

Risk communication in the area of the Major-Accident Ordinance

UFOPLAN 205 48 329

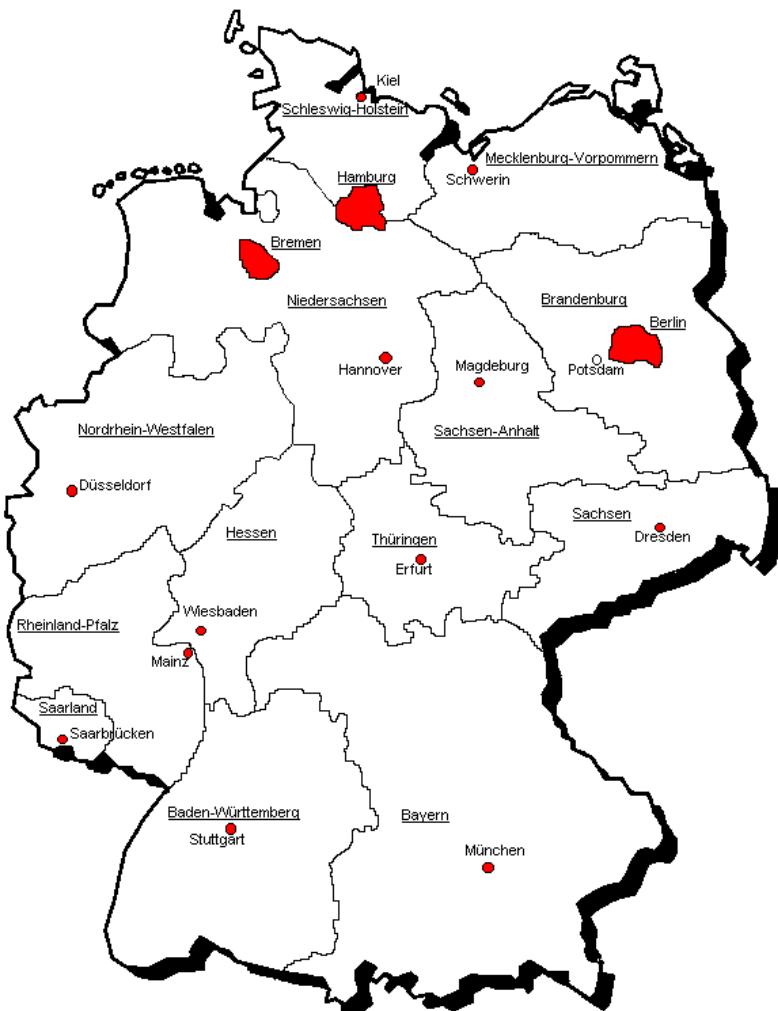
Interplay of the Environmental Information Act and
the Major-Accident Ordinance
(also known as the Hazardous Incident (Reporting) Ordinance)
Consequences for the Federal Environmental Agency

[NAME insert presenter]



- 1. Environmental information and major-accident law are in close association since a substantial portion of the information obtained as a result of the major-accident law is subject to the environmental information law.**
- 2. For petitions to information access and in the applicability of § 10 Para. 5 UIG, the UBA's (Federal Environmental Agency) disclosure of information is severely restricted for reasons of legal competence to those cases for which the common hazard defence of the states cannot or cannot be further engaged.**





3. **Art. 20 of the RL 96/82/EG (Seveso-II-Directive) is implemented through federal law by way of the right to information under § 3 UIG.**
4. **The environmental information guideline sets a minimum standard that the states must also consider in the event of an explicit implementation of Art. 20 of the RL 96/82/EG (Seveso-II-Directive).**
5. **The distribution obligation of § 10 Para. 1 to 4 UIG complements the enforcement control oriented UIG, while the distribution obligation of § 10 Para. 5 UIG serves the purpose of making self-protective measures possible.**

6. The regulation is actionable and, upon infraction, claims can be asserted against the liability of the agency, also from the affected public.
7. The prerequisite „immediate hazard“ is to be substantiated on the basis of the categories of the hazard defence laws.
8. In contrast to the major-accident law, it applies to lower risks as well as to other substances not relevant to the application of the major-accident law or to hazards that are not a result of substances. It also applies to unforeseen side effects of the compliant normal operations and to completely natural causes.



9. **As legal consequence, § 10 Para. 5 UIG incorporates an obligation by the authorities, and § 11 of the 12. BImSchV an obligation by the operator.**
10. **According to § 10 Para. 5 UIG, the public that is potentially affected by a hazard is to be informed, whereas for § 11 of the 12. BImSchV, those persons affected by a major-accident .**
11. **To be distributed is the entire information that is applicable for protection, not just environmental information.**
12. **So as to still “immediately” inform, an appropriate examination period shall not be exceeded.**



13. The distribution during the “immediate” time period is possible for as long as the hazard situation persists.
14. The obligation to coordinate with other agencies means that in the first, hot phase of the hazardous incident, information is not be distributed without the permission of the hazard defence authorities.
15. Later, a consensus constraint is no longer present.
16. The free access to environmental information and its distribution are restricted by the standardized reasons for objection provided in §§ 8 and 9 UIG.

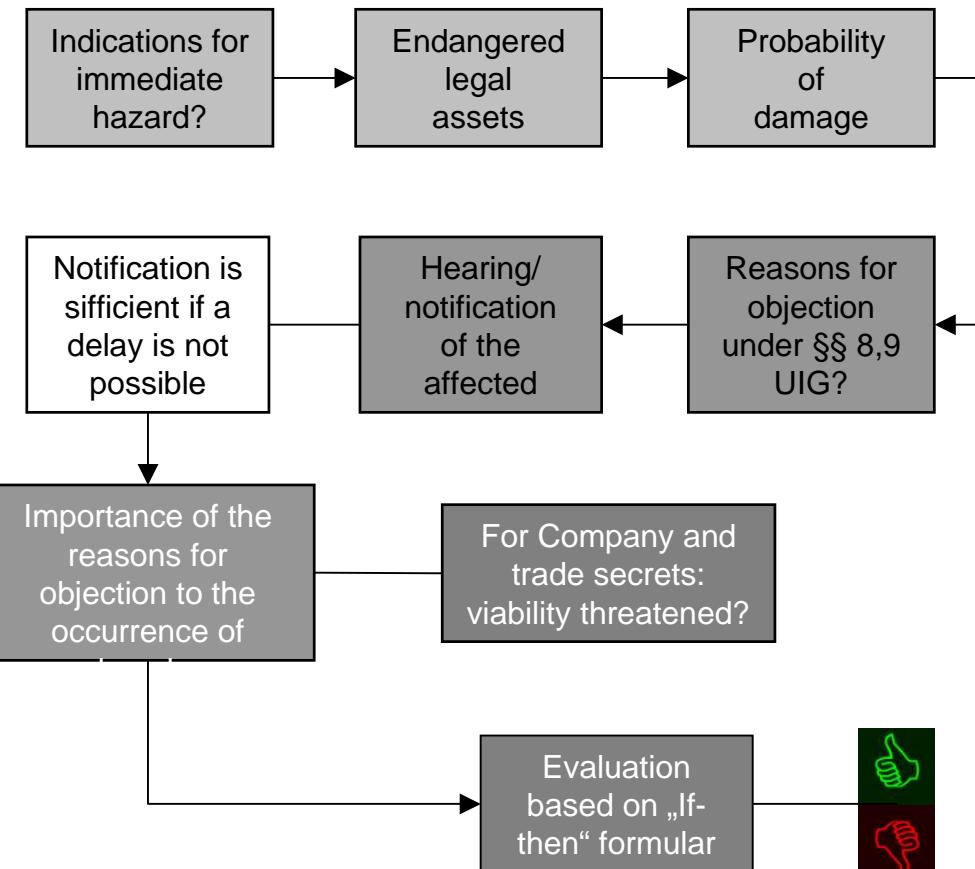


17. The law allows for counter-exceptions for public as well as for private claims, which can represent reasons for objection. Company and trade secrets are not legally defined further, but rather shaped by the case law of competition regulations.
18. Counter-exceptions are the predominant interest in the disclosure of environmental information and the unrestricted access to information on emissions.



- 19. The exclusion of emissions from the protection of company and trade secrets does not raise a constitutional concerns.**
- 20. The hearing intended under § 9 Para. 1 Sentence 3 UIG is also to be conducted if a petition for information refers to emissions.**
- 21. In the heat of the decision for a specific major-accident, if necessary actions may be reduced to a notice of publication.**

Confirmatory schematic approach for distribution of environmental information under § 10 Para. 5 UIG
-outside the scope of a catastrophe-



- 22. In the consideration of interests according to § 9 Para. 1 Sentence 1 UIG, all public and private claims that are to be taken into consideration must be determined.**
- 23. The individual claims are then to be evaluated correctly, to be weighted and to be balanced against one another.**
- 24. On the basis of which legal assets will be affected at which intensity, the evaluation may result in that one legal asset be given precedence and that the opposing claims must completely step aside, such as e.g. in cases of imminent danger to life and health.**



Additional information at
<http://www.umweltbundesamt.de/anlagen/....>

