



Japan Local Government Centre, London

Monthly Report January 2011 (Germany) – Hesse amends environment law

After the amendments made to the Basic Law in the federalism reforms of 2006, the status of the environment protection legislation changed. Previously, under the so called 'framework legislation', federal government decided on fundamental principles, and left detailed regulations to each *Land*. After the category of framework legislation was abolished in the reforms, environment legislation was transferred to the principal responsibility of the federal government under the so-called 'concurrent legislation', but with the *Länder* to have the right to legislate differently in some areas (Abweichungsrecht) as specified in article 72 of the Basic Law, and to regulate in more details in areas which are not specifically included in the federal legislation. After much discussion on the possibility of passing a very comprehensive new body of environment protection code akin to the Code of Social Law to be called 'code of environment law' but which in the end foundered on opposition from the *Länder*, the new 'Federal Environment Protection Law' (Bundesnaturschutzgesetz, BNatSchG) was passed in 2009 and entered into force in March 2010.

The *Länder* now have the possibility to legislate differently in some areas, apart from the overall principles of nature protection, the protection of species and protection of the marine environment which are set out in the federal law. Not all the *Länder* have done so; but is expected that more legislation will emerge over the next years.

Hesse has just implemented a law which replaces its previous environment protection law, to adapt to the new situation. On 29 December 2010, the 'Hesse Implementation Law to the Federal Environment Law' entered into force. It has made a number of changes and also affects the powers of local authorities in certain circumstances.

- 1) Local authorities have been given the power to confer protected status on specific natural features within their built-up environment. This power also includes that they can demand the retraction of similar protection which has been issued previously by the county. This replaces a similar power previously available to protect green spaces, which has now been extended to encompass other natural features as well.
- 2) The rules regarding the composition of advisory councils on environment protection, which local authorities with responsibilities for environmental protection must set up, have been relaxed.
- 3) Local authorities have more power to issue penalty notices in case of misdemeanours, not only to investigate them.

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- 4) Local authorities can formulate parks and green spaces plans (Grünordnungspläne) as part of development and zoning plans (Bebauungspläne).
- 5) In the area of protection of open orchards, which are a distinctive feature in Hesse and very important in the production of the regional cider-like drink based on apples (äpplewoi), the new law in Hesse regards these as important habitats and offers them more protection than the federal law on its own would do.

There are voices which criticise the law for not going far enough; and indeed the government in Hesse has in the past gone back on natural protection. In 2006, the Land government rescinded the designation of 15 areas as 'protected landscapes', thereby reducing the area of the Land that enjoyed some degree of special protection from 40% to 21%, arguing that new European legislation demanding designation of certain areas for the protection of birds which were designated at the same time would otherwise have meant that more than half of the total area would have been protected, and that could be regarded as objectively too much and not appropriate to the times.

However it is evident that the voices calling for further development on one hand and those emphasising environment landscape protection on the other are more often than not in conflict, and it is important that mechanisms are in place under which these conflicts can be openly discussed and pragmatic solutions be found.

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