



# **Germany as an affected party: Characteristics and implications of Germany's federal structure**

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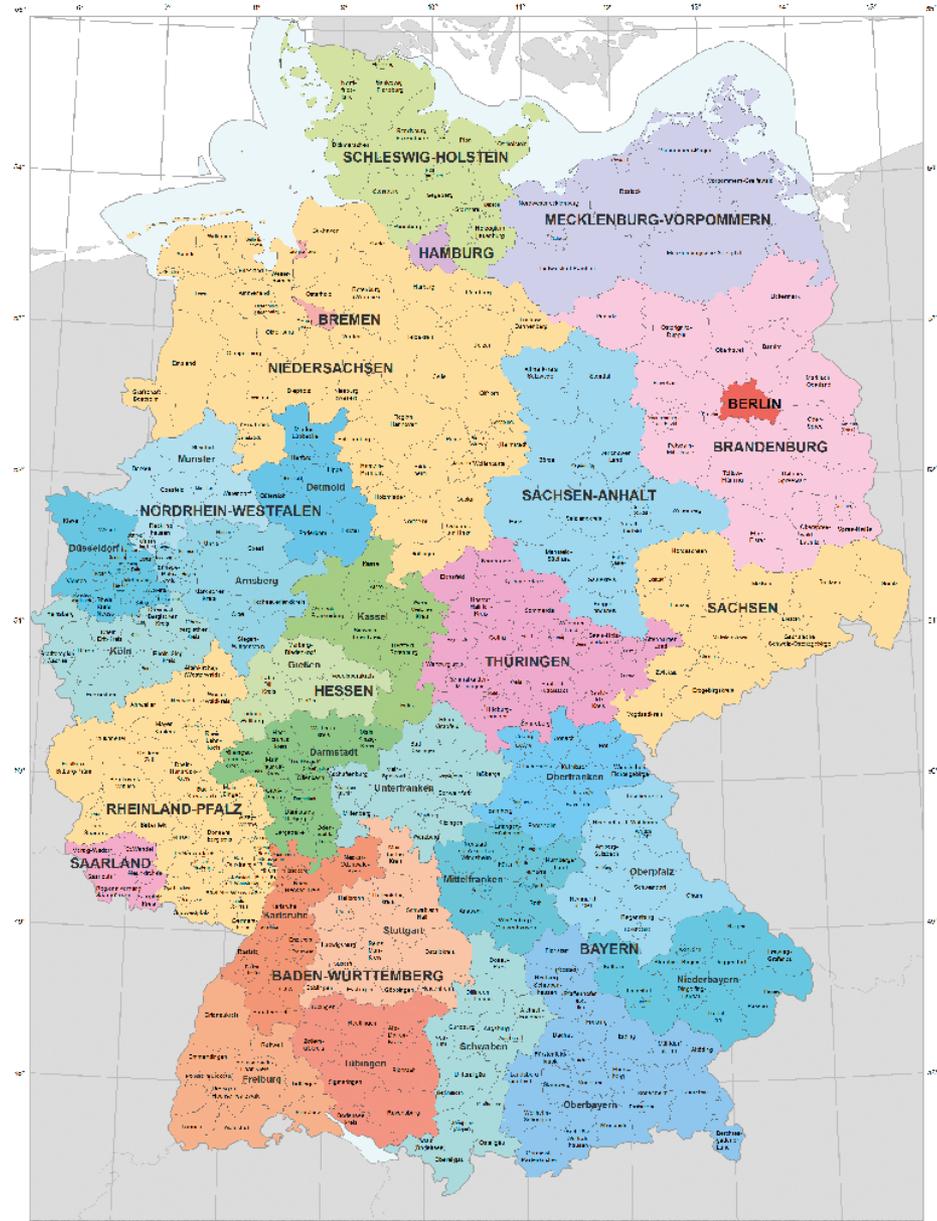
# Overview

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# Germany as a federal republic

- Legislative and administrative powers are divided between the Federation (Bund) and 16 federal states (Länder)
- This division is laid down in Germany's Basic Law
- Principle: Responsibility lies with the 16 Länder unless it is expressly assigned to the Federation





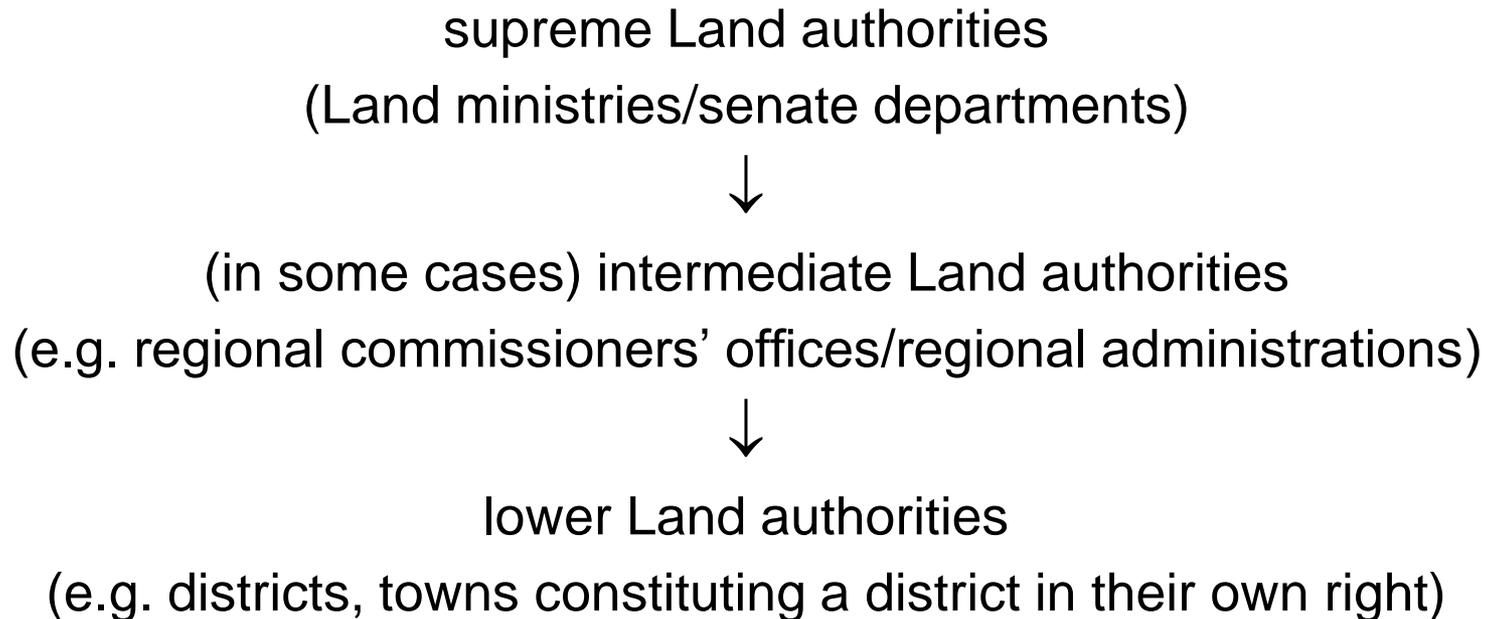
## **Enforcement/administrative structure**

- Enforcement of legislative provisions is fundamentally a task for the Länder. Only in a few areas federal authorities are responsible.
- The Länder themselves regulate the structures of their own administrations
- This is why the individual Länder have different administrative structures and different names for their authorities



# Enforcement/administrative structure

Generally speaking, the structure is as follows:





## Enforcement/administrative structure

- The Länder themselves determine which specific authority is responsible for which specific task
- This is why in the different Länder different authorities can be responsible for the same task

For example:

Licensing authority for the construction of an industrial  
plant

Land A  
regional commissioner's office

Land B  
district



# Germany as an affected party/legal basis

- In Germany, the Espoo Convention (including the SEA Protocol), the EIA Directive and the SEA Directive are implemented through the Act on the Assessment of Environmental Impacts (EIA Act - UVPG)

## Article 9b Transboundary participation of authorities and public in the case of foreign projects

- (1) If a project planned in another state is capable of having significant environmental impacts in the Federal Republic of Germany, **the German authority which would be competent for a project of the same kind in Germany** shall ask the competent authority in the other state for documentation about the project, in particular a description of the project and details of its transboundary environmental impacts. If it considers participation in the approval procedure to be necessary, it shall so inform the competent authority in the other state and shall where necessary request further details within the meaning of Article 6 paragraphs (3) and (4), inform the authorities within the meaning of Article 7 about the details, and indicate the authority in the other state to which a statement may if appropriate be submitted and the deadline by which this must be done, unless it considers the submission of a single statement to be indicated. The competent German authority should ask the competent authority in the other state for a translation of suitable details of the project, and especially about transboundary environmental impacts.
- (2) On the basis of the documentation supplied by the other state, **the competent German authority shall announce the project in a suitable manner to the public in the areas likely to be affected**, if public participation is provided for by the rules of the other state or would have to be ensured under this Act. When doing so, it shall **specify the authority in the other state to which a statement may be sent** if appropriate **and the deadline by which this must be done**, and shall provide an opportunity to inspect the documentation within a reasonable period.
- (3) ...



# Germany as an affected party/procedural process

Espoo focal point receives notification



Forwarding to the competent national authority

- According to Section 9b (1), first sentence, of the EIA Act, authorities of several Länder can be the “competent authority” if a project is capable of having significant environmental impacts in more than one Land
- Examples: construction of the Fennovoima nuclear power plant (FIN), construction of the Decin dam at the upper reaches of the Elbe (CZE)





# Germany as an affected party/procedural process



Competent national authority declares its wish to participate in the transboundary procedure to the country of origin

- If several Land authorities are the “competent authority” within the meaning of Section 9b EIA Act it is possible that several authorities express their wish to participate to the country of origin.
- However, for German participation it is enough for one authority to express its wish to participate within the given deadline, irrespective of whether other authorities express their wish too. By doing so, Germany as affected Party of the Espoo Convention indicates according to Article 3(3) that it intends to participate in the EIA procedure.



## **Germany as an affected party/procedural process**

- With regard to cases in which several authorities act as “competent authorities” the German EIA Act so far does not include a formal legal obligation for coordination.
- However in practice, the competent authorities involved should strive to provide for the best possible coordination in order to make sure that there is a common understanding and communication on the way of proceeding (e.g. timeframes für commenting etc.).
- In some cases there has been a lack of internal coordination. The Federal Ministry for the Environment is considering ways to improve the process.



# Germany as an affected party/procedural process

- Example: “Competent authority” according to Section 9b EIA Act is the Ministry of Economic Affairs in Land X and the Ministry for the Environment in Land Y. X expresses its wish to participate within the deadline set by the country of origin, Y does not express this wish (or does so at a later date)
  - The wish expressed by X within the given deadline is an expression of the wish of the affected Party to participate within the meaning of Article 3(3) Espoo Convention. Germany therefore participates in the respective procedure. Y can also participate as no further indication of a wish to participate is required other than from X. However, X and Y should coordinate the way of proceeding and communication towards the country of origin.



Competent national authority follows the further procedure through to its conclusion

- Including carrying out public participation, publishing the final decision



# Germany as an affected party/procedural process

## Arranging public participation:

According to Section 9b (2), second sentence, of the EIA Act, members of the German public are expected to send their statements directly to the competent authority of the state of origin

- ⇒ i.e. comments of the German public will not be collected and bundled up by the competent German authority
- ⇒ same approach as in national EIA or SEA procedures

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Options/suggestions for improvements?