



Rights of the Spree

Draft law and accompanying text

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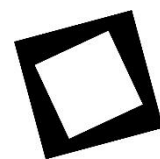
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Text of the law

Preamble

This legal act serves to recognize the rights of the Spree and its ecosystem as a legal entity with its own rights.

The Spree is home to many different species and individuals, including the people who live along its banks and in its catchment area. Its natural preservation and development are essential for a good life and a sustainable future for people living today, future generations, animals, plants, and other living creatures, as well as for the river itself.

The Spree does currently not reach the very good or at least good status that a healthy ecosystem should be in and that is required by applicable law, in particular Directive 2000/60/EC. It has been channelized, built up, polluted, and overexploited. Many ecosystem functions are impaired. Species that were once common have been decimated or are no longer found locally. The Spree has been and continues to be prevented from existing and developing in accordance with its nature. The various planetary crises—climate crisis, biodiversity crisis, and pollution crisis—are having a cumulative negative impact on the Spree and its ecosystem.

The aim of this legal act is to create conditions for the natural development, regeneration, restoration, and long-term preservation of the Spree and its ecosystem. The Spree as an ecosystem includes human and non-human inhabitants and residents. Their interests are therefore both part of and an expression of the interests of the Spree. At the same time, it is necessary to strike a balance between the interests of the Spree, in particular its ecological conservation, restoration, and development interests, and the economic and social interests of third parties.

The obligation to preserve and restore the Spree ecosystem already arises from numerous provisions of international, European, and national law. This law therefore refers explicitly to European Directives 2000/60/EC, 92/43/EEC, and 2009/147/EC, Regulation (EU) 2024/1991, the Biodiversity Convention, Article 20a of the Basic Law, and the Federal Nature Conservation Act. However, these provisions are not yet sufficient to achieve the desired objective. This Act does not represent a break with existing international, European, or national law, but rather a necessary addition to it.

§ 1 Legal personhood of the Spree

1. This act recognizes the legal personhood of the Spree. The Spree is an ecological person and must be treated as a legal entity. It is a legal entity that can invoke its rights, defend them in court and in other ways, and assert its rights.
2. The ecological person Spree consists of the Spree ecosystem, a river system approximately 400 kilometers long, flowing from its sources to its confluence with the Havel, also consisting of its direct and indirect, artificial and natural tributaries, which is composed in particular of
 1. the flowing water,
 2. the riverbed,
 3. the riverbank area,
 4. the floodplain, and
 5. all living beings, including humans, animals, plants, fungi, and microorganisms, to which the Spree gives life and habitat.

§ 2 Rights and obligations

1. The Spree has rights, in particular
 - a) the right to exist and develop naturally,
 - b) the right to protection,
 - c) the right to preservation,
 - d) the right to restoration,
 - e) the right to flourish.
2. The Spree has obligations, the fulfillment of which is incumbent upon the bodies representing it. These are
 - a) the duty to make available to the public, in an appropriate form, annual reports on the state of the Spree ecosystem, its development, and ongoing and planned restoration measures,
 - b) the duty to make available environmental information concerning the Spree ecosystem in accordance with the Environmental Information Act,
 - c) the obligation to provide the public with opportunities to obtain information and actively participate in the beneficial development of the Spree ecosystem and the implementation of any restoration measures within the framework of regular, appropriate participation formats
 - d) the obligation to actively participate in educational work within the meaning of § 4 of this act.
3. The realization of the rights of the Spree is independent of the fulfillment of the obligations.

§ 3 Definitions

For the purposes of this act

1. **"Ecosystem"** means a dynamic complex of communities of plants, animals, and microorganisms, as well as their non-living environment, which interact as a functional unit.
2. **"The right to exist and develop naturally"** expresses that the Spree is subject to a natural order and ecological laws, and that its existence as a river ecosystem and as a terrestrial ecosystem in its catchment area is ensured. The right to exist means respecting these ecological conditions in order to ensure the balance and regulatory capacity of the ecosystem in the face of the

imbalance caused by anthropogenic pressure, which comes mainly from the catchment area. The right to exist and to develop naturally also includes, in particular, the right to flow freely, the right to a healthy environment and natural biodiversity, the right to fulfill its natural functions, and the right to stay clean and unpolluted.

3. The **"right to protection"** means that all activities that pose a threat to the ecosystem or cause environmental damage to the ecosystem must be restricted, stopped, and not authorized.
4. **The "right to preservation"** requires measures to protect species and habitats on land and in the river, as well as the management of associated nature reserves. These measures must be implemented of any damage that has actually occurred or is expected to occur, and should in particular take into account possible adverse effects resulting from cumulative impacts of uses and the unavoidable consequences of climate change.
5. **The "right to restoration"** requires remediation measures in the river and its catchment area after damage has occurred, restoring the natural dynamics and resilience as well as the associated ecosystem services. This also includes the reintroduction of species that are necessary for the functioning and integrity of the ecosystem.
6. requires the **"right to flourish"** in addition to restoration measures, active measures to fully ensure and maintain a very good status in the future. The content of this right is the further development of the Spree, thus going beyond the right to exist and develop naturally. Even if the ecosystem has already reached a very good status, preventive measures or actions should be taken to support the Spree as an ecosystem in its existence and natural development.
7. The **"natural functions of a healthy river and ecosystem"** include promoting nutrient and mineral cycles, carbon storage, sedimentation control, providing a thriving biodiversity, favorable water quality, steady soil formation, vibrant wildlife corridors, water storage and filtration, groundwater recharge, flood protection, and reduced susceptibility to disease and invasive species.
8. The **"status"** of the Spree is based on the respective lower value for ecological and chemical status within the meaning of Article 2(17) of Directive 2000/60/EC.
9. **"Quality elements"** means the quality components for assessing status in accordance with Annex 5 of Directive 2000/60/EC.
10. According to Annex 5 No. 1.2 of Directive 2000/60/EC, the Spree has reached **"very good status"** if there are no or only very minor anthropogenic changes in the values for the physical-chemical and hydromorphological quality components compared to the values normally associated with a river in the absence of disruptive influences. The values for the biological quality components of the river correspond to those normally associated with a river in the absence of adverse impacts and show no or only very minor deviations.
11. **"Good environmental status"** means the environmental status in which the Spree ecosystem is ecologically diverse and dynamic and, within its specific characteristics, clean, healthy, and productive, and is used at sustainable levels so that the opportunities for use and activities of present and future generations are maintained, i.e.:

1. The structure, functions, and processes of the ecosystem, as well as the associated physiographic, geographic, geological, and climatic factors, enable the ecosystem to function without restrictions and maintain its resilience to human-induced environmental changes. The species living there and their habitats are protected, human-induced declines in biological diversity are prevented, and the various biological components are in balance.
2. The hydromorphological, physical, and chemical conditions of the ecosystem, including those resulting from human activity in the area concerned, support the ecosystem. Anthropogenic inputs of substances and energy, including noise and light, do not cause pollution effects.
7. **"Favorable conservation status of a habitat"** means the favorable conservation status within the meaning of Article 1(e) of Directive 92/43/EEC.
8. There is a **"threat to the ecosystem"** if a situation or behavior, if allowed to proceed unchecked, is likely to damage the ecosystem in the foreseeable future.
9. **"Pollution"** means the direct or indirect introduction of substances or heat into the air, water or soil which may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly dependent on them, result in damage to property, or result in an impairment or disruption of the recreational value and other legitimate uses of the environment.
10. **"Environmental damage"** means any direct or indirect, identifiable adverse change in a natural resource (protected species and natural habitats, water, and soil) or impairment of the function of a natural resource.
11. **"Restoration"** is the process of actively or passively supporting the recovery of an ecosystem to improve its structure and functions with the aim of maintaining or improving the biological diversity and resilience of ecosystems by bringing the Spree ecosystem into a good condition.

§ 4 Environmental education

In order to ensure the effectiveness of the rights referred to in § 2, it is incumbent upon the competent public authorities to promote environmental education, in particular with regard to the coexistence of humans and the Spree ecosystem, and to raise public awareness of the protection of the Spree ecosystem and its components.

§ 5 Representation and administration

The Spree is represented and administered by two bodies, the main committee and the expert committee. The bodies shall adopt rules of procedure.

§ 6 Composition of the main committee

1. The main committee is composed of equal numbers of representatives from nature conservation organizations, associations with a direct connection to the Spree, companies whose activities depend directly on the condition of the Spree or have a direct influence on the condition of the Spree, and residents living along the Spree.
2. The county councils of the counties with access to the Spree shall each elect one representative from each category by a majority of the valid votes cast. For the state of Berlin, the districts of
 - a) Spandau and Mitte;

- b) Friedrichshain-Kreuzberg and Charlottenburg-Wilmersdorf, and
- c) Treptow-Köpenick and Lichtenberg

are each considered as one county. All natural persons who have their main place of residence in Germany and are at least 16 years old are eligible to be elected. When selecting representatives, special consideration should be given to those who are particularly committed to the protection of the Spree or other ecosystems. All persons who have a particular interest in being appointed to the main committee may appeal against the selection, citing the non-consideration of sentence 3.

3. The representatives are elected for a term of five years. They may be re-elected once. If a person leaves the committee prematurely, they will not be replaced. If more than a quarter of the elected representatives leave the committee prematurely during a term of office, new elections for the entire committee must be organized within six months.
4. The members of the main committee are entitled to appropriate compensation.

§ 7 Tasks of the main committee

1. The main committee represents the Spree ecosystem, taking into account the opinions of the expert committee and in consultation with the expert committee. In particular, it decides on the financing and implementation of appropriate measures to protect the Spree. The main committee is obliged to obtain opinions of the expert committee when developing measures to protect the Spree and to take these into account in its decisions.
2. Unless otherwise specified in the rules of procedure, the main committee shall take decisions by a majority of the valid votes cast.
3. The main committee is obliged to report regularly on its activities to the expert committee and the municipalities bordering the Spree. The reports shall be made available to the public in an appropriate form.
4. The main committee is responsible for financial management in accordance with the budget and the long-term strategy.
5. The main committee is obliged to document its activities, in particular decisions and expenditures, and to make them publicly available. The remaining organizational procedures shall be governed by the rules of procedure of the main committee.

§ 8 Composition of the expert committee

1. The expert committee consists of 15 representatives from the scientific community. The majority of the members are natural scientists. At least three members of the committee are qualified to hold judicial office.
2. The members of the expert committee are appointed by the state parliaments of Berlin, Brandenburg, and Saxony. The state of Berlin appoints seven representatives, and the states of Brandenburg and Saxony appoint four representatives each. The selection process shall take into account both their scientific abilities and their special commitment to the protection of the Spree or other ecosystems. All persons who have a special interest in being appointed to the expert committee may appeal against the selection, citing the non-consideration of sentence 3.
3. The representatives are elected for a term of five years. They may be re-elected once. If a person leaves the committee prematurely, the responsible state appoints a suitable successor.

4. The members of the expert committee are entitled to appropriate compensation.

§ 9 Tasks of the expert committee

1. The expert committee advises the main committee by issuing regular opinions. In particular, the expert committee comments on the condition of the Spree and the measures required, as well as the prospects of success of legal disputes on behalf of the Spree for which funding is being requested. The expert committee may also issue opinions without being commissioned to do so by the main committee.
2. Unless otherwise specified in the rules of procedure, the expert committee shall take decisions by a majority of the valid votes cast.
3. The expert committee may veto decisions of the main committee. A veto decision requires the approval of two-thirds of the members of the expert committee.

§ 10 Legal representation

1. The main committee is entitled to take legal action against any violation of the rights of the Spree arising from this law before the competent court.
2. Such a lawsuit will be filed on behalf of the Spree ecosystem. The main committee is entitled to reimbursement of all costs of the legal dispute, regardless of the outcome, in accordance with the budget.
3. Any natural or legal person is entitled to submit an application to the main committee to bring an action within the meaning of § 10 (1). The main committee is obliged to examine the merits of the action for the enforcement of the rights of the Spree and its financing options, taking into account the opinion of the expert committee, and to take an appropriate decision. The main committee shall inform the applicant of its decision and the reasons for it.
4. If the main committee rejects the application or significantly modifies the requested action, the applicant is entitled to submit another application within one month of notification of the decision. If the second application is rejected, the applicant is entitled to bring the requested action themselves on behalf of the Spree ecosystem before the competent court. If the subsequent lawsuit is won on behalf of the Spree, the applicant is entitled to reimbursement of all costs of the legal dispute.
5. Associations within the meaning of § 3 UmwRG are entitled, notwithstanding paragraphs 1–4, to challenge the violation of the Spree's rights under this law by bringing an action before the competent court. Before bringing an action, the associations must make serious efforts to assert the rights of the Spree by bringing an action through the main committee instead of through the association.
6. The main committee and the expert committee may each decide by a majority of the valid votes cast to report a possible violation of the rights of the Spree to the competent authority. The authority is obliged to process the report within four weeks and to inform the reporting committee of any measures taken or not taken. Section 10 (4) shall apply mutatis mutandis.
7. Associations within the meaning of § 3 Environmental Appeals Act may also report a possible violation of the rights of the Spree to the competent authority if they can credibly demonstrate that the committees have failed to do so. The authority is obliged to process the report within four weeks.

§ 11 Funding

The financial resources available to the committees for the fulfillment of their tasks shall consist of:

1. Usage fees agreed in contracts for the commercial use of the Spree,
2. Damages paid by those responsible for damaging the Spree ecosystem,
3. Contributions from one-time or recurring donations from natural and legal persons,
4. Annual payments from the Federal Fund for the Rights of Nature of the Federal Ministry for the Environment, Climate Protection, Nature Conservation, and Nuclear Safety.
5. Sufficient financial resources shall be made available to achieve the financing objective.

§ 12 Use of Funds

1. The main committee shall decide on the use of the funds by a majority of the valid votes cast.
2. Financial resources may be used for information campaigns, educational initiatives, and similar activities relating to the rights of the Spree. These may be proposed and implemented by the committees or by third parties.
3. Funds are also available for restoration measures.
4. Furthermore, funds may be used to enforce the rights of the Spree in legal disputes that are deemed appropriate to promote the purposes of this act.
5. The running costs of the committees shall be covered by the funds.
6. For projects under 1.-3., an application must be submitted to the main committee, stating the expected costs and itemizing individual items. In the case of 3., the main committee must obtain an opinion from the legal working group of the expert committee and refer to it in the decision. The expert opinion must include, in particular, an evaluation of the extent to which the proposed measures further the purposes of this act.
7. The main committee is obliged to approve all measures under 2.-4., in particular legal disputes under 4., within the limits of its financial and operational capabilities.

§ 13 Budget planning

At the beginning of each year, the main committee shall draw up a provisional budget. This shall be adopted by a two-thirds majority. In addition, a long-term strategic plan shall be drawn up by the main committee every five years. This shall be adopted by a two-thirds majority. The strategic plan shall include, in particular, a financing target.

§ 14 Participation in the preparation of programs of measures and management plans

1. The competent authorities are obliged to involve representatives of the main committee and the expert committee in the preparation, review, and updating of programs of measures (§ 82 Water Resources Act) and management plans (§ 83 Water Resources Act) relating to the Spree. The obligation to participate includes the regular involvement of representatives in the form of a dialogue to discuss all essential procedural steps.
2. In particular, the representatives of the main committee and the expert committee must be consulted as part of the public affected by environmental impact assessments for projects relating to the Spree in accordance with Annex 1 and Annex 5 of the Environmental Impact Assessment Act.

§ 15 Rights of the main committee and obligations of the water authorities

1. The rights of the Spree must be taken into account comprehensively in all actions taken by public authorities. In particular, the authorities may not carry out, approve, license, permit, or finance any public or private projects or activities that could disproportionately impair or violate the rights of the Spree and the provisions laid down in this act.
2. The realization of the ecological rights of the Spree is the foundation for the realization of the social and economic rights of third parties. In general, therefore, the ecological interests of the Spree must be given priority over the social and economic interests of third parties. However, this requires qualification and consideration of the severity of the impact in relation to the expected benefits, with public interests taking precedence over purely private interests. In addition, the following rules of consideration apply:
 - a) The cumulative effects of repeated or recurring interventions must be taken into account.
 - b) The implementation of the Paris Climate Agreement, the Convention on Biological Diversity, and European and national climate targets, as well as ecological and social impacts, must be taken into account insofar as they are relevant.
 - c) Encroachments on the central sphere of rights pursuant to § 2 are only permissible if there is an overriding public interest, provided that there are no reasonable alternatives and insofar and as long as they are accompanied by appropriate compensatory measures. It is the responsibility of the main committee to make this assessment, whereby the opinion of the expert committee must be obtained and taken into account.
3. Fees for the commercial use of the Spree by third parties shall be regulated uniformly in a list of fees drawn up by the main committee.
4. The water and environmental authorities shall inform the main committee of any possible violations of the rights of the Spree as soon as they become aware of them. At the request of the main committee, the competent authorities shall take appropriate measures to remedy the violations. They shall inform the main committee of the measures taken and the status of their implementation.
5. If the authorities fail to comply with the obligations set out in paragraphs 1 and 2, the main committee may bring an action before the competent administrative court.

§ 16 Environmental criminal law supplement for the implementation of Directive (EU) 2024/1203

1. The following shall be punishable by law:
 - a. the intentional and unlawful discharge, emission or introduction of a quantity of materials or substances, energy or ionizing radiation, into air, soil or water which causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;
 - b. the intentional and unlawful placing on the market, in breach of a prohibition or another requirement aimed at protecting the environment, of a product the use of which on a larger scale, namely the use of the product by several users, regardless of their number, results in the discharge, emission or introduction of a quantity of materials or

- substances, energy or ionizing radiation into air, soil or water and causes or is likely to cause the death of, or serious injury to, any person or substantial damage to the quality of air, soil or water, or substantial damage to an ecosystem, animals or plants;
- c. the deliberate and unlawful abstraction of surface water or groundwater within the meaning of Directive 2000/60/EC, where such conduct causes or is likely to cause substantial damage to the ecological status or ecological potential of surface water bodies or to the quantitative status of groundwater bodies;
 - d. the intentional and unlawful killing, destruction, taking of, possession, sale or offering for sale of a specimen or specimens of a species of wild fauna or flora;
 - e. any intentional and unlawful act that causes damage to a habitat within the Spree ecosystem or disturbs the animal or plant species living there, if the damage or disturbance is significant.
2. The acts listed above constitute a qualified criminal offense if
- a. the Spree, a habitat within the Spree ecosystem, or the air, soil, or water quality is destroyed, or
 - b. the Spree as a whole or in parts is irreversibly or permanently damaged over a large area and to a significant extent.

§ 17 Sanctions

1. The competent courts (in the case of criminal offenses) or authorities (in the case of administrative offenses) shall impose criminal and non-criminal sanctions on natural persons who have intentionally and unlawfully damaged the Spree, which may include the following:
 - a. The obligation
 - i. to restore the previous state of the environment within a specified period of time if the damage is reversible, taking into account the expert assessment of the expert committee and confirming the successful completion of the damage repair by the main committee, or
 - ii. to pay compensation for environmental damage if the perpetrators are unwilling or unable to remedy reversible damage or if the damage is irreversible;
 - b. Fines and penalties that are proportionate to the severity of the act and to the individual, financial, and other circumstances of the natural person concerned and, where appropriate, determined with due regard to the severity and duration of the environmental damage and the financial benefits derived from the offense;
 - c. Exclusion from access to public funding, including tendering procedures, grants, permits, and licenses;
 - d. Prohibition from holding a management position of the same type as that used for committing the offense within legal entities;
 - e. The withdrawal of authorizations and licenses for activities that led to the offense in question;
 - f. Temporary prohibition from standing for public office;
 - g. In individual cases, after consideration of the public interest, the full or partial publication of the court decision, which may include the offense committed and the penalties or measures imposed, but only in sufficiently justified exceptional cases may include the personal data of convicted persons.

2. A legal entity shall be held responsible for an offense under these provisions if an offense has been committed for the benefit of a legal entity by a person who, has acted either alone or as part of an organ of the legal entity concerned, and holds a leading position within that legal entity on the basis of
 - a. the power to represent the legal entity,
 - b. the power to take decisions on behalf of the legal entity, or
 - c. the power to exercise control within the legal entity.
3. Effective, proportionate, and dissuasive criminal or non-criminal sanctions or measures shall be imposed by the competent authorities on responsible legal entities, which may include:
 - a. The obligation to
 - i. Restore the environment to its previous state within a specified period of time if the damage is reversible, or
 - ii. Pay compensation for environmental damage if the damage is irreversible or the perpetrator is unable to restore the environment to its previous state;
 - b. Exclusion from subsidies or financial assistance;
 - c. Exclusion from access to public financing;
 - d. Temporary or permanent prohibition from engaging in business activities;
 - e. The withdrawal of permits and licenses for activities that led to the offense in question;
 - f. Placement under judicial supervision;
 - g. Court-ordered dissolution;
 - h. The closure of facilities used to commit the offense;
 - i. An obligation to establish due diligence systems to improve compliance with environmental standards;
 - j. The full or partial publication of the court decision on the offense committed and the sanctions or measures imposed, where there is a public interest, without prejudice to the rules on confidentiality and the protection of personal data.

Accompanying text

This draft law is a legal experiment. In Germany, nature as a whole, individual rivers, animals, or plants do not currently have any rights under the law. At the same time, however, nature in Germany, as in large parts of Europe, is in poor condition. The climate crisis, biodiversity crisis, and pollution crisis already have serious consequences: many species are endangered or threatened with extinction, there are fewer and fewer insects and birds of the field, trees are dying on a large scale in forests, and drought, pollutants, overuse, and invasive alien species are threatening ecosystem functions.

When we began working on this draft, we asked ourselves: What can the law contribute to improving the protection and long-term preservation of nature? We were inspired by examples from other countries where rights of nature have already been enshrined in law. Using the Spree as an example, we wanted to test and demonstrate how something like this could also work in Germany. We chose the Spree as our case study, but it could just as easily have been Lake Constance, the Wadden Sea, or the Zugspitze.

Attentive readers will notice that this draft leaves some questions unanswered, including some important ones. This is partly because the time frame for the project was limited. On the other hand, we also see this text explicitly as a thought-provoking exercise, and we want people to ask questions about it, form their own opinions, engage in controversial discussions, and further develop what we have presented here. This draft does not claim to be complete or perfect. It is just that – a draft. We hope that it will spark curiosity and inspire people to think further, with us and with others.

Preamble

Why a preamble? A preamble is an introductory statement at the beginning of a legal document, such as a constitution or an international treaty. Most German laws do not have a preamble. Instead, information on why a law was enacted and how certain provisions are to be interpreted can be found in the stated purpose of the law and in the accompanying explanatory notes. One exception is the Basic Law, the German constitution, which has a short preamble. European laws—the regulations and directives of the European Union—are preceded by so-called "recitals," which serve a similar function. We decided to preface this act with a preamble to clarify its intention. The preamble also provides space to outline the framework within which this law was created and is intended to operate.

The choice of words is important: the law recognizes the legal personhood of the Spree, it does not bestow it. This is to make it clear that we are trying to treat the Spree as an equal, not as "we humans, the crown of creation."

The first sentence shows, not only through its wording but also through its systematic position at the very beginning of this law, that the Spree is recognized as an independent and natural entity. The natural preservation and development of the Spree is for its own sake and for the benefit of its inhabitants and residents.

The second paragraph describes the significance of the Spree and the reasons for its protection. The ecosystem functions of the Spree are highlighted. It is not only a valuable and scarce resource for humans, but also essential for the species of animals, plants, fungi, and microorganisms that inhabit it and the adjacent land ecosystems. To date, human activities have brought the Spree into a poor state that has an impact on the entire ecosystem.

Against this background, the fourth paragraph sets out the objective of creating the conditions for better protection of the Spree. One focus is on regeneration, restoration, and long-term preservation in view of the poor general condition. Regeneration means giving the Spree the opportunity to reclaim to a better ecological state as far as possible. However, in view of the many negative effects of human activities in the past and present, this alone is not enough. Active restoration is therefore also necessary. This may include, for example, removing embankments or transverse structures and renaturalizing riverbanks and floodplains. The emphasis on balancing competing interests and uses makes it clear that the rights of the Spree are not to be absolute, but rather that the aim of the law is to create a fairer balance.

The preamble also aims to show that although this law only recognizes the legal personhood to the Spree ecosystem, it is our hope and vision that this will set a precedent and that more ecosystems could be recognized as legal persons in the future. The preamble therefore points out that the Spree ecosystem should not be viewed in isolation. It thrives on its interactions with other systems, and other systems thrive on their interactions with the Spree ecosystem. It should be obvious that the approach chosen here is not based solely on the dependence and integration of humans within the Spree ecosystem, but also takes into account the surrounding natural environment.

The last paragraph refers to existing obligations and legal protections. For example, the European Water Framework Directive (Directive 2000/60/EC), in particular its first recital, emphasizes *that "water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such."* The Habitats Directive (92/43/EEC), the Birds Directive (2009/147/EC) and the European Nature Restoration Law (2024/1991) are included because the Spree is a habitat for protected species such as water birds, fish, amphibians, mammals such as otters and beavers, insects, and aquatic plants. In the national legal system, particular reference is made to Article 20a of the Basic Law as a state objective. Section 1(1) of the Federal Nature Conservation Act also mentions the intrinsic value of nature: *"Nature and the landscape shall be protected in populated and unpopulated areas in accordance with the following paragraphs, on account of their intrinsic value and as the basis for human life and health, and also in responsibility for future generations, in such a way that..."*

The last sentence expressly emphasizes once again that this is intended to be a necessary addition to the existing legal system. The eco-centric focus of the law complements existing legislation and provides the Spree with better enforceable protection. In contrast to the Whanganui River, the Spree is not recognized as a *"living whole"* (cf. § 12 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017) and, based on this conviction, is granted its own rights. Rather, the mutual relationship between natural and human interests is emphasized.

Regarding § 1

§ 1 (1) recognizes the legal personhood of the Spree. This provision is necessary and forms the core of this law because (until now) under German law, legal personhood (i.e., the ability to have rights) has only been granted to natural persons, i.e., humans, and certain so-called legal entities, such as a corporations. We have decided to define the Spree as an ecological person and the ecological person as a form of legal entity. The term "ecological person" is intended to indicate that, in contrast to other legal entities, the function of the Spree as a person is not to participate in economic life or to unite people for a specific purpose. Rather, the Spree ecosystem includes not only humans but also the non-human inhabitants and residents of the Spree, as well as inanimate elements such as the riverbed and the water flowing in the river. The ecological person Spree has in common with other legal entities that natural persons act on its behalf in external relations. It cannot participate independently in legal transactions. The designation as an "ecological person" clarifies the purpose and reason for this law and the recognition of its legal personhood.

Section 1(2) defines the Spree ecosystem within its material, real boundaries. It also makes it clear that humans can be part of the ecosystem and the ecological person Spree, for example as residents.

Regarding § 2

§ 2(1) lists the specific rights of the Spree, which have been identified in a legal comparison with existing legislation on the rights of nature. The specific rights for the Spree were developed from a compilation of existing legal acts. Rights to existence, prosperity, development, care, and restoration, as well as corresponding obligations, have been recognized for entire ecosystems or even for the entire "Mother Earth" (as in Bolivia). In some legal systems, the ecosystem has been recognized as a living entity and, based on this conviction, has been granted its own rights (as in the case of the Whanganui River in New Zealand). The ecosystem approach was adopted for the rights of the Spree, as it is not possible to grant a separate legal status to the river alone. Rather, it is precisely the recognition as an ecosystem that should be emphasized. Such an ecosystem-based approach to water bodies can already be inferred from § 1(1) of the Water Resources Act. Furthermore, the basic functions of the Spree ecosystem are to be protected and, in particular, the relationship/interactions between humans and the Spree are to be regulated.

The term "in particular" in § 2(1) is intended to make it clear that the list is not exhaustive. Over time, it may become necessary for the Spree to have new rights. These rights are further elaborated and legally defined in § 3.

§ 2 (2) also sets out obligations for the Spree, which must be fulfilled by the bodies representing it. In principle, a legal or natural person does not need to fulfill corresponding obligations in order to have rights. Newborns, children, and young people, or people with certain health issues, for example, naturally have rights even though they cannot fulfill obligations to the same extent as healthy adults. The law therefore explicitly states that the realization of rights and the fulfillment of obligations are independent of each other. In principle, obligations other than those listed in the law would be conceivable, such as the obligation to pay for damage caused by flooding. However, we have deliberately decided against such an obligation because,

on the one hand, seasonal flooding is part of the natural dynamics of a river and damage often occurs because rivers have been built up and natural flood retention and drainage areas such as floodplains have been destroyed. On the other hand, the severity and frequency of flooding is increasingly being determined by anthropogenic climate change.

The **right to exist and develop naturally in § 2 (1) (a)** recognizes and protects the natural character and capacity for independent development of the Spree ecosystem. The Spree is no longer a passive object of human use, but is granted a right independently. This means that the Spree should, in principle, be left to follow its natural course. In this respect, a certain freedom from human intervention is recognized. Unlike rights to restoration or protection, no active human intervention or action is required, but rather, as a counterpoint, respectful abstention on the part of humans. In terms of the relationship with humans, this means that the Spree may not be completely destroyed or eliminated.

The right itself essentially only protects a minimum existence for the Spree and would not necessarily prevent it from continuing to flow heavily polluted or overexploited. For as long as the Spree continues to exist and develop naturally, human use, pollution, and exploitation remain possible.

The **right to protection in § 2 (1) (b)** recognizes the Spree's need for protection and, in this respect, requires active human action, both from state bodies such as the competent authorities that grant usage permits and from legal entities such as companies that use the water of the Spree and from private individuals such as people who pursue leisure activities on or by the Spree. A prerequisite for the substantive right to protection is behavior attributable to humans that is harmful or dangerous to the Spree ecosystem. This can then be restricted, stopped, and not approved.

The **right to preservation in § 2 (1) (c)**, like the right to protection, recognizes the Spree's need for protection and therefore requires active human action. Unlike the right to protection, however, there does not have to be any causal behavior attributable to humans. Rather, the right to preservation recognizes the need for protection even if there is no obvious human or non-human cause for the specific environmental damage or threat to the ecosystem, but also if this results from the multitude of different and interdependent uses or activities. In addition, ecosystemic interdependence is recognized and taken into account. This means that the measures to be taken may also be aimed at protecting species and habitats on land and in the water.

The **right to restoration in § 2 (1) (d)** presupposes that environmental damage has already occurred and that the action causing it has already been completed or can no longer be identified. In this case, unlike with the right to protection, it is not possible to link the right to restoration to a specific measure; rather, active measures that go beyond this may be necessary, such as ecological remediation measures, reintroduction of species, or active restoration. Restoration also requires an ecosystemic approach. If restoration of the ecosystem is no longer possible, this constitutes a violation of the right to existence and natural development.

The aim of restoration must be to return the Spree ecosystem to a good condition. Restoration thus goes beyond merely guaranteeing a minimum subsistence level.

The purpose of **the right to flourish under § 2 (1) (e)** is the further development of the Spree and goes beyond the right to existence and natural development. It also ties in with the condition after restoration of the ecosystem to a good status. With its

forward-looking orientation, it aims to preserve and promote existence and natural development (§ 2 (1) (a)) through human action in the best possible way. In contrast to the rights under § 2 (1) (b)-(d), there is therefore no requirement that a threat to the ecosystem or environmental damage to the Spree ecosystem exists or has already occurred. Rather, even if the ecosystem is in very good condition, preventive measures or actions should be taken to support the Spree as an ecosystem in its existence and natural development. The term "care" emphasizes the mutual caring and nurturing relationship between humans and the Spree and is intended to highlight coexistence. In addition to ecological measures, measures to promote social appreciation of the Spree and to preserve cultural diversity in the Spree catchment area are also to be undertaken.

The rights of the Spree are accompanied by the obligation to create suitable participation formats. These should invite all interested parties to engage in dialogue, become active, and support and complement the work of the committees. This gives citizens the opportunity to contribute what they believe is useful or necessary for the Spree to thrive.

Regarding § 3

§ 3 contains definitions that further specify the content of the law. In particular, this section also contains definitions of the rights of the Spree referred to in § 2.

It should also be noted that the definitions in § 3 are largely taken from the Water Framework Directive and the Nature Restoration Law, and that the system established therein, which classifies the quality and restoration needs of the Spree ecosystem, has been adopted.

Regarding § 4

§ 4 places particular importance on environmental education as a key instrument for shaping social transformation. The aim is to help ensure that the rights of the Spree referred to in § 2 are made more effective and safeguarded. In addition, environmental education relates to the entirety of the rights conferred on the Spree and therefore has overriding importance. The obligation to guarantee this is directed at the public sector with its educational institutions, but special extracurricular and university education programs are also to be enabled and promoted in a separate manner. By specifically promoting education about ecosystems and the Spree, the foundation is laid for coexistence with appreciation and the understanding that we humans are part of an ecosystem on whose functioning and preservation we depend.

Regarding § 5 – 10

The representative bodies shall ensure that the rights of the Spree are asserted effectively, participatively, and in accordance with current scientific standards.

The main committee has the key role of shaping the rights of the Spree in individual cases and enforcing them vis-à-vis authorities and third parties. The guiding principle for its composition is to anchor the concretization and enforcement of the rights of the Spree in society. In this way, a convergence of the common good and the rights of the Spree should be achieved within the committee itself. For this reason, the main committee is composed of four different groups of people who have a close connection to the Spree, for example due to a special interest in its preservation or the preservation of species dependent on it, an economic or other interest in its use, or due to other special dependencies (water supply, flood risk). The different interests in the preservation and use of the Spree are reflected in the groups of people. In order to take into account both the number of residents and the size of the affected section of the Spree while maintaining the main committee's ability to act, two Berlin districts may jointly appoint the same number of representatives as a county. This also allows established (administrative) structures to be used for appointments. If no appointment is made, persons with a special interest may bring an action for a new appointment in accordance with the legal requirements. Persons who appear to be at least as suitable as the appointed persons have a special interest in a new appointment and are therefore entitled to bring an action.

All activities of the main committee are guided by the rights of the Spree as set out in § 2. To this end, the main committee manages the Spree ecosystem with the help of the mechanisms specified in the draft law. This includes, in particular, decisions on the financing of appropriate measures to protect the Spree and legal disputes on behalf of the Spree. In order to ensure scientifically sound action in the best interests of the Spree, the main committee is supported by the expert committee.

The expert committee provides the scientific reasoning for the main committee's actions. Its opinions play a key role in the main committee's decisions, as it can be assumed that the scientific parameters for the condition and development of the Spree ecosystem and its parts represent the Spree's own "voice." As the scientific members of the expert committee are responsible for its content, they should demonstrate particular scientific excellence and merit in the protection of the Spree or similar ecosystems. The expert committee should also include scientists who can assess the social impact of the condition of the Spree and the main committee's exercise of its rights (sociologists, geographers, environmental scientists). Finally, the members of the committee with legal training should ensure that the findings and opinions of their colleagues are translated into the legal assessment of the prospects of success of a lawsuit or a request by the main committee for official action, or are taken into account in this assessment.

The interaction between the main committee and the expert committee combines extensive public participation with high-quality, scientifically sound, and efficient enforcement of the rights of the Spree.

The procedural peculiarity of the draft law is that the Spree ecosystem has its own rights, which can be enforced in court. The draft law opts for the main committee to assert these rights rather than all natural and legal persons. This has the advantage of ensuring that the content of the lawsuits is of high quality, that similar lawsuits can be coordinated or brought jointly, and that the proceedings can be conducted in a time- and cost-effective manner. This corresponds to the principle of expediting proceedings under procedural law. In addition, this prevents abuse of the right to bring legal action, for example to enforce private interests under the "guise" of the rights of the Spree. To ensure that the rights of the Spree are comprehensively protected and to enable and promote public participation, all natural and legal persons may submit an application

to the main committee to bring a legal action. To ensure that the rights of the Spree as defined in this law can be exercised even if the committee fails to act, § 10 (4) provides that natural and legal persons who have twice unsuccessfully applied to bring the same action may also bring an action on behalf of the Spree. If the action is successful, i.e., if the action brought by the ecological person Spree is upheld at least in part, the plaintiff is entitled to reimbursement of the costs of the entire legal dispute (paragraph 4). In addition, environmental associations recognized under § 3 Environmental Appeals Act also have the option of bringing an action, but must first attempt to have the main committee bring an action. This takes into account the fiduciary role of the main committee.

The actions are brought in accordance with the generally applicable provisions of the German Courts Constitution Act (Gerichtsverfassungsgesetz) and the rules of procedure (ZPO and VwGO; in the case of criminal offenses under § 16 and 17 of the draft law, also the Code of Criminal Procedure (StPO)). Concentrating the proceedings in one court (following the example of antitrust law) would have the advantage that this court could build up its own expertise in dealing with the rights of the Spree. However, opening up the possibility of legal action under general rules has the advantage of normalizing the legal status of the Spree in court. In addition, it affords the specialized courts the opportunity to shape the understanding of the rights of nature (in their specific areas).

Regarding § 11–13

The section on finances specifies permissible sources of financing, the use of financing, and the financing procedure.

In particular, § 11 stipulates that sufficient financial resources must always be available to protect the rights of the Spree. This is the only way to ensure that the mechanisms provided by the draft law for the protection of the Spree can be effectively used and implemented. The usage fees and compensation payments have a dual function: in addition to financing the active measures of the main body for the protection of the rights of the Spree, they are also intended to minimize the harmful use of the Spree.

Regarding § 11 (1): Usage fees must be specified in a corresponding list of fees. In principle, private individuals should continue to be able to use the Spree free of charge for non-harmful purposes. Leisure activities such as walking or swimming should therefore not be affected. Usage fees serve to compensate for commercial and, where applicable, harmful use of the Spree in such a way that the interests of the Spree are taken into account. For example, the extraction of water for commercial purposes and boat traffic, whether commercial or non-commercial, that pollutes the Spree should be subject to a fee.

Regarding § 11 (2): Compensation for damages is generally based on § 249 et seq. of the German Civil Code (BGB). Accordingly, the principle of restitution in kind applies. This means that the original condition must be restored through the payment of compensation. If restoration of the original condition is not possible, monetary compensation must be paid. In addition, there is a dynamic system of penalties that become payable in the event of repeat offenses and particularly serious damage that (1) destroys an ecosystem of considerable size or ecological value, a habitat within a protected area, or the quality of the air, soil, or water, or (2) causes irreversible or permanent damage over a large area.

Regarding § 11 (4): A fund pools a sum of money to be used for a specific purpose (in this case, to finance the measures taken on the basis of the proposed law). Such a fund does not yet exist and is assumed hypothetically for the implementation of the rights of nature in the Federal Republic of Germany. Alternatively, the financial requirements could be covered by levies of the municipalities bordering the Spree. However, this is not the first choice due to the higher administrative costs and the poorer financial situation of municipalities compared to the federal government.

§ 12 lists projects that can be financed to protect the rights of the Spree. The list is expressly not exhaustive. The main committee, in its role as the primary administrator of the rights of the Spree, decides on the approval and implementation of the projects. A special focus is placed on the financing of legal proceedings to protect the rights of the Spree. This reflects the assertion of rights on behalf of the Spree as a special feature of the draft law.

§ 13 standardizes the main committee's responsibility for financial decisions. In order to make the main committee's decisions transparent to the public and predictable for all interest groups, the main committee is required to draw up a budget and a long-term strategy plan and to make decisions and expenditures publicly available. This underscores the importance of public participation in environmental and climate protection. The financing target of the long-term strategy plan serves as a benchmark for the minimum financial resources to be made available.

Regarding § 14 and 15

§ 14 and 15 ensure that the rights of the Spree are integrated into the existing water and environmental regulatory regime and its institutional implementation. Particularly relevant is the obligation of the authorities, as stipulated in § 15 (1) and (2), to take the rights of the Spree into account comprehensively and to refrain from any measures that could impair or violate these rights. This obligation must be stipulated separately, as the rights of the Spree are not enshrined in constitutional law, at least not to this extent. The authorities are therefore not bound by this obligation in their actions for constitutional reasons alone (cf. Art. 1 (3) of the Basic Law). A constitutional obligation on the authorities to respect the rights of the Spree could arise from Art. 20a (1) of the Basic Law. However, this is at least so unclear or controversial that its separate codification appears necessary.

In recognition of the fact that the Spree is subject to external (e.g., with other management objectives under the Water Resources Act) and internal (e.g., with other natural entities) conflicts of interest, the general principles set out in § 15 (2) help to resolve conflicts of interest in the best possible way. As the competent authorities continue to issue permits for the use of the Spree, they can use the principles for balancing interests contained in § 15 (2) as a guide. This ensures that the rights of the Spree are given appropriate consideration by determining in advance which points are important for the rights of the Spree and how these can be taken into account in the balancing decision. This approach is based on § 6 of the Water Resources Act, which standardizes so-called management guidelines. These guidelines are intended for the competent authorities, which must take into account the key points for exercising their discretion in their decisions. In the event of a violation, this constitutes a mandatory ground for refusal. Unlike in § 6 (1) of the Water Resources Act, however, the overriding guideline is not the sustainability requirement, but rather, in accordance with § 2 (1) (a), the right of the Spree to exist and develop naturally.

The principle enshrined in § 15 (2) represents a moral decision in favor of the rights of the Spree. The realization of its ecological rights is therefore the basis for enabling

third parties to use it to realize their social or economic rights. This is intended, for example, to avoid decisions that are made exclusively in favor of economic interests. This is because, regardless of how strong the economic interest may be, it is bound to the preservation of the ecological interests of the Spree and cannot simply "outweigh" them and thus completely override them.

§ 15 (2) (b) refers to relevant legislation in the field of climate protection. This must be taken into account when making decisions. The relevant sources here are the Paris Climate Agreement and the Convention on Biological Diversity under international law, and the climate targets enshrined in legislation at European and national level. The Paris Climate Agreement of 2015 aims to limit global warming to 1.5°C, ideally, but in any case to below 2°C compared to pre-industrial levels. The Convention on Biological Diversity serves to protect nature and the natural foundations of human life. Germany is a signatory of both agreements. The German climate targets – contained in the Federal Climate Protection Act – envisage a 65 % reduction in greenhouse gas emissions by 2030 compared to 1990, 88 % by 2040, and greenhouse gas neutrality by 2045. The European Climate Law stipulates a 55 % reduction in emissions by 2030 compared to 1990 levels. In addition, the EU is to become climate neutral by 2050. All these targets require detailed, step-by-step implementation in order to be achieved. This law is intended to contribute to this. To ensure this, the above-mentioned legal requirements must be taken into account when making decisions on the rights/use of the Spree.

In addition, a holistic approach that also takes social impacts into account should be pursued. This is the only way to ensure that the interests of the Spree are taken into account as comprehensively as possible. To this end, more far-reaching targets than the usual pollution thresholds, in particular those that measure biodiversity, soil fertility, regenerative capacity, the common good, and similar ecological and social values, should be included. In particular, the expertise of the expert committee should be drawn upon.

Regarding § 16 and 17

§ 16 and 17 refer to Directive (EU) 2024/1203, the new EU Directive on environmental crimes, which entered into force on May 20, 2024, but has not yet been implemented by the Federal Republic of Germany. § 16 and 17 summarize the most important provisions of the Directive with regard to watercourses. Once the Directive has been effectively implemented, § 16 and 17 will become superfluous, but until then, these sections shall remain in force.

Glossary

Anthropogenic: Caused by humans.

Floodplain: The low-lying land along the banks of a river or stream that is influenced by its natural dynamics (seasonal high and low water levels). Floodplains are directly connected to the river and its catchment area and, due to the alternation of flooding and drying out, provide very diverse and dynamic habitats for animals and plants. Forests in floodplains are called riparian forests. Many floodplain landscapes in Central Europe have been destroyed or severely damaged in recent centuries or decades because humans have interfered with the natural dynamics of rivers (for example, through dams or canalization) and floodplains have been structurally altered or sealed. In many places, the riparian forest has been cleared. As a result, floodplains are often no longer able to fulfill their functions as habitats and water retention areas (flood protection).

Biodiversity Convention = Convention on Biological Diversity: An international treaty adopted in 1992 on the protection of nature and biological diversity around the world. Today, the agreement has 196 parties, with almost all countries in the world (with the notable exception of the USA) as members. The three main objectives of the agreement are the conservation of biological diversity, the sustainable use of its components, and the fair sharing of the benefits arising from the use of genetic resources.

Catchment area: The area from which a water system, such as a river, draws its water. Depending on the size of the water system, catchment areas can be very large. The catchment area of the Spree is approximately 10,000 km².

Riverbed: The part of a river that delimits the flowing water at mean water level (i.e., neither high nor low water) downwards and to the sides. The lower part is also called the sole.

River system: A main river and its tributaries.

Common good: That which benefits and is useful to many people in a community or state.

Good, very good, poor status: According to the Water Framework Directive, surface water (e.g., a river) has reached good status if it is at least in good ecological and chemical condition. The status is determined on the basis of certain legally defined quality criteria. In addition to "good," the Water Framework Directive also recognizes "very good" and "moderate" (i.e., not so good) status for water bodies. In common parlance, however, one would rather say that a water body is in bad or poor condition. The status of many water bodies in Germany is not good today. They have often been structurally altered by humans, the water quality has been deteriorated by pollutant inputs, and many animals and plants that once lived there are no longer found in our rivers and lakes.

Legal entity: An association of persons, an organization, or a body of assets that has attained legal personhood as a whole, i.e., has rights and obligations. In Germany, a distinction is made between legal entities under private law (e.g., registered associations, corporations, or cooperatives) and legal entities under public law (e.g., municipalities or public television stations). According to Article 19, paragraph 3 of the German Constitution, fundamental rights also apply to domestic legal entities insofar as they are applicable to them by their nature.

Natural person: Under German law, only humans are natural persons. As such, they are bearers of rights and obligations.

Legal personhood: The ability to be the bearer of rights and obligations. According to § 1 of the German Civil Code (BGB), legal personhood begins at birth. However, certain rights already belong to unborn children; for example, they are already capable of inheriting according to § 1923 (2) BGB.

Regeneration: In ecology, the ability of an ecosystem to reverse a change caused by a disturbance (e.g., a natural disaster or human intervention) and return to its previous state.

Directive 2000/60/EC = Water Framework Directive: An EU law that regulates the protection of water bodies. Because it is a directive, its provisions do not apply directly in the individual member states, but had to be and must continue to be implemented by them in their national law. In Germany, this is mainly done through the Water Resources Act (WHG).

Directive 92/43/EEC = Habitats Directive: A European law in the form of a directive whose aim is to protect and preserve certain typical species and habitats within the EU. The member states have also designated special areas for these species, which together with the bird sanctuaries form Natura 2000, the European network of protected areas.

Directive 2009/147/EC = Birds Directive: A European law in the form of a directive whose aim is to protect and conserve all wild bird species in the EU. To this end, the member states have also designated special bird protection areas, which are now part of the Natura 2000 network and are subject to special protection.

Environmental information: Information about the state of the environment or individual environmental systems (e.g., air, water, landscape); according to the definition in § 2 (3) of the Environmental Information Act, this also includes data on factors, measures, and activities that affect the environment.

Regulation (EU) 2024/1991 = Nature Restoration Law: A European law that aims to contribute to the long-term and sustainable recovery of land and marine ecosystems in the EU and to the achievement of the EU's climate goals. As a regulation, it is directly applicable in all EU member states, which must take appropriate measures to achieve the goals.

Restoration: The process of actively or passively supporting the recovery of an ecosystem to improve its structure and functions with the aim of maintaining or improving the biological diversity and resilience of ecosystems.