



Rewilding in Germany

Obligations and Liability to Neighbouring Landowners

*Headquarters of Rewilding Oder-Delta in Rothenklempenow, Vorpommern-Greifswald, Mecklenburg-Western Pomerania
Florian Möllers / Rewilding Europe*

Core topics

- General obligations of landowners towards their neighbours
- How nuisance may limit the use of private property
- Liability for nuisance and damage to neighbouring landowners caused by rewilding
- Right of way of necessity over neighbouring land

Key takeaways

- 1 Landowners must avoid causing harm or disturbance to neighbouring properties. This includes protecting both the land itself and the neighbour's use and enjoyment of it.
- 2 Damage or disruption may lead to compensation. If a rewilding project causes harm to a neighbouring property, there may be a legal obligation to pay for that damage.
- 3 Legal requirements vary locally. Before starting a project, it is important to understand the relevant rules: these are usually published by municipalities or Federal States and may be supported by official guidance.
- 4 Risk assessments are strongly recommended. These help identify potential issues (such as noise, water run-off, or wildlife movement) and reduce the likelihood of conflict with neighbours.
- 5 Insurance can help manage liability. Where possible, having comprehensive coverage can protect both the practitioner and those working with them from unexpected claims.

Table of Contents

1. General considerations regarding neighbour relations.....	2
2. What constitutes nuisance and damage? ..	3
3. Can a landowner be liable for hazards occurring naturally which cause damage to neighbouring landowners?.....	4
4. What potential hazards can arise from rewilding activities?.....	5
4.1 Liability for nuisances, particularly smells, smoke, or noise	5
4.2 Encroachment by trees, roots, and shrubs	6
4.3 Excavations.....	8
4.4 Flooding.....	9
5. Blocking access to neighbouring property	10

1. General considerations regarding neighbour relations

The general principle under German law is that landowner may use their property as they see fit, provided they do not infringe upon legal restrictions or third-party rights.¹ These restrictions are often designed to prevent conflicts between neighbouring properties. For example, landowners have a duty to regularly inspect trees for stability and health to prevent them from falling onto neighbour's property or harming passersby. Additionally, minimum planting distances must be maintained from property boundaries to safeguard a neighbour's access to light, air, and views.

Neighbour relations in Germany are governed by the neighbour laws of the Federal States and the Federal Civil Code (*Bürgerliches Gesetzbuch*, "BGB"). These laws are not necessarily binding if neighbouring parties mutually agree to deviate from them.²

For instance, whilst a neighbour law may stipulate a minimum distance for tree planting, two landowners may agree to plant trees closer to the boundary on the condition that the planting neighbour undertakes regular pruning and leaf removal. Such agreements should be documented in writing, rather than made informally.

If conflicts arise, they may still be resolved amicably between neighbours. However, some disputes may escalate beyond mere nuisance and result in property damage or personal injury. In these cases, legal claims may arise under the law of nuisance (see section 2) or civil liability. If a landowner causes damage to a neighbour's property through negligence or other wrongful conduct, they may be held liable and required to compensate for damage. For more details on

damage and in what type of situation liability is likely to arise. It also outlines specific sources of nuisance and damage as well as key considerations for practitioners implementing rewilding projects.

Example 1

Landowner A removes a fence that belongs to a neighbouring property, without the neighbour's consent.

As a result, Landowner A may be responsible for covering the cost of rebuilding the fence and for any additional damage that occurs – for example, if animals escape and need to be recovered. If the neighbour pays for the repairs themselves, they may later request reimbursement from Landowner A base on general liability principles. See *Rewilding in Germany: Third Party Liability*.

Example 2

Landowner B builds a wildlife hide and, during construction, stores building materials overnight on a neighbouring property without permission.

This kind of use is not allowed without the neighbour's consent. The neighbour has the right to demand immediate removal of the materials. If Landowner B does not comply, the neighbour may remove the materials themselves and claim back the costs from Landowner B

2. What constitutes nuisance and damage?

Nuisance refers to a negative impact on a third party that causes an unreasonable burden or disturbance, even if no physical damage occurs. Damage, on the other hand, involves harm to a legally protected interest (e.g. property damage) and is typically compensable under civil law (particularly tort law).

To illustrate the difference:

- Nuisance: noise from animals inhabiting an artificial lake may be considered a nuisance.
- Damage: animals destroying crops would constitute damage.
- Nuisance: unpleasant odours from compost heaps may qualify as nuisance.
- Damage: an infestation of rats drawn to compost heaps, causing harm to a neighbour property would be classified as damage.
- Nuisance: shadows caused by trees on a neighbouring property could fall into the category of nuisance.

German law considers various legal frameworks, including the BGB³, neighbour law of the Federal

States (*Nachbarrecht*)⁴, nature conservation laws, and local regulations⁵. In addition, case law may influence the interpretation of these provisions.

Although generally less severe than damage, nuisance can still trigger liability and compensation claims.

The legal framework on nuisance is complex, and it is recommended that practitioners seek legal advice, if necessary. However, there are some takeaways:

- Nuisance typically arises when an activity on one property interferes with a neighbour's right to enjoy their own land, even without causing physical damage.
- The interference may be physical (e.g. falling leaves, dust) or non-physical (e.g. noise, odours, shadows). Both cases may lead to claims from affected neighbours.
- If the nuisance is significant, the affected neighbour may request its cessation. Significance is assessed based on technical rules or ordinances, the character of the surrounding area and the nature of the affected property.

- The more a rewilding project blends into its surroundings, the lower the risk of a significant nuisance finding.

Over time, ecological restoration and rewilding may influence the assessment of nuisance claims. For example, whilst neighbours once had valid claims to remove fallen leaves, modern perspectives increasingly view such impacts as minor and tolerable unless they pose a safety risk.

Practitioners should be aware that claims can be raised by any affected party, including tenants, not just property owners. Also, nuisance claims are not limited to immediately adjacent properties; they may also arise from more distant properties negatively affected by the relevant actions or omissions.

Considering the definitions above, this note uses "hazards" as any negative impact, encompassing both nuisance and damage.

3. Can a landowner be liable for hazards occurring naturally which cause damage to neighbouring landowners?

The rule is that there is no liability for naturally occurring hazards. For example, strong winds may cause a healthy tree to fall onto a neighbour's property, breaking a window. In such cases, the landowner is not generally liable. However, liability may arise when hazards result from human activity.

Claims may be brought if human action or omission contributed to the hazard. In practice, those who create a hazardous situation are required to take precautions to prevent harm to others (*Verkehrssicherungspflicht*).⁶ For instance, if landowners fail to fulfil their duty to prevent hazards to third-party property or health, they may be liable. Whilst leaving dead trees on land may support ecosystem health, landowners must ensure that such trees do not pose a danger to others. If a dead tree is near a public path or neighbouring property and falls during a storm, the landowner may be liable for resulting damage if they failed to take appropriate preventive measures, such as removing or securing the trees.

Example 3

As part of a rewilding project, Landowner C stops clearing vegetation, and over time, dry bush builds up on the land. A wildfire breaks out in the dry material and spreads to neighbouring properties, destroying crops and other assets.

In this case, Landowner C may be held liable for the damage, based on general rules of liability. Neighbours affected by the fire could seek compensation for their losses.

However, if Landowner C has taken all reasonable precautions, such as managing fire risk, and the fire still spread due to natural causes beyond their control, Landowner C would likely not be held. In such cases, the damage is seen as the result of external natural forces rather than Landowner C's actions or failure to act.

Example 4

Landowner D plants a tree at the legally required distance from the boundary with a neighbouring property. Over time, pests settle on the tree and eventually spread to the neighbour's land, causing damage to plants and trees.

Because Landowner D followed all the relevant planting regulations, they are unlikely to be held liable for the pest damage. In this situation, responsibility for the harm is not likely to fall on Landowner D.



4. What potential hazards can arise from rewilding activities?

Rewilding involves certain activities that may have a negative impact on neighbouring properties. It is essential for practitioners to be aware of these risks, as well as how to mitigate them and manage situations when nuisance or damage occurs. Practitioners should recognise that general civil liability rules may apply, and further information can be found in *Rewilding in Germany: Third Party Liability*.⁷

The following subsections address specific scenarios commonly encountered in rewilding projects. If necessary, practitioners should seek legal advice.

4.1 Liability for nuisances, particularly smells, smoke, or noise

The legal framework on nuisances establishes a system to determine which nuisances must be tolerated and which may require compensation, ensuring that each landowner's right to enjoy their property is respected.⁸

Thus, a landowner who is adversely affected by a nuisance may request its removal or even seek to prevent its constitution.⁹ However, if the impact is not significant, the affected neighbour may be required to tolerate it, as it would not be considered to materially affect their right to enjoy their property.

In certain cases, neighbours may be required to tolerate a nuisance, even if it significantly impacts them, if such tolerance is customary for the area and reasonable economic mitigation measures are not available. In these circumstances, whilst the nuisance must be tolerated, the affected neighbour may claim compensation.

Additionally, if mitigation measures are legally prohibited, there is no obligation to implement them. For example, it is not permissible to remove a protected species or to destroy its habitat to prevent a nuisance.¹⁰ Practitioners should be aware that when nuisances are to be tolerated, even when their impact is substantial, any compensation claims will be directed to the State, rather than the landowner.

Practitioners should take measures to prevent animals from escaping. For example, if a large animal (such as a cow or horse) owned or cared for by the practitioner strays onto neighbouring land without permission, the neighbour can take action to remove the animal, even if it does not cause any disturbance or if such escapes are customary in the area.¹¹ For more information, see *Rewilding in Germany: Liability for Damage Caused by Animals*.

Example 5

Landowner E creates an artificial lake. Over time, frogs and ducks settle there. Nearby residents complain that the noise from the animals is disturbing their sleep and harming their wellbeing, and they argue that Landowner E is responsible.

The first step is to assess whether the noise qualifies as a significant disturbance. This depends on local noise regulations, which may vary depending on whether the area is rural or residential.

If the noise is *not* considered significant, Landowner E is generally not required to take any action and may keep the lake.

If the noise is significant, the next question is whether it is something that is *typically tolerated* in that location. In rural or remote areas, some level of natural noise is usually accepted, and the lake may still be allowed.

However, if the lake is in a residential area and the noise exceeds permitted levels, Landowner E

may be required to take steps to reduce the impact, possibly including relocating the animals or draining the lake. This holds true even if Landowner E were unaware that frogs and ducks could settle there.¹²

If the frogs or ducks are protected species under conservation law, Landowner E cannot remove them or destroy their habitat. In that case, the neighbour may request a special permit from the relevant authority. If the permit is refused, the lake and its inhabitants stay, and the neighbour must tolerate the noise.

This example is particularly illustrative and relevant in the context of rewilding. It shows that it is not only the deliberate release of animal species that may lead to nuisance claims. The restoration of habitats, which subsequently attract certain animal species, whether intended or not, can also result in liability for nuisance. However, nature conservation law often prevents the destruction of these restored habitats or the removal of the colonising species.

If necessary, other measures may need to be taken to prevent interference with a neighbour's property. Where no feasible measures can be implemented, compensation may be considered. However, case law to date generally rejects compensation claims against the landowner, at least in cases where disturbance aligns with nature conservation

objectives. This remains a heavily debated topic in legal jurisprudence.

To mitigate risks, it is advisable to reach agreements with neighbouring landowners regarding the potential for disturbance before undertaking any rewilding activities.

4.2 Encroachment by trees, roots, and shrubs

Disputes between neighbours often arise in relation to trees or shrubs planted near the boundary of a neighbouring property, especially when these plants cause nuisance or damage.

Below are some examples illustrating how liability for nuisance or damage may arise and how to address it. However, it is advisable for practitioners to seek both technical and legal advice concerning the specific works they plan to undertake, particularly those that carry higher risks, such as excavations.

Can a neighbour request that trees or shrubs be pruned or removed, even if they do not encroach upon or damage their property?

Neighbour laws of most federal states stipulate minimum distances that must be observed when planting trees or shrubs near the boundary of a neighbouring property.¹³

For rewilding practitioners, it is important to note that these provisions typically apply to self-seeded

plants – those that have grown without human intervention. This is important in rewilding efforts, as allowing land to return to natural processes and encouraging natural plant growth does not absolve the obligation to maintain the required distances.

The purpose of these defined distances is to prevent excess shading, ensure the preservation of fresh air corridors, and avoid damage to neighbouring properties. If these distances are not observed, a neighbour may request the pruning or removal of the plants under neighbour law even, if the branches or roots do not directly cause damage. Generally, claims are barred if several years have passed without the neighbour making such a request.¹⁴

Example 6

Landowner F has planted trees and shrubs on their property, some of which are near the boundary with a neighbour. Over time, a few additional trees and shrubs have naturally grown close to the boundary as well. The neighbour complains that the plants are causing too much shade and should be removed.

Whether Landowner F needs to take action depends on the height and distance of the trees and shrubs, according to the neighbour law of the relevant Federal State.

If the trees or shrubs are too close to the boundary, Landowner F must trim them back to meet the required distance.

If pruning isn't enough to meet the legal distance, removal may be required.

Pruning is typically only permitted between 1 October and 29 February, to protect nesting wildlife and follow environmental rules.

However, if the trees and shrubs are located far enough from the boundary to comply with the legal minimum, even if they cast shade, Landowner F is not required to take any further action.

May a neighbour request action if the required distances are respected but branches or roots extend into their property?

In addition to the general provisions of the BGB on liability, nuisance, and neighbourly relations, practitioners may also face claims under specific provisions of the neighbour laws of the federal states.¹⁵

If roots or branches extend into a neighbour's property and cause a nuisance, practitioners may be required to remove or cut them back, even if no damage has been caused. If the practitioner fails to take action, the neighbour may do so themselves, although in case of branches, this is only permitted

after the neighbour has set a deadline for the practitioner to cut them back.¹⁶ The practitioner would then be liable to reimburse the neighbour for any costs incurred.

Where trees or bushes are protected under nature conservation laws, the neighbour's options are limited, as the protected status takes precedence over the impact suffered by the neighbour.¹⁷ However, practitioners should be aware that a neighbour may apply to the relevant authority for an exemption from the prohibition on removing a protected plant.¹⁸ It should also be noted that such exemptions are not always granted.

Can a practitioner be held liable if trees and shrubs cause damage?

If the negative impact results in actual damage, the general civil liability rules under the BGB apply. If intrusive roots cause damage to a neighbour's property – such as to the foundations of a building or water pipes – the practitioner must remove the roots and restore the damaged property to its original state. Alternatively, the practitioner must bear the costs for such repairs.

For more information, please see *Rewilding in Germany: Third Party Liability*.



Example 7

A tree on Landowner G's property falls and damages a wall and several fruit trees on neighbouring land. The neighbour had planned to sell the fruit at a local market.

Landowner G may be liable for the damage if it turns out that the tree was unhealthy and had not been properly inspected. Landowners have a duty to regularly check the condition of their trees and take action if they pose a risk.

If Landowner G failed to carry out such inspections, they may have to compensate the neighbour, including for the lost profits from the damaged fruit trees. This is one of the reasons why having third-party liability insurance is strongly recommended.

However, if the tree falls due to an unavoidable natural event (like a severe storm), Landowner G is unlikely to be held liable. For more information, see *Rewilding in Germany: Third Party Liability*.

Example 8

The roots of a tree on Landowner H's property grow into neighbouring land and damage a wall.

In this case, Landowner H is responsible for either repairing the wall or compensating the neighbour for the cost of the damage.

4.3 Excavations

As a rule, landowners must not undertake actions that compromise the stability of a neighbouring property.¹⁹ Such actions include excavation, demolition of foundations, or lowering of the groundwater level.

Before carrying out any such works, the landowner must assess whether it could compromise the stability of the neighbouring property's ground. This duty can be discharged by carefully selecting and commissioning qualified experts, such as architects or engineers, with the necessary expertise to evaluate the risks and by implementing the measures they recommend.

If a landowner's actions result in a loss of stability on the neighbouring property, the neighbour may:

- Demand that the destabilising actions cease;
- Request the restoration of the property to its original condition; or
- Require measures to be taken to ensure sufficient stability of the affected property.²⁰

These claims must be made directly to the landowner. If the landowner refuses to comply, the neighbour may seek legal recourse by filing a claim with the competent court.²¹

Example 9

Landowner I begins a rewilding project on a property with old buildings. To make space for planting trees, Landowner I demolishes a structure and excavates its foundations. This causes the neighbouring property to shift, damaging a building and making it unusable. The neighbour claims that Landowner I did not take the proper precautions and demands compensation.

If Landowner I carried out the work despite expert advice that subsidence could cause damage, they may be required to pay for the neighbour's losses. In this situation, Landowner I should have avoided the work or taken steps to protect the neighbouring property's stability.

In rare cases, the neighbour may be expected to tolerate some level of subsidence, depending on how the properties relate to each other, but even then, they may still be entitled to compensation for the damage caused.

If there is no fault or negligence on Landowner I's part, there may be no legal claim for damages.

Whilst damages claim aims to restore the original condition – including the recovery of lost profits – a compensation claim seeks to redress the disadvantages suffered.

4.4 Flooding

Landowners must not increase the discharge of water—whether from springs or rain – onto a neighbouring property outside of a natural watercourse. Similarly, they must not obstruct the natural flow of such water onto neighbouring land.

For example, a landowner may not build a dam to prevent rainwater from entering their property if this would negatively impact a neighbour living at a higher elevation. Likewise, they must not interfere with the natural drainage of water flowing from their land onto the property of a neighbour living at a lower elevation to that neighbour's detriment.

If a landowner fails to comply with this obligation and increases the discharge of water onto a neighbouring property, the affected neighbour may file a court claim to compel the landowner to cease the actions causing the flooding. Where necessary, the neighbour may also seek restoration of the original condition and claim damages under general civil law rules.

Therefore, when changing the use of their land – such as converting arable farmland into forest – landowners must take appropriate measures to

prevent an increased water flow onto neighbouring property.²² It is strongly recommended that practitioners seek relevant technical and legal advice before undertaking any work related to water management.

Example 10

Landowner J buys a piece of land and begins a reforestation project. As part of the work, Landowner J blocks drainage ditches that had previously directed rainwater from the area. The following year, heavy rains lead to flooding and damage on a neighbouring, lower-lying property. The neighbour claims that the blocked ditches changed the natural flow of water and requests both the removal of the blockage and compensation for damage.

If Landowner J could have carried out the work in a way that reduced the risk to the neighbour, they may be required to remove the obstruction and take alternative measures.

Even if the rainfall was unusually heavy, Landowner J may still be liable if their actions contributed to the damage

On the other hand, if the flooding was entirely due to natural causes, or if blocking the ditches was absolutely necessary for the reforestation project, Landowner J is unlikely to be held liable.

In such cases, the affected neighbour may still have the right to enter Landowner J's land to carry out necessary repairs or drainage work.

5. Blocking access to neighbouring property

Under German law, a landowner whose property cannot be properly used due to a lack of connection to a public path or an established right of way may be entitled to a right of way of necessity (*Notwegerecht*).²³

This legal right allows the affected landowner to require a neighbour to tolerate access over their property in exchange for appropriate compensation.

Example 11

Landowner K owns land that borders a public road and builds a fence to allow wild horses to graze safely. A neighbouring property sits behind this land and has no direct access to the road. The neighbour asks Landowner K for access. Whilst Landowner K is open to allowing a footpath, they refuse vehicle access, concerned about disturbing the horses.

Under the right of way of necessity (*Notwegerecht*), a neighbour without road access may be entitled to cross adjacent land, and this usually includes the right to use vehicles. Landowner K, therefore, cannot refuse such road access.

In return, the neighbour must pay Landowner K a fee (an annuity) as compensation for the access. The amount is based on any loss in property value or disturbance caused by granting this right.

To avoid future disputes, both parties are advised to put the terms of the access and the annuity in

a written agreement. The neighbour can also request that the access right be formally recorded as an easement in the Land Registry.

See *Rewilding in Germany: Legal Mechanisms for Securing and Protecting Wild Land* for more information on easements and other property law mechanisms to access land.

See *Rewilding in Germany: Legal Mechanisms for Securing and Protecting Wild Land* for more information on easements and other property law mechanisms to access land.

End Notes:

1. Please see sec. 903 BGB, the German Civil Code (*Bürgerliches Gesetzbuch*).
2. Please see, for example, sec. 1 of the Neighbour law of Rhineland-Palatinate (Nachbarrechtsgesetz Rheinland-Pfalz) which sets forth that the provisions of the neighbourhood law shall only apply if the relevant parties do not agree otherwise; similarly, see sec. 2 para 1 of the Neighbour law of Saxony-Anhalt (Nachbarschaftsgesetz Sachsen-Anhalt). In addition, unless the provisions of the Federal Civil Code are mandatory, which is rare, parties may always come to an agreement which deviates from the statutory rules.
3. The relevant provisions are sec. 906 et seq. BGB which set forth the rules relevant for the relationship between neighbours. Note in particular sec. 1004 BGB as it is the general nuisance provision.
4. Most federal states have enacted neighbour laws which set forth very specific rules in relation to distances to be observed when planting trees etc., access to neighbouring properties etc. Federal States in the north of Germany such as Hamburg, Bremen and Mecklenburg-Pomerania have not enacted neighbour laws. Therefore, it is recommended to check which provisions exist prior to starting a rewilding project.
5. Such local laws may for example be statutes or ordinances enacted by the relevant municipality setting forth requirements for fencing, planting of trees etc.
6. BGH, judgement as of 4 December 2001, VI ZR 447/00.
7. As regards liability for damage please see *Rewilding in Germany: Third Party Liability*.
8. The relevant legal provision is section 906 BGB which sets forth that owners must tolerate insignificant impact on their property. In case of significant impact which is customary and cannot be mitigated by proportionate means, the owner must tolerate the impact but can claim compensation.
9. According to sec. 1004 BGB.
10. These actions are forbidden by the law on the protection of Nature.
11. It is necessary to clarify that this rule applies to animals of a certain size, such as cats or larger animals, such as cows or horses. In contrast, sec. 906 BGB treats insects in the same category as smell, noise, or smoke. This means that, if there is a customary norm to tolerate their presence, their presence needs to be tolerated. However, there are grey areas, e.g. birds, which are treated neither as "large" animals nor as insects. A case-by-case analysis may be warranted.
12. Please see BGH NJW 1999, 2896 et seq. See also BGH, 20.11.1992, V ZR 82/91, which is the German "Frog pond case". There, the BGH cites the rule that one is considered a disturber if the interference is at least indirectly attributable to the will of the owner. This is to be assumed in this case. With the construction of the artificial lake based on their free will, Landowner E has created the conditions for frogs to settle there and cause the noise disturbance.
13. Under section 34 Nachbarschaftsgesetz Sachsen-Anhalt the following distances must be complied with for trees and shrubs:
 - up to a height of 1.5m: 0.5m;
 - up to a height of 3m: 1m;
 - up to a height of 5m: 1.25m;
 - up to a height of 15m: 3m; and
 - up to a height of 15 m: 6 m.Similar provisions exist for forests etc. Similar provisions also exist in other neighbour laws, e.g. sec. 40 et seq. Nachbarrechtsgesetz Nordrhein-Westfalen, sec. 44 et seq. Nachbarrechtsgesetz Rheinland-Pfalz, sec. 38 et seq. Hessisches Nachbarrechtsgesetz and sec. 12 et seq. Nachbarrechtsgesetz Baden-Württemberg. As regards Mecklenburg-Vorpommern, no special rules for distances to borders have been enacted.
14. Please see article 52 AGBGB for Bavaria and section 40 Nachbarschaftsgesetz Sachsen-Anhalt, both of which provide for a time limit of five years; however, in other Federal States other time limits apply e.g. under sec. 47 Nachbarschaftsgesetz Nordrhein-Westfalen which, such claims if no court claim has been filed within six years after the tree has been planted; according to sec. 43 Hessisches Nachbarrechtsgesetz the time limit is the end of the third calendar year since the tree was planted.

15. See, for example, sec. 51 Thüringer Nachbarrechtsgesetz (ThürNRG) in relation to cutting of trees and shrubs, sec. 17 para 2 Hessisches Nachbarrechtsgesetz (NRG) in relation to costs for fences, and sec. 43 in relation to cutting of trees and shrubs; similar provisions exist in most federal states, please refer to endnote 4.
16. See sec. 910 BGB.
17. In such a case the neighbour may, however, have compensation claims against the Federal Republic of Germany or the Federal State because nature protection law forbids removal of the intruding plants due to considerations of the public good, namely nature protection targets.
18. For example, the tree protection ordinance of the city of Würzburg stipulates that the nature conservation authority must grant an exemption to the general ban on felling trees if e.g. the relevant tree poses an impairment or danger to life, health or major material assets.
19. Please see sec. 909 BGB. A similar prohibition is included in the neighbour laws of many Federal States, which also address heightening of the ground of the relevant property above the surface of the neighbouring property. In case of non-compliance, the neighbour may claim damages by omission, e.g. sec. 17 NbG Sachsen-Anhalt, sec. 43 RhPfINRG, and sec. 30 and 31 NachbG NRW.
20. Damages can be claimed in accordance with regular tort law. Since sec. 909 BGB is a so-called protective law (Schutzgesetz), sec. 823 para. 2 BGB is applicable. Here, with regard to fault, the burden of proof is reversed, meaning that the injuring party (i.e. the landowner causing loss of stability) must prove that they complied with the relevant duty of care. See *Rewilding in Germany: Third Party Liability*.
21. Please note: in exceptional cases the neighbour may have to tolerate the loss of stability; however, in such a case, the neighbour may claim compensation, BGH NJW 1987, 2808 et. seq.
22. Please see BGH, judgement as of 20 April 2023, III ZR 92/22, ZfBR 2023, 551/554.
23. Please see sec. 917 BGB.

Contact Us

More information about rewilding and the issues addressed in this guidance note is available on [The Lifescape Project](#) and [Rewilding Europe](#) websites.

If you have any queries, please contact:



Elsie Blackshaw-Crosby

E: elsie.blackshaw@lifescapeproject.org



Catarina Prata

E: catarina.prata@lifescapeproject.org

Acknowledgements

Thank you to Rewilding Oder Delta for sharing their practical experiences of rewilding in Germany. Thank you also to *Clifford Chance Partnerschaft mit beschränkter Berufshaftung* for their legal support in producing this briefing note.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.