

“Industrial Parks and the Law of Hazardous Incidents: Criteria for regulation of safety responsibilities with establishments governed by the law of hazardous incidents in industrial parks”

Thomas Friedenstab, Christian Jochum, Jörg Peter und Gerald Spindler, UFOPLAN-Ref. No FKZ: 299 48 325.

Industrial parks (especially “chemical parks”) are characterised by the proximity of (in many instances dangerous) installations belonging to different operators and their compound system of substances and energy. Especially the new law of hazardous incidents (the German equivalent to major accidents) leads to the question how to deal with such a site, since this law is based on the addition of quantities of (dangerous) substances within an establishment and not restricted to installations. To answer this question the rules of the Hazardous Incident Ordinance (12th Ordinance for the implementation of the German Federal Immission Control Act which implements the Seveso-II-directive) had to be considered against the background of general private and company laws (esp. relating to groups). After dealing with the (purely) legal aspects of safety responsibilities with establishments the question remained to be answered in which way these responsibilities could be fulfilled within industrial parks. Dealing with this question four industrial parks (“chemical parks”) were analysed. They were different in size, structure and history, and located in the old (former West Germany) and the new federal states (former East Germany).

The study shows that the 12th Ordinance does offer solutions to cope with the specific situations in industrial parks. However, the 12th Ordinance cannot be construed in such a way as to recognize a joint operator responsible for the cumulative hazard to be dealt with. Nonetheless, the 12th Ordinance contains adequate instruments to solve this problem without questioning the existence and especially the further market-oriented development of industrial parks.

Especially the rules dealing with the “domino-effect” offer the opportunity to develop specific requirements directed to single operators to prevent hazardous incidents in industrial parks. However, the starting point is that the 12th Ordinance is restricted to require that an operator implements measures to reach this aim and that he is free in choosing the adequate measures. Thus, in standard cases, the competent authorities are not empowered to require specific measures, for example a “best-practice-solution”. Nonetheless, the specific situation in the respective industrial park may empower the competent authority to require specific measures and, if there were intensive dangerous mutual influences in case of a hazardous incident, to require close cooperation between operators.

In the parks analysed, the instruments found to deal with the cumulative hazard were the result of voluntary agreements by means of private law. However, these instruments regularly comply with mandatory requirements of public law which have been dealt with in this study. Though one can think of other instruments complying with public law, those instruments found can be regarded as a “model”. If voluntary or necessary cooperation increases, an infrastructural-unit/company should be created. It can partially be a substitute for the (former sole) works operator and his integrating function. If there is an intensive use of such an infrastructural-unit/company, this leads to a “relative unity” of the industrial park. This unity is, to some extent, due to public law requirements to cooperate, but to a higher extent to the understanding that such a unity is simply necessary.

Central coordinating and supporting functions should be assigned to the infrastructural-unit/company in the case of a hazardous incident. This implies that there is one “works” fire

service for the whole industrial park. However, the fire protection laws to be applied in the four analysed parks complicate or even hinder the maintenance of a “works” fire service for the whole industrial park.

The study was more or less confined to the law of hazardous incidents. However, dealing with fundamental general private and company law (esp. relating to groups) questions within this context, it could be shown that the industrial park is a topic involving many further questions of law and organisation. This study provides a fundamental basis for answering these questions.