.psml?showdoccase=1&doc.id=jlr-AbfGBY1996rahmen&doc.part=X&doc.origin=bs&st=lr>

⁵ <http://www.sbb-mbh.de/fileadmin/media/recht/berlin/krwabfg-berlin-2011.pdf>

⁶ http://www.bravors.brandenburg.de/sixcms/detail.php?gsid=land_bb_bravors_01.c.47202.de

⁷ <http://bremen.beck.de/default.aspx?bcid=Y-100-G-brabfallg-name-inh>

⁸ <http://www.landesrecht.hamburg.de/jportal/portal/page/bshaprod.psml?doc.id=jlr-AbfWGHA2005rahmen&st=lr&showdoccase=1¶mfromHL=true#focuspoint>

⁹ http://www.rv.hessenrecht.hessen.de/jportal/portal/t/1poc/page/bshesprod.psml;jsessionid=7C2E5198E6360DD548299EC5384681E5.jp65?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=6&fromdoctodoc=yes&doc.id=VB-HE-GVBLI2004252&doc.part=D&doc.price=0.0#focuspoint

¹⁰ http://mv.juris.de/mv/gesamt/Abf_AltLastG_MV.htm

¹¹ <http://www.recht-niedersachsen.de/2840001/nabfg.htm>

¹² <http://www.lanuv.nrw.de/abfall/untersuchungsstellen/labfg.pdf>

¹³

http://landesrecht.rlp.de/jportal/portal/t/1joo/page/bsrlpprod.psml/action/portlets.jw.MainAction?p1=0&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-Abf_AltLastGRPrahmen&doc.part=R&toc.poskey=#focuspoint

Sachsen: Sächsisches Abfall- und Bodenschutzgesetz (SächsABG)¹⁵ - §4a
Sachsen-Anhalt: Abfallgesetz des Landes Sachsen-Anhalt (AbfG LSA)¹⁶ - §8
Schleswig-Holstein: Abfallwirtschaftsgesetz für das Land Schleswig-Holstein¹⁷ - §8
Thüringen: Thüringisches Abfallwirtschaftsgesetz (ThürAbfG)¹⁸ - §9

Until 2007 an ordinance existed, that regulated the preparation and content of Waste management concepts and records. It was abolished to lower the burden of waste management institutions and administration.

Assessment: Germany fulfilled its duties to ensure waste management planning with the delegation of the task to the Länder. It also set a framework how the Länder shall prepare the plans, which is compliant with the EU directive. The delegation makes sense, because the Länder regulate and implement the details of waste law and deal with waste management institutions regulated under public law on a subregional level. Thus waste management planning is no priority for the Bund – on the website of the Ministry of the Environment information on waste management planning and procedures can hardly be found.

WFD Article 28

Waste management plans

1. Member States shall ensure that their competent authorities establish, in accordance with Articles 1, 4, 13 and 16, one or more waste management plans. Those plans shall, alone or in combination, cover the entire geographical territory of the Member State concerned.

Q2

Please describe according to what territorial distribution the waste management plans are prepared by the government (national, sub-national, regional, sub-regional, etc.)!

As stated above, the Bund delegates this task to the Länder. The Länder can structure the plan according to regional structures or waste types. In nearly all Länder laws there is a provision, that establishes the preparation of subregional waste management concepts.

¹⁴

http://www.umweltserver.saarland.de/Landesrecht/2_Quellen/21_Quellen/212_Quellen/2128_Quellen/2128-2.pdf

¹⁵ <http://www.revosax.sachsen.de/Details.do?sid=1069214178951>

¹⁶ <http://www.landesrecht.sachsen->

[anhalt.de/jportal/?quelle=jlink&query=AbfG+ST&psml=bssahprod.psml&max=true&aiz=true](http://www.landesrecht.sachsen-anhalt.de/jportal/?quelle=jlink&query=AbfG+ST&psml=bssahprod.psml&max=true&aiz=true)

¹⁷ <http://www.gesetze->

[rechtsprechung.sh.juris.de/jportal/portal/t/1rw8/page/bsshoprod.psml?doc.hl=1&doc.id=jlr-AbfWGS1999rahmen%3Ajuris-](http://www.gesetze-rechtsprechung.sh.juris.de/jportal/portal/t/1rw8/page/bsshoprod.psml?doc.hl=1&doc.id=jlr-AbfWGS1999rahmen%3Ajuris-)

[Ir00&documentnumber=1&numberofresults=67&showdoccase=1&doc.part=R¶mfromHL=true#focuspoint](http://www.gesetze-rechtsprechung.sh.juris.de/jportal/portal/t/1rw8/page/bsshoprod.psml?doc.hl=1&doc.id=jlr-AbfWGS1999rahmen%3Ajuris-Ir00&documentnumber=1&numberofresults=67&showdoccase=1&doc.part=R¶mfromHL=true#focuspoint)

¹⁸

http://landesrecht.thueringen.de/jportal/portal/t/1qpe/page/bsthueprod.psml;jsessionid=B8ACB7A1F86E827E7EB9FECAD4E0C6E3.jp65?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=jlr-Abf_AltLastGTH1999V5IVZ&doc.part=S&doc.price=0.0#focuspoint

In some Länder the administration of counties or municipalities not associated with a county have the task of preparing them, (e.g. Berlin) although the Bund regulated that the waste management institutions/enterprises governed by public law carry out this task. These institutions are assigned to the waste treatment and discharge of a subregion. The procedure – especially the public participation procedure in this concept differs.

Article 6 of the KrW-AbfG regulates, that the Länder coordinate their Waste Management plans. If transboundary planning is needed the Länder shall find agreement. For example Berlin - a city state has regulated in its own waste law, that agreement with its neighbor state Brandenburg is aimed for.

There is no coordinating or monitoring activity by the Bund documented on the internet.

WFD Article 28

2. The waste management plans shall set out an analysis of the current waste management situation in the geographical entity concerned, as well as the measures to be taken to improve environmentally sound preparing for re-use, recycling, recovery and disposal of waste and an evaluation of how the plan will support the implementation of the objectives and provisions of this Directive.

3. The waste management plans shall contain, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:

(a) the type, quantity and source of waste generated within the territory, the waste likely to be shipped from or to the national territory, and an evaluation of the development of waste streams in the future;

(b) existing waste collection schemes and major disposal and recovery installations, including any special arrangements for waste oils, hazardous waste or waste streams addressed by specific Community legislation;

(c) an assessment of the need for new collection schemes, the closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16, and, if necessary, the investments related thereto;

(d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations, if necessary;

Q3

Please detail how the national waste management plan deals with future landfill capacities and how much such capacity it is planning for the future within the country!

As there is no national waste management plan but more detailed regulations in the national law on landfills I will elaborate on them at this point.

According to § 29 Article 1 Waste Management Plans (WMP) identify approved waste management facilities and suitable areas for waste disposal facilities for final deposition of waste (landfill sites) and for other waste management facilities. These can be made binding by this plan, nevertheless the identification in a WMP as a suitable site is not a precondition for an official approval of a landfill in a formal planning procedure. A site can be called suitable, if location, size, character and the intended use are in coherence with the waste management targets in the planning area and doesn't conflict concerns of the well-being of the general public.

I further analyzed some of the federal state WMPs sections on municipal solid waste landfills. In most federal states the capacities have been reduced significantly due to the higher standards that were introduced with the ordinance on waste disposal effective 15 July 2009. In the current WMP of Bavaria the capacities have been reduced from 56 to 38 landfills¹⁹. Surprisingly in the plan of most states (North Rhine-Westphalia, Bremen, Brandenburg, Baden-Württemberg, Hessen, Bavaria) the current capacity of waste disposal facilities appears to be sufficient²⁰. Schleswig-Holstein forecasts a need for further capacity in 2020, but didn't take planning steps until now – they are scheduled for 2012²¹.

¹⁹ Verordnung über den Abfallwirtschaftsplan Bayern, Annex 2&3

<http://www.stmug.bayern.de/umwelt/abfallwirtschaft/recht/doc/abfpv.pdf>; Begründung Verordnung über den Abfallwirtschaftsplan p.22-23

http://www.stmug.bayern.de/umwelt/abfallwirtschaft/recht/doc/abfpv_begrueend.pdf

²⁰ Abfallwirtschaftsplan Nordrhein-Westfalen, Teilplan Siedlungsabfälle: p. 65

http://www.umwelt.nrw.de/umwelt/pdf/abfallwirtschaftsplan_siedlung.pdf

Press release Bremen:

<http://www.umwelt.bremen.de/de/detail.php?gsid=bremen179.c.3596.de>

Abfallwirtschaftsplan Brandenburg p. 26-27

<http://www.brandenburg.de/cms/media.php/2318/awpsied06.pdf>

Abfallwirtschaftsplan Mecklenburg-Vorpommern p. 16 http://www.lung.mv-regierung.de/dateien/awp_2008.pdf

Abfallwirtschaftsplan Hessen p.36

http://www.hessen.de/irj/servlet/prt/portal/prtroot/slimp.CMReader/HMULV_15/HMULV_Internet/med/938/9385d06a-915a-a21f-012f-31e2389e4818,22222222-2222-2222-2222-222222222222,true

Abfallwirtschaftsplan Baden-Württemberg p.135 <http://www.um.baden-wuerttemberg.de/servlet/is/15916/>

[Abfallwirtschaftsplan Teilplan Siedlungsabfaelle.pdf?command=downloadContent&filename=Abfallwirtschaftsplan Teilplan Siedlungsabfaelle.pdf](http://www.um.baden-wuerttemberg.de/servlet/is/15916/Abfallwirtschaftsplan_Teilplan_Siedlungsabfaelle.pdf?command=downloadContent&filename=Abfallwirtschaftsplan_Teilplan_Siedlungsabfaelle.pdf)

²¹ Abfallwirtschaftsplan Schleswig-Holstein p. 46 <http://www.schleswig-holstein.de/cae/servlet/contentblob/646532/publicationFile/AWPSiedlungsabfaelle.pdf>

<http://www.schleswig-holstein.de/cae/servlet/contentblob/646532/publicationFile/AWPSiedlungsabfaelle.pdf>

WFD Article 28

3. (e) general waste management policies, including planned waste management technologies and methods, or policies for waste posing specific management problems.

4. The waste management plan may contain, taking into account the geographical level and coverage of the planning area, the following:

(a) organisational aspects related to waste management including a description of the allocation of responsibilities between public and private actors carrying out the waste management;

(b) an evaluation of the usefulness and suitability of the use of economic and other instruments in tackling various waste problems, taking into account the need to maintain the smooth functioning of the internal market;

(c) the use of awareness campaigns and information provision directed at the general public or at a specific set of consumers;

(d) historical contaminated waste disposal sites and measures for their rehabilitation.

Q4

Please detail to what extent the national waste management plan deals with historical contaminated waste disposal sites and what does it say about them!

I didn't find a reference to historical contaminated waste disposal sites in the WMPs I analyzed. All cases of the restoration of contaminated sites documented on the internet date from earlier days than the WMPs analyzed. Seemingly nowadays mainly subsequent improvement like waterproofing of operating landfills is done.

WFD Article 28

5. Waste management plans shall conform to the waste planning requirements laid down in Article 14 of Directive 94/62/EC and the strategy for the implementation of the reduction of biodegradable waste going to landfills, referred to in Article 5 of Directive 1999/31/EC.

WFD Article 30

Evaluation and review of plans and programmes

1. Member States shall ensure that the waste management plans and waste prevention programmes are evaluated at least every sixth year and revised as appropriate and, where relevant, in accordance with Articles 9 and 11.

2. The European Environment Agency is invited to include in its annual report a review of progress in the completion and implementation of waste prevention programmes.

Q5

Please detail if the previous national waste management plan has been reviewed after 6 years pursuant to the obligation set by the Directive!

Article 10 of §29 KrW/AbfG regulates that the plans have to be prepared firstly until 31st December 1999 and have to be updated every five years. As stated above, there is no public documentation, whether all Länder comply with their duties under the Directive.

Table 1: Waste management Plans in the German federal states

Baden-Württemberg	1998, 2005
Bayern	2001, 2006
Berlin	2008
Brandenburg	2000, 2007
Bremen	2002, 2007
Hamburg	2001, 2007
Hessen	2010
Mecklenburg-Vorpommern	2002, 2008
Niedersachsen	2005, 2011
Nordrhein-Westfalen	2009
Rheinland-Pfalz	1993, 2004(municipal waste) 1995, 2006 (hazardous waste)
Saarland	2004, 2010
Sachsen	2004, 2009
Sachsen-Anhalt	2000-2001, 2005
Schleswig-Holstein	2001, 2007
Thüringen	2000, 2006

According to German legislation the Länder Baden-Württemberg, Bayern, Rheinland-Pfalz, Sachsen-Anhalt and Thüringen should have updated their WMP to date. In Sachsen-Anhalt is a new plan in process²², Baden-Württemberg has updated the WMP in 2005 with a duration until 2015, what contradicts the EC-legislation. According to European law Sachsen-Anhalt, Rheinland-Pfalz and Baden-Württemberg are late with their updating process.

WFD Article 31

Public participation

Member States shall ensure that relevant stakeholders and authorities and the general public have the opportunity to participate in the elaboration of the waste management plans and waste prevention programmes, and have access to them once elaborated, in accordance with Directive 2003/35/EC or, if relevant, Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

(1). They shall place the plans and programmes on a publicly available website.

Q+1

Please describe if there has been sufficient public participation in the most recent waste management planning process on the national or sub-national level and if the waste management plans are publicly available on the internet!

²² <http://www.sachsen-anhalt.de/index.php?id=17650>

In the course of this research cannot be assessed fully, whether the public participation in the various plans has been sufficient. Nevertheless I can share some impressions, which derive from documented procedures on the internet. The time frames of a minimum of six weeks for public display and possibility to comment seems to be held in all of the processes, if it is not widened to 8 weeks-two months²³. The documentation on the internet differs. For example in Nordrhein-Westfalen the invitation to comment is still published online. In Sachsen-Anhalt, where a process is underway now, only a reference to the process is made – no deadlines and addresses are documented there.

I found sources, where NGOs criticize, that WMP are enacted without an SEA. The administration preparing the plan argues, that the plan only contains strategic goals and general targets and in the cases concerned no sites for new landfills were identified²⁴.

With the exception of the federal state Thüringen all WMPs are online available.

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The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.



²³

https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=1&gld_nr=1&ugl_nr=1000&bes_id=12704&aufgehoben=N&sg=0&print=0&menu=1
http://www.stadtentwicklung.berlin.de/umwelt/abfall/wirtschaftsplan/de/teilplan_gefahra_bfall.shtml

<http://www.landesrecht-mv.de/jportal/portal/page/bsmvprod.psml?showdoccase=1&doc.id=VVMV-VVMV000000297>

²⁴http://www.bund-nrw.de/fileadmin/bundgruppen/bcmslvnrw/PDF_Dateien/Themen_und_Projekte/Abfallpolitik/Stellungnahme_AWP_Teilplan_Siedlungsabfaelle.pdf