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REVIEW

The Aarhus Convention in operation

Ralph Hallo

Aarhus related cases of the Belgian Constitutional Court

Luc Lavrysen

Highest court abolishes EIA-permit

Thomas Alge/Dieter Altenburger

Public Interest Litigation in Environmental Matters

Dora Schaffrin/Michael Mehling

Opening the Doors to Justice - Strengthening Public Access

Irina Zodrow/Cathrin Zengerling

Asia-Pacific Partnership on Clean Development and Climate

Christoph Holtwisch

Waste, Product and By-product in EU Waste Law

Carlos da Silva Campos

CONTENTS

Editorial	1
<i>elni forum on WEEE revision</i>	
The Aarhus Convention in operation: EEB Survey Initial Results	2
<i>Ralph Hallo</i>	
Presentation of Aarhus-related cases of the Belgian Constitutional Court	5
<i>Prof. Dr. Luc Lavrysen</i>	
Highest Austrian court abolishes EIA permit - but EIA appeal proceeding with regard to transport projects appears ineffective	9
<i>Thomas Alge, Dieter Altenburger</i>	
Public Interest Litigation in Environmental Matters: A German Perspective	13
<i>Dora Schaffrin and Michael Mehling</i>	
Opening the Doors to Justice - The Challenge of Strengthening Public Access	20
<i>Irina Zodrow LL.M and Cathrin Zengerling LL.M.</i>	
Asia-Pacific Partnership on Clean Development and Climate: Blockade or Impetus for the International Climate Regime?	23
<i>Christoph Holtwisch</i>	
Waste, Product and By-product in EU Waste Law	28
<i>Carlos da Silva Campos</i>	
elni Members and Networks: J&E - More than just an NGO	45
<i>Pavel Černý</i>	
Imprint	47
Authors of this issue	47
elni Membership	48

tion could be recognised and a certain willingness of the different stakeholders to work together was indicated. It is now down to all these players to follow up on this indication and willingness and keep on walking forward. If we all do so, the doors to environmental justice and better protection of the environment may finally open.

For more information, please see:
<http://www.unece.org/env/pp/welcome.html>

Asia-Pacific Partnership on Clean Development and Climate: Blockade or Impetus for the International Climate Regime?*

Christoph Holtwisch

* All sources for this summarising article are contained in the author's master thesis on the APP (in German) which is available as a pdf-file upon e-mail request: holtwisch@t-online.de.

1 Introduction

The *Asia-Pacific Partnership on Clean Development and Climate* [APP or AP6] is a very new phenomenon in international climate policy. It has important effects on the traditional climate regime formed by the UN *Framework Convention on Climate Change* [FCCC] and its *Kyoto Protocol* [KP]. From its own point of view, the APP is a grouping of key nations to address serious and long-term challenges, includ-

ing anthropogenic climate change. The APP partners - Australia, China, India, Japan, South Korea and the USA - represent roughly half the world economy and population, energy consumption and global greenhouse gas emissions. For this reason, this "coalition of the emitting" is – and will be – a central factor in international climate policy.

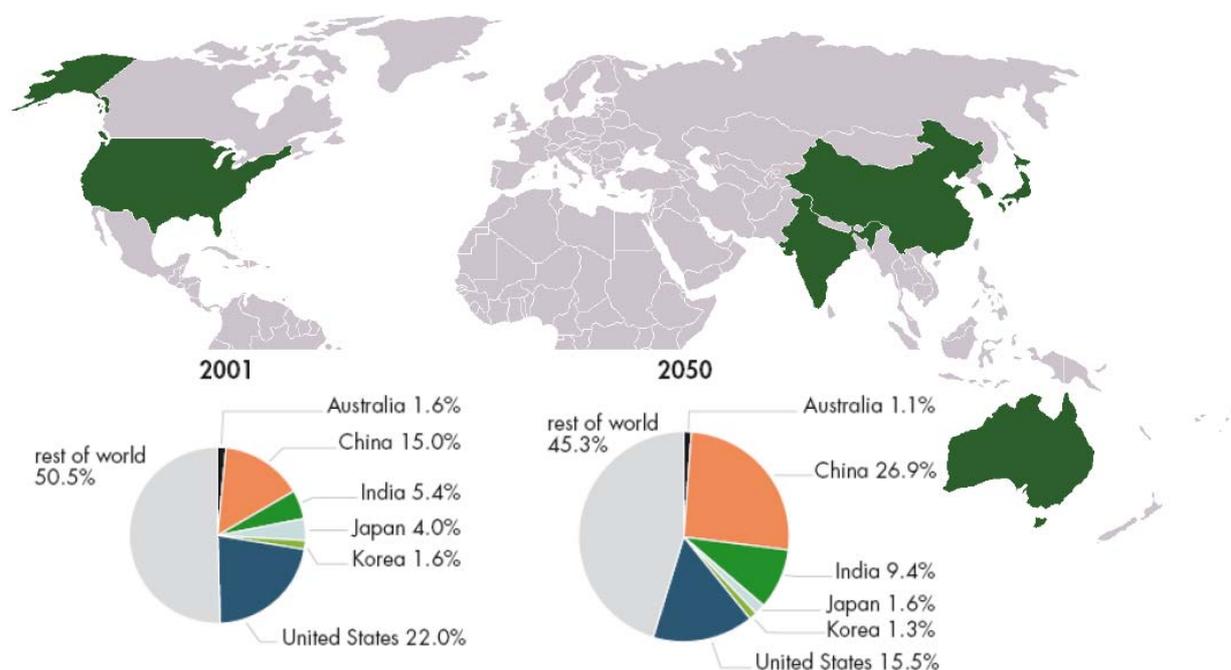


Figure 1: APP states and their (projected) global greenhouse gas emissions

2 Development and expansion of the APP

Following secret negotiations, the APP was announced on 28th of July 2005 at an ASEAN regional forum in Vientiane (Laos) on the basis of a *Vision Statement* which is now an integral part of the APP *Charter*. The official establishment of the APP occurred at an inaugural ministerial meeting on 12th of January 2006 in Sydney (Australia) by means of the *Charter*, accompanied by a *Communiqué* and a *Work Plan*. The 2nd meeting of the Policy and Implementation Committee [PIC] of the APP took place between 18th and 21st of April 2006 in Berkeley/California (USA) in which *Guidelines* for the Task Forces of the APP and their *Action Plans* were drawn up. At the 3rd PIC meeting in Jeju (Korea) from 11th to 13th of October 2006, additional *Guidelines* for flagship projects were created and the *Action Plans*, which were developed by the Task Forces, were accepted by the PIC. On 4th of April 2007 a further *Guidance* to the Task Forces and a *Procedure* for adding new projects to the APP were published. The 4th PIC meeting took place in Tokyo (Japan) on 19th and 20th of July 2007. It produced the

Forms for project registration and status report already foreseen in the *Procedure* and the *Guidance*.

Beside the few concrete results, the 4th PIC prepared for the 2nd ministerial meeting of the APP which will probably take place together with the 5th PIC meeting in October 2007 in New Delhi (India). Before that, according to rumours, an “APP-plus” with further Asian states and some kind of regional emission trading system may be announced at the APEC meeting in Sydney in early September. This could fall into line with the US-led meeting of important emitters in late September in Washington D.C. This will prepare for the Bali (Indonesia) FCCC/KP conference in December 2007 by dealing with long-term goals and APP-like topics (technology). This process could lead to an important expansion of the APP to countries such as Canada (which was an observer at the 4th PIC meeting and stated its interest in joining), New Zealand, Mexico and ASEAN states. The EU could be a potential technology partner in the future, too, but it has been more sceptical towards the APP because of the dubious position of this agreement towards the KP.



Figure 2: Participants of the 3rd APP PIC meeting

3 Character, aims and potential of the APP

The APP forms a non-legally binding political soft law regime. This is stated expressively and indicated by terms like “compact” (instead of treaty), “partners” (rather than parties) and “nations” (instead of states). Therefore, participation in the APP is on a totally voluntary basis which renders the existing ending clause devoid of meaning. Nevertheless, the APP should not be underestimated because political obligations are ultimately crucial - even in international law, which does not contain effective enforcement. While the *Vision Statement* uses the misleading expression “non-binding” which led to criticism, the *Charter* prefers the term “non-legally binding” which indicates clearly that the APP is meant to be politically binding. Irritatingly, the *Charter* tries to look like an international law treaty which is one reason why it is overestimated by some observers.

The APP follows the ideal of sustainable development with interlinked environmental, economical and social sub-aims. It contains the first connection of climate protection and energy security in an international agreement. To view climate policy as a sub-chapter of geopolitics may make it easier for the USA to be engaged actively in it (“It’s the energy, stupid!”). The APP recognises that renewable energy

and nuclear power will represent an increasing share of global energy supply, but stresses that fossil fuels underpin their economies at present and for the predictable future. The continued economic use of (cleaner) fossil fuels is consequently at the core of the APP policy. Therefore, critics view it as a coal pact only. This is too simple but without doubt the technology of carbon capture and storage [CCS] is one of the central technological options for the APP.

Instead of reducing absolute greenhouse gas emissions, the APP only intends to limit the greenhouse gas intensities of economic activities which would lead only to relative emission reductions (compared to a reference case). This plan is an important difference towards the cap and trade architecture of the KP and much less ambitious than it. Even in the best case scenario – global use of the APP approach with CCS – absolute greenhouse gas emissions would more or less double between now and 2050. Therefore, the APP ideas are clearly not enough to respond to climate change, but they may nonetheless play a certain role in dealing with this challenge. Exact foresights are impossible at this stage and depend very much on future implementation of the APP.

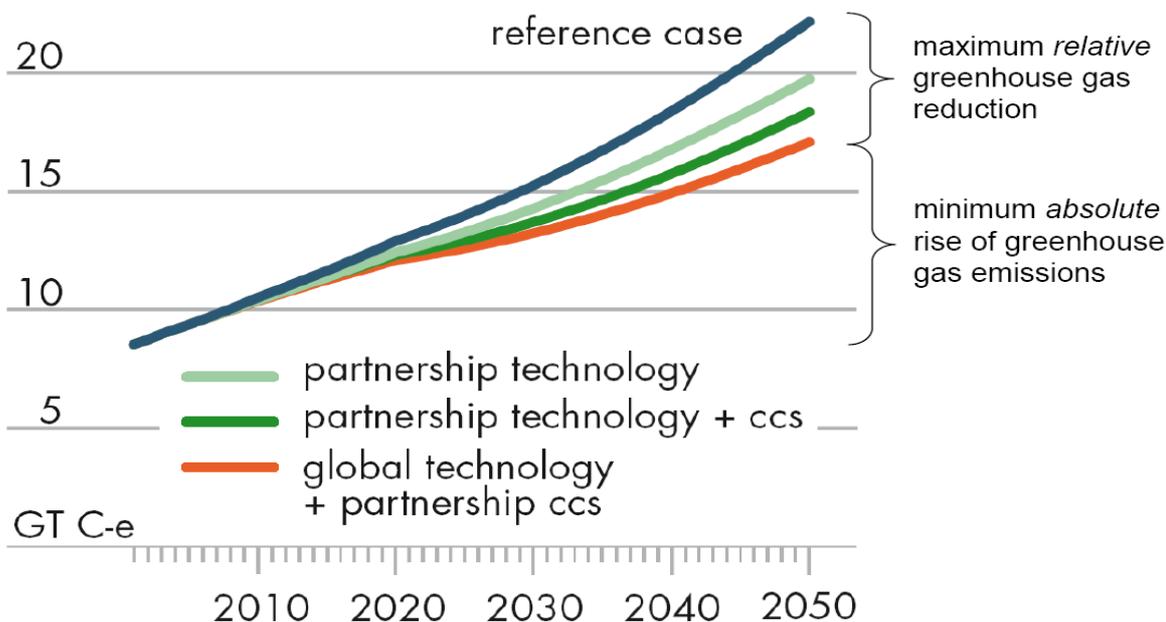


Figure 3: Prognostic development of greenhouse gas emissions with and without APP scenarios

4 Purposes, financing and implementation of the APP

The APP is meant to serve as a framework for an international cooperation between its partners and for the coordination of their national strategies (with the help of capacity building). At its core, the APP is an agreement for the development and transfer of environmentally sound technologies. Economic freedom (with its legal and political aspects) is important for this as an enabling environment, so the APP contains an institutional dimension as well. The technology cooperation builds on a great number of existing bi- and multilateral political initiatives like the *Methane to Markets Partnership* or the *Carbon Sequestration Leadership Forum* which are – like the APP – parallel tracks to the traditional climate regime. As the APP is not limited to special technologies, it has the potential to build up as a future framework for these initiatives.

Having in mind the different national laws regarding intellectual property of technologies, all these matters are to be addressed on a case-by-case basis. Generally, the financing of the technology development and transfer will be the crucial point for the APP. The financial contributions of the APP partners are very limited and vague. For this reason, the inclusion of the private sector is fundamental for the APP

activities, or, as one spokesman said: “The real dollars we are looking for are the private sector dollars, we are talking tens of billions of dollars if not hundreds of billions of dollars. If we don’t get the investment sector we can’t succeed.” By now, it does not look like there will be enough financial support for the APP to be that successful, even if most of the presentations at the 2nd and the 4th PIC meeting dealt with the crucial topic of financing.

The first *Work Plan* of the APP focuses on power generation and distribution, as well as key industries. Eight temporary public-private task forces have been established in addition to the permanent political PIC and its Administrative Support Group [ASG]: (1) cleaner fossil energy [CFE], (2) renewable energy and distributed generation [RDG], (3) power generation and transmission [PGT], (4) steel [STF], (5) aluminium [ATF], (6) cement [CMT], (7) coal mining [CM], and (8) buildings and appliances [BATF].

The *Action Plans* developed by the Task Forces and the concrete different projects contained in it were accepted by the PIC at its 3rd meeting in October 2006. In May and July 2007 the PIC endorsed a small number of new projects for some of the Task Forces.

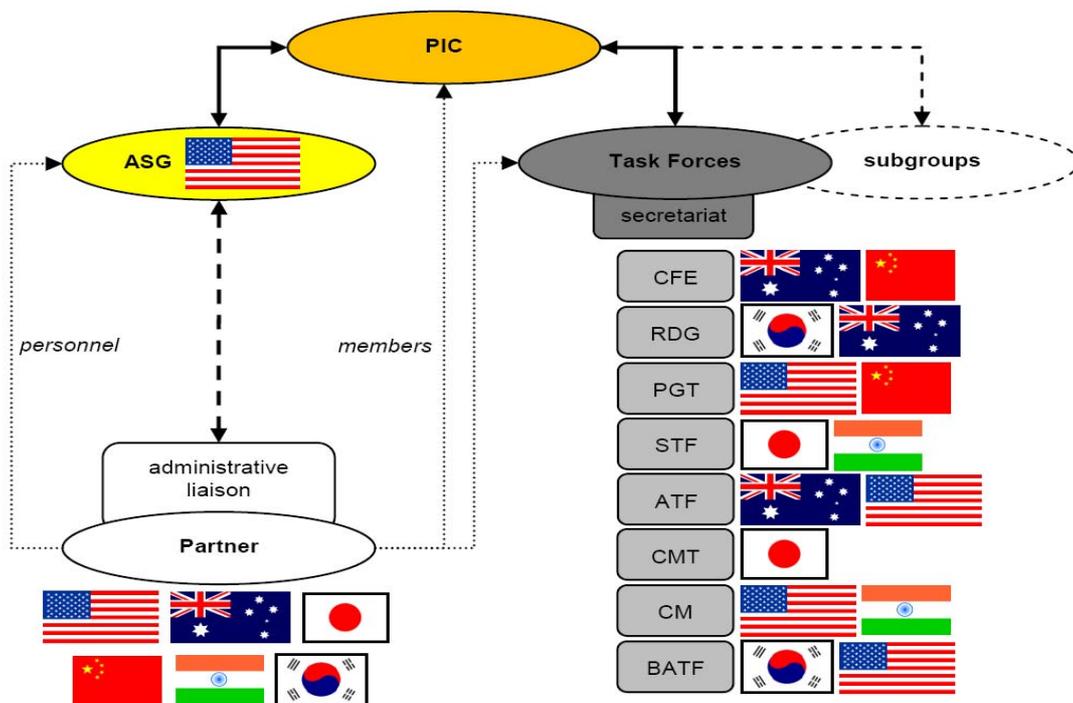


Figure 4: Institutions of the APP

5 APP and traditional climate regime

While FCCC and KP are an established regime, the APP is a new parallel track. Officially, the APP is meant to be *consistent with* the principles of the FCCC and intended to *complement* but not *replace* the KP. Indeed, the APP is fully consistent with the FCCC principles but the position towards the KP is more dubious. To function as a complement, the FCCC must be the joint focal point of KP as well as APP and the latter must also go beyond what is already foreseen in the FCCC. Therefore, the technology development and transfer rules of the APP must clearly go beyond the comparable FCCC norms. Technology plays an important role within the FCCC and there is a special technology “framework” for dealing with the topic in a similar way as the APP and with much more projects. The APP is only one of the technological “partnerships” foreseen as a component of this framework. As such, it does not have the potential to go beyond the FCCC and complement the KP.

But is the APP intended to replace the KP instead? Some statements of its representatives as well as the timing of its meetings – which usually take place a few months before the FCCC/KP meetings – point to this impression. It seems likely that the APP was set up as a competitive regime to the KP because the KP contains legally binding emission commitments which the APP partners now oppose (USA and Australia) or for the future (China, India, Korea and perhaps Japan). The opposition towards the KP means that the USA and Australia cannot use the flexible mechanisms of the KP which allow additional technology transfer to developing countries (Clean Development Mechanism) and transformation states (Joint Implementation). Therefore, while the USA and Australia oppose the KP and view the APP as an alternative to it, for China, India and Korea it is complementary with regard to technology transfer combined with an argument against future emission commitments; Japan simply widens its future political options with the APP. Overall, the APP is - at least for the most part and for the future - an opposing model against central ideas of the KP. To date, it is intended to replace it.

The KP in its present form will expire in 2012. This leads to the questions of whether the APP

could be subsequently (at the latest) integrated in the steadily developing traditional climate regime. Due to the opposition towards the KP, such integration is conceivable only under the FCCC framework. Since the creation of the APP, the FCCC stressed its openness towards technology-orientated concepts and the importance of such international partnerships was mentioned at the Heiligendamm (Germany) G8-summit (6th to 8th of June 2007), too. Nevertheless, a formal integration via a new technology protocol or a second technology decision is very unlikely because the first alternative would lead to a legally binding APP (against the declared will of its partners) and the second – non-legally binding – alternative would install parallel procedures and institutions to the existing technology framework (which would undermine it against the will of the other FCCC parties). Therefore, only a non-formal integration is a realistic option which could lead to a fragmented but synergic “orchestra of treaties” with a fruitful cooperation between the traditional climate regime and the APP. To avoid the destructive potential of the APP, a peaceful coexistence is necessary as a minimum.

Such a cooperation or coexistence is important because every technology-orientated approach needs market incentives for the development and transfer of technology. It may be “an inconvenient truth”, but these can be created only by external emission commitments (or other market mechanisms) if the internal financing of the APP cannot be remarkably strengthened. The international climate policy has to deal with the difficult task of combining the competing approaches of *market pull* (KP) and *technology push* (APP). Technology is an important but only one component in a portfolio of measures against climate change. The combination of these approaches is “by far the largest and hardest task that environmental policy has ever faced”. Nonetheless, we should be optimists like *Sir Nicholas Stern*, the economist who published a famous review report on climate change, who imagines “a real festival of technology, fired by constantly stricter commitments”. However, the APP has to further clarify the role it wants to play in this future – internally and externally.

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.

The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.

The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:

The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

Contact

Freiburg Head Office:

P.O. Box 50 02 40
D-79028 Freiburg
Phone +49 (0)761-4 52 95-0
Fax +49 (0)761-4 52 95 88

Darmstadt Office:

Rheinstrasse 95
D-64295 Darmstadt
Phone +49 (0)6151-81 91-0
Fax +49 (0)6151-81 91 33

Berlin Office:

Novalisstrasse 10
D-10115 Berlin
Phone +49(0)30-280 486 80
Fax +49(0)30-280 486 88
www.oeko.de

The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R. carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

The Institute fulfils its assignments particularly by:

- Undertaking projects in developing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research:

- **European environmental policy**
 - Research on implementation of European law
 - Effectiveness of legal and economic instruments
 - European governance
- **Environmental advice in developing countries**
 - Advice for legislation and institution development
 - Know-how-transfer
- **Companies and environment**
 - Environmental management
 - Risk management

Contact

Prof. Dr. jur. Gerhard Roller
University of Applied Sciences
Berlinstrasse 109
D-55411 Bingen/Germany
Phone +49(0)6721-409-363
Fax +49(0)6721-409-110
roller@fh-bingen.de

www.fh-bingen.de

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.

The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

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- German Federal Environmental Agency (UBA)
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- Federal Ministry of Consumer Protection, Food and Agriculture

Contact

Darmstadt Office

Prof. Dr. Martin Führ – sofia
University of Applied Sciences
Haardtring 100
D-64295 Darmstadt/Germany
Phone +49(0)6151-16-8734/35/31
Fax +49(0)6151-16-8925
fuehr@sofia-darmstadt.de
www.h-da.de

Göttingen Office

Prof. Dr. Kilian Bizer – sofia
University of Göttingen
Platz der Göttinger Sieben 3
D-37073 Göttingen/Germany
Phone +49(0)551-39-4602
Fax +49(0)551-39-19558
bizer@sofia-darmstadt.de

www.sofia-research.com

elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. Since then, elni has grown to a network of about 350 individuals and organisations from all over the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researchers, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brus-

sels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
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- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
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- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

ElNi Website: elni.org

On the elni website www.elni.org one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.