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## REVIEW

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- The Future of EMAS
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- Building a climate policy in Belgium: flexible mechanisms in a flexible state
- Implications of the Clean Development Mechanism under the Kyoto Protocol on other Conventions:
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## Building a climate policy in Belgium: flexible mechanisms in a flexible state?

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On January 19th 2005 the Commission announced to take Belgium, Greece, Finland and Italy to the European Court of Justice for not fully transposing Directive 2003/87/EC on CO<sub>2</sub>-Emissions Trading (ET-directive) into national law. This should have been done by 31 December 2003. In the case of Belgium the Commission was taking this action for the reason that in Belgium the Directive had been transposed only in the Brussels and Walloon Regions. At the moment of the Commission's announcement the Flemish region was almost ready with its draft-legislation, but this was of course not sufficient to convince the Commission.

In this contribution an overview will be given of the policy developments regarding the climate change issue, both at the federal level and at the regional levels in Belgium. The Flemish situation will get some particular attention.

### 1 Policy making in the Belgian state

Since the last but one constitutional reform (adopted in 1994) Belgium is a federal state, made up of three communities (language-related: Flemish-, French- and German-speaking) and three regions (territory-related: Flanders, Wallonia and Brussels-Capital). Within Flanders the community-related and territorial issues have been merged into one regional entity. Consecutive constitutional reforms in 1970, 1980, 1988, 1993 and 2001 have resulted in devolution of competencies. Substantial powers in the cultural, social, economic and environmental spheres have been transferred from the federal level to the regional level.<sup>1</sup> However as the heart of the federal state is an economic and monetary union it is no surprise that quite a number of socio-economic issues remain federal competence, contrary to the major part of environmental policy making which came in the hands of the regional policy makers.<sup>2</sup> The legislative power of the com-

munities and the regions is exercised by the enacting of decrees (ordinances in Brussels). Decrees/ordinances have force of law throughout the territory for which they are intended. Decrees/ordinances may repeal, extend, amend or replace prevailing statutory provisions in the allocated areas of responsibility. Conflicts of competence between federal laws and decrees are settled before the quasi-constitutional Court of Arbitration.

In principle, the federal legislative body is only competent for those matters that have been explicitly allocated to it by the Constitution. However as a list of federal competencies has not yet been established, the residual competence still remains with the federal legislator.<sup>3</sup> Given the vast policy area covered by the issue of climate change, it is obvious that co-operation between all policy levels is essential for progress. One of the mechanisms is the Interministerial Conference. They have a political nature, are sector-related (e.g. Environment) and are held on a regular basis or when an urgent matter has to be addressed. In order to improve co-operation between the different policy levels and to avoid the expected deadlock situations, the constitutional reform has also introduced the "co-operation agreements".<sup>4</sup> Such an agreement may formalize and elaborate issues that have been agreed on by an Inter-ministerial Conference. Some agreements may have direct effect, others require an additional approval by the different parliaments (federal and regional). Already a number of these agreements exist but their enforcement remains questionable due to a lack of enforcement mechanism.

Given the need for multi- and cross-sectoral approaches in climate change policy, sector planning is in an important factor. As agriculture became part of the regional competences during the last constitutional reform<sup>5</sup>, energy and transport are the major

tion, transit of waste, protection of marine environment, and the policy concerning product norms remain within the federal competence

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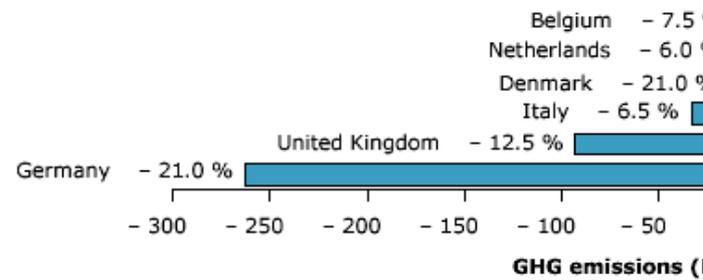
<sup>1</sup> K. DEKETELAERE, K. and F. SCHUTYSER, *International Encyclopaedia of Laws - Environmental Law - Belgium*, Kluwer, The Hague, 2000, p. 32.

<sup>2</sup> L. LAVRYSEN, *De bevoegdheidsverdeling in België - Leefmilieu en waterbeleid*, Die Keure, Brugge, 1999, p. 88; Protection against ion radia-

<sup>3</sup> W. PAS, *De door de grondwet aan de wet voorbehouden aangelegenheden, vroeger en nu*, in: ALEN, A. (ed.), *De vijfde staats hervorming van 2001*, Die Keure, Brugge, 2002, p. 61.

<sup>4</sup> L. LAVRYSEN and F. MAES, *Institutioneel kader voor duurzame ontwikkeling en milieubeleid: Juridische grondslagen voor het (inter-)nationaal verdelen en gemeenschappelijk beheren*, in: B. MAZIJN (ed.), *Duurzame ontwikkeling - meervoudig bekeken*, CDO-Academia, Gent, 2000, p. 143-232.

<sup>5</sup> G. CRAENEN, *De bevoegdheidsverdeling inzake landbouw en zeevisserij, buitenlandse handel en ontwikkelingssamenwerking*, in: ALEN, A. (ed.), *De vijfde staats hervorming van 2001*, Die Keure, Brugge, 2002, p. 124-130.



remaining economic important sectors with a crucial federal link. In the light of the actual political tensions (April 2005) that might lead to a further devolution of competencies, it is being said that also energy should be transferred to the regions.

Concerning the organisation of the electricity market, the federal law of 29 April 1999 has replaced the previous requirement for a binding national infrastructure plan by an indicative programme for production facilities.<sup>6</sup> Such a ten year indicative programme identifies the expected demand for electricity on medium and long-term and the need for new production installations. When developing such a programme including the description of building conditions for installations, environmental concerns have to be taken into account. The indicative programme is drafted by the Commission for the regulation of electricity in co-operation with the Energy Administration of the Economics Ministry, the federal Planning Bureau, the Controlling Committee for Electricity and Gas, and also the Interdepartmental Commission for Sustainable Development. Given their environmental competencies, the regions are involved in drafting the indicative programme.<sup>7</sup> Concerning the organisation of the gas market, another federal law of the same date, which is focused on the economic aspects and transport facilities of natural gas, contains a similar approach that however gives only a minimum attention to environmental considerations.<sup>8</sup> In practice the regions are not in a key position to implement most of the sustainable development options as they are only responsible for the distribution of electricity and gas, enhancing rational energy use and developing decentralised energy production like renewable energy sources.<sup>9</sup> Renewables count for a bit less than 2% of the total primary energy supply, nuclear for about 20% and the share of nuclear in the electricity supply is 46,3%. The federal level holds the competency for issues such as energy pricing, nuclear policy, energy labelling and product norms.

## 2 The Belgian greenhouse gas emissions: some figures

Under the EU-burden-sharing decision (Council decision 2002/358/EC) Belgium has to face the challenge of a 7,5% reduction.

The last EEA Report on the greenhouse gas emission trends and projections in Europe 2004 has made clear that Belgium belongs to the EU-member states (Austria, Denmark, Finland, Greece, Ireland, Italy, Portugal and Spain) that - on the basis of their emissions in 2002 - are not on track to meet their individual greenhouse gas limitation or reduction targets in 2010.<sup>10</sup>

In the technical report<sup>11</sup> it is stated that the “with measures” projections give an increase of 6,5% compared to 1990. This means that compared to the “burden sharing agreement” figure a gap of 19,7 MtCO<sub>2</sub> eq (14%) arises. A savings of 13,8 MtCO<sub>2</sub> eq or about 70% of the gap to the commitment should be realized by additional policies and measures. The report says that most of the policies and measures in the energy sector have been implemented, whilst in other sectors they are still at the adoption and planning stage. The report also mentions explicitly the fact that the federal nature of Belgium means that policies may be implemented in some regions but not in the others. Details of the announced and implemented policies and measures are given in the 3<sup>rd</sup> National Communication under the UNFCCC (April 2002), but there is no clear indication which policies and measures have been included in the “with measures” projection for which an econometric model has been used. The remaining gap of the commitment should be covered by using Kyoto mechanisms. Belgium has indicated - like Austria, Denmark, Finland, Sweden and the Netherlands - to allocate financial resources for using Kyoto mechanisms.

On 15 April 2005 Belgium has submitted its latest National Inventory to the UNFCCC Secretariat. Compared to the figures of 2002, emissions-levels are risen again in 2003.<sup>12</sup>

This report is the result of the cooperation between the federal and regional administrations within the Working Group Emissions<sup>13</sup> of the Coordination Committee International Environmental Policy. This task is being co-ordinated by the interregional Unit for the Environment (IRCEL) that makes a compilation on the basis of the figures from the three regions. The yearly inventory has to be approved by the National Climate Commission (see below).

<sup>6</sup> K. DEKETELAERE, *Handboek Milieurecht*, Die Keure, Brugge, 2001, o.c., p. 1455-56.

<sup>7</sup> L. DE RIDDER (2000), *De bevoegdheidsverdeling in België - Het energiebeleid*, Die Keure, Brugge.

<sup>8</sup> K. DEKETELAERE (2001), o.c., p. 1460.

<sup>9</sup> See the Flemish decrees on the organisation of the gas market (6 July 2001) and the electricity market (17 July 2001), as amended.

<sup>10</sup> EEA Report No 5/2004, p. 5, see: [http://reports.eea.eu.int/eea\\_report\\_2004\\_5/en/GHG\\_emissions\\_and\\_trends\\_2004.pdf](http://reports.eea.eu.int/eea_report_2004_5/en/GHG_emissions_and_trends_2004.pdf)

<sup>11</sup> [http://reports.eea.eu.int/technical\\_report\\_2004\\_7/en/tab\\_content\\_RLR](http://reports.eea.eu.int/technical_report_2004_7/en/tab_content_RLR)

<sup>12</sup> See: <http://www.klimaat.be>

<sup>13</sup> Membership: Flemish Environmental Agency (VMM) for Flanders; Direction générale des ressources naturelles et de l'environnement (DGRNE) for Wallonia; Brussels Institute for Environmental Management (BIM) for Brussels

The latest inventory reveals a general increase of GHG emissions:

+ 1,6% compared to 2002

+ 1,4% compared to 1990

+ 0,6% compared to the reference level for the Kyoto target

+ 5,5% compared to "Kyoto-traject" (the theoretical linear trajectory to the Kyoto target)

An even more important increase of CO<sub>2</sub> – emissions in 2003, linked to energy consumption has been detected :

+ 2,7% compared to 2002

+ 6,2% compared to 1990

### 3 Belgian climate policy: steps of the past

On June 6th 1991 a CO<sub>2</sub>-working group was established at the federal level. Its task was to develop a 'general CO<sub>2</sub> plan'.<sup>14</sup> The (first) National Programme to reduce CO<sub>2</sub>-emissions of 1994 had no attention for emissions trading as a policy instrument. This Programme was not very successful as Belgian policy makers were relying on European developments and in particular on the introduction of a energy/CO<sub>2</sub>-tax.<sup>15</sup> The opportunities of emissions trading as a means to reduce the greenhouse gas effects were researched for the first time within the framework of the CLIMBEL-network<sup>16</sup> which was a part of the federal Plan to support a policy towards sustainable development.<sup>17</sup> Also the federal Plan for Sustainable Development 2000-2004 announced further research and the need to establish an institutional and legal framework.<sup>18</sup>

The National Climate Plan 2002-2012 that was adopted by the federal and regional governments during the Interministerial Conference Environment of 6 March 2002 is not very ambitious regarding the flexible mechanisms. It contains only an overview of existing research initiatives at the different policy levels, such as the federal study about the implementation of these mechanisms in Belgium as also foreseen in the federal Plan for Sustainable Development.

In order to prepare the required institutional and legal framework the prior focus lay on the – not easy – issue of the division of competencies regarding the introduction of emissions trading.<sup>19</sup>

On November 14<sup>th</sup> 2002 all governments signed the co-operation agreement.<sup>20</sup> This agreement contains the general institutional and legal framework.<sup>21</sup> The agreement provides for the establishment of a National Climate Commission that includes representatives of the federal and regional authorities. The National Climate Commission has a number of tasks including the gathering of information, reporting and the preparation of policy proposals. A particular task concerns the preparation of a separate co-operation agreement on flexible mechanisms.<sup>22</sup> Another important task for this Commission was the preparation of a burden-sharing agreement between the four Belgian governments. This ought to be ready by 2005 but the fast adoption of the Emissions Trading Directive and the need for a swift transposition operation in order to be in time for the National Allocation Plan requirements led to more pressure. So negotiations on this sensitive issue started in January 2003 but could not be finalized before 18 May 2003, when federal elections were held.

The Cabinet Agreement of 10 July 2003 announced nothing new. The commitments for the establishment of the National Climate Commission and a new co-operation agreement before the end of 2003 were already part of earlier policy plans. By the end of 2003 the National Climate Commission was

<sup>14</sup> [http://www.environment.fgov.be/Root/tasks/atmosphere/klim/set\\_nl.htm](http://www.environment.fgov.be/Root/tasks/atmosphere/klim/set_nl.htm)

<sup>15</sup> The final outcome of this EU-process that lasted for about 10 years is rather weak, see: C. BRETTEVILLE FROYN & H. ASBJORN AAHEIM, Sectoral opposition to carbon taxes in the EU – a myopic economic approach, *International Environmental Agreements: Politics, Law and Economics*, Vol. 4, No. 3, 2004, p. 279

<sup>16</sup> H. TULKENS, *Changements climatiques et instruments de réduction des émissions en Belgique : une analyse interdisciplinaire*, rapport final 2001 : zie : <http://www.belspo.be>; The research by N. BOUCQUEY on civil law issues related to emission trading (*L'organisation du marché des permis négociables*, Brussel, december 1999, 57 p.) is particular interesting.

<sup>17</sup> Belgisch Staatsblad (State Gazette) of 4 February 1998.

<sup>18</sup> Federaal Plan Duurzame Ontwikkeling, 81-82 (nrs. 526-530), zie: <http://www.billy-globe.org/nl/plan-do-nl.pdf>

<sup>19</sup> ECOLAS-ECONOTEC, Implementation of the flexibility mechanisms in Belgium, not-published study commissioned by the Secretary of State for Energy and Sustainable Development, March 2002.

This study was an analysis of the Commission proposal for ET Directive. It concluded that the proposal contained elements that covered both the federal and the regional competencies. Clear environment-related issues like the permit and consequences of amending of the IPPC-Directive belong to the regional competencies. Other issues have a clear economic character and are related to trade law-issues for which only the federal level is competent (e.g. transfer of allowances). The study suggested also that the future transposition and implementation of the ET Directive would need a specific co-operation agreement. Such an agreement should contain all required elements in order to guarantee a uniform implementation of the ET Directive.

<sup>20</sup> For Flanders approved by the Decree of 18 July 2003, (State Gazette, BS 19 August 2003) Vlaams Parlement, Stuk 1672 (2002-2003) - Nr.1; For Brussels approved by Ordinance of 22 May 2003.

<sup>21</sup> *Approved by Law of 11 April 2003 (Belgisch Staatsblad of 15 July 2003)*; Text of "Wet houdende instemming met het Samenwerkingsakkoord tussen de Federale Staat, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijke Gewest betreffende het opstellen, het uitvoeren en het opvolgen van een Nationaal Klimaatplan, alsook het rapporteren, in het kader van het Raamverdrag van de Verenigde Naties inzake Klimaatverandering en het Protocol van Kyoto", Brussels, 14 November 2002, (draft available at: Belgian Senate, 2002-2003, 2 - 1432/1, 20 January 2003).

<sup>22</sup> Article 6, § 2. (6).

indeed installed.<sup>23</sup> In the autumn of 2003 negotiations were re-opened and a final agreement was reached on 8 March 2004 within the Consultation Committee. This is the highest possible level for

<sup>23</sup> The composition of the National Climate Commission was approved by the Cabinet on 5 December 2003, zie B.S. 8 December 2003, and was changed.

intra-Belgian political consultations. Article 9 of the above-mentioned co-operation agreement stipulates that the National Climate Commission decides by rule of unanimity. If this is not possible the matter is presented to the Interministerial Conference for the Environment. If even there an agreement cannot be reached, the Consultation Committee has to deal with the matter.

	Annually amount of allowances	Equals compared to 1990	Estimation of CO <sub>2</sub> -emissions in 1990
Walloon Region	50,23 Mton CO <sub>2</sub> -eq.	- 7,5%	54,30 Mton CO <sub>2</sub> -eq.
Flemish Region	83,37 Mton CO <sub>2</sub> -eq.	- 5,2%	87,95 Mton CO <sub>2</sub> -eq.
Brussels Region	4,13 Mton CO <sub>2</sub> -eq.	+ 3,475%	3,99 Mton CO <sub>2</sub> -eq.
<b>Total Belgium</b>	<b>137,73 Mton CO<sub>2</sub>-eq.</b>		<b>146,24 Mton CO<sub>2</sub>-eq.</b>

According to the burden-sharing agreement of 8 March 2004 the regions are responsible for the allocation and issuing of allowances under the Protocol of Kyoto. They will receive allowances from the federal state on the basis of the following repartition:<sup>1</sup>

It is interesting to compare the amount of yearly AAU's with the results of a report by the Federal Planning Bureau that includes figures on projections regarding GHG-emissions.<sup>2</sup> This report expects an increase of such emissions when policies remain unchanged for the projected period (up to 2010). The total amount of emissions could stabilize within that period but that would still include an increase of 6,7% (period 1990 to 2010).

This means that the regions receive more allowances than the amount of allowances that has been assigned to Belgium under the Protocol of Kyoto (135,27 Mton CO<sub>2</sub>-eq).

The federal Government shall cover the difference by buying emission rights on the international market. The amount to be covered is annually 2,46 million tons CO<sub>2</sub>-eq for the period 2008-2012. Furthermore the federal Government shall take measures to reduce GHG-emissions on the Belgian

territory (annually 4,8 million tons CO<sub>2</sub>-eq in 2008-2012). Examples of these measures include the promotion of public transport and bio-gasoil, the building of off-shore wind mills, financial incentives for energy efficiency practices, third party financing, conversion of old power plants, etc.

The above-mentioned (basic) and widely politically co-operation agreement will be supplemented in the near future with additional co-operation agreements focusing on particular and even more practical and legal issues, e.g. on the application of flexible mechanisms, the registry etc... The Interministerial Conference for the Environment agreed on 14 May 2004 that the responsibility for the Belgian registry is assigned to the federal Minister for the Environment. However a one Party holding account created in accordance with Articles 11 and 12 of the Commission Regulation (EC) No 2216/2004 on the registry, shall de facto be split in accounts for the different regions.

#### 4 First steps of a climate policy in Flanders: plans

In the first Environmental Report, the climate change issue was one of the 17 main items.<sup>3</sup> Other elements for a Flemish climate policy had been earlier incorporated in policy plans, such as the CO<sub>2</sub> /Rational Energy Use Policy plan (1999) and the 2nd Environmental Policy Plan. A separate

<sup>1</sup> MINA-Raad-Advies 2004/20 of 22 April 2004 (Advice of the Environmental Advisory Council). In this advice it is mentioned that the emissions inventory of Belgium calculates 146,24 Mton CO<sub>2</sub>-eq. For 1990, whilst in the latest (official) Belgian emissions-inventory "only" 141,567 Mton CO<sub>2</sub>-eq. were calculated. bedroegen. The difference has to be found in the used methodology and the incorporation of some additional F-emissions.

<sup>2</sup> F. BOSSIER, I. BRACKE & F. VAN HOREBEEK, *Vooruitzichten tot 2010 voor de uitstoot van broeikasgassen in België*: Een actualisering, Working Paper N° 9-04, Federaal Planbureau, Februari 2004,

<sup>3</sup> J. VAN RENSBERGEN & W. DEBRUYN, *Verandering van klimaat: broeikas-effect*, in: A. VERBRUGGEN (red.), *Leren om te keren*, VMM -Garant, Leuven, 1994, p. 187-198.

Flemish Climate Policy Plan was announced in another Environmental Report (MIRA-T – report 2001).<sup>4</sup> A bit earlier the Flemish Government had decided on 20 April 2001 to install a ‘Taskforce Climate Policy’. This taskforce is chaired by the energy and environment fields and it is a permanent consultation forum that includes political and administrative representatives from all policy fields related to climate issues. Apart from its more general objectives, such as to draft a climate policy plan, this forum also created a separate ad hoc working group in order to prepare a policy framework to implement flexible mechanisms. Given the existing Kyoto Protocol and the at that time ongoing discussions for the Emissions Trading directive, it is obvious that Flanders was not that early at all...

Only in the beginning of 2003, the Flemish Government finally approved the first Climate Policy Plan 2002-2005.<sup>5</sup> It is a strategic plan that includes a number of projects that should result in lowering GHG-emission levels compared to a ‘business-as-usual-scenario’. It includes all GHG regulated by the Kyoto Protocol. It is mainly an update and extension of the above-mentioned CO<sub>2</sub> /Rational Energy Use Policy plan (1999) and the 2nd Environmental Policy Plan. The most recent Environmental Policy Plan 2003-2007 includes also the objectives and main substantial lines of this Climate Policy Plan. Part 4 of the Climate Policy Plan indicates clearly how the strategic choices should be further elaborated. When the Climate Policy Plan was drafted all relevant policy fields and stakeholders were involved which gives the plan a broad societal basis. This is obviously a condition sine qua non in order to achieve an integrated climate policy. This Climate Policy Plan is also an iterative plan that is being reviewed yearly and if necessary even updated. The process however shows some problems, as the progress report of 2003 was approved in 2004. In its advice on this progress report the Flemish Environment and Nature Advisory Council was rather critical and observed a lack of ambition and clear strategy with respect to realising a carbon-poor economy.<sup>6</sup> In the beginning of 2005 preparations started to draft a new plan.

In the new Flemish government (2004-2009) environment and energy are in the hands of the same minister. The Flemish Cabinet Agreement refers to the Climate Policy Plan but not to the Environmental Policy Plan. The Minister’s latest policy

intentions reveal nothing new in comparison to the mentioned plans. His main message seems to be that Flanders is not willing to carry an unreasonable burden.<sup>7</sup>

## 5 Flexible instruments in Flanders: unknown and unloved ?

Emissions trading as a possible policy instrument hardly got any attention in policy reports and other documents.<sup>8</sup> The first Environmental Report contained a chapter on economic instruments as well as a chapter on legal instruments. None of both included a description and assessment of the opportunities and limitations of using tradable emission rights.<sup>9</sup> In 1995 an academic commission presented its final report on the reform of the environmental law. This report also contained a draft framework decree. On economic instruments the report contained some suggestions on levies and subsidies but no provisions were drafted.<sup>10</sup> The 2nd Environmental Policy Plan (MINA-2-1997-2001) announced research on emissions trading but nothing happened. The new Environmental Policy Plan (2003 – 2007) includes a number of references to emissions trading but up to now, research happened mainly in the framework of the scientific research programmes, such as the Environmental Policy Sciences Support Centre. This research is focusing mainly on the need to address ongoing international developments.<sup>11</sup>

Like the National Climate Plan the Flemish Climate Policy Plan announced the drafting of a policy framework for flexible instruments as one of its priority projects.<sup>12</sup>

When advising on this item, the Flemish Environment and Nature Advisory Council, repeated its earlier concern that the use of such instruments had

<sup>4</sup> K. CLAES, D. BOEYE & J. BROUWERS, *Klimaatverandering*, in: M. VAN STEERTEGEM (red.), *MIRA-T 2001*, VMM-Garant, Leuven- Apeldoorn, 2001, p. 352

<sup>5</sup> See: <http://lucht.milieuinfo.be/>

<sup>6</sup> Advice MINA -Raad 2003/68 of 4 December 2003, see: <http://www.minaraad.be/2003/2003-68.pdf>

<sup>7</sup> p. 73, see: <http://www2.vlaanderen.be/ned/sites/regeerakkoord/vlaamsregeerakkoord2004.pdf>

<sup>8</sup> In a report by the Social-Economic Council of Flanders about economic instruments for environmental policy (“Economisch instrumentarium inzake milieubeleid”, Brussel, 30 September 1992) have the theoretical possibilities of emissions trading been assessed (p. 72-77).

<sup>9</sup> A. VERBRUGGEN, (red.), o.c., p. 677.

<sup>10</sup> INTERUNIVERSITAIRE COMMISSIE TOT HERZIENING VAN HET MILIEURECHT IN HET VLAAMSE GEWEST (ICHM), Voorontwerp decreet milieubeleid, Die Keure, Brugge, 1995, p. 441 and p. 633; see also: H. BOCKEN & D. RYCKBOST, *Codification of Environmental Law – Draft Decree on Environmental Policy*, Kluwer Law Int'l, London, 1996.

<sup>11</sup> See inter alia p. 67, 86, 324, 387 of the Environmental Policy Plan: <http://www.milieubeleidsplan.be>

<sup>12</sup> Flemish Climate Policy Plan (Vlaams Klimaatbeleidsplan 2002-2005), Aminaal, Brussel, 2003, p. 99, see: <http://www2.vlaanderen.be/ned/sites/economie/energie/energiesparen/vlaamsklimaatplan.htm>

to remain limited.<sup>13</sup> Such an opinion would also be included in a later advice (on 22 April 2004) on the draft Flemish Allocation Plan.<sup>14</sup> On the other hand it has to be mentioned that the Flemish Social and Economic (Advisory) Council stated clearly in its advice on the draft decree on Rational Energy (see below) that internal measures would be too expensive to realize the emission reduction targets. It concluded that the use of flexible instruments would be necessary and unavoidable.<sup>15</sup>

## 6 Developing a legal framework in Flanders

Sector agreements or voluntary agreements like benchmark covenants are obviously favoured by the industry and are promoted in their publications.<sup>16</sup> Flanders is no exemption, taking into account that it is the host country for one of the largest sites of chemical plants worldwide (port of Antwerp). In 2002 (29 November) a benchmark covenant was approved by the Flemish Government. It is an energy covenant that aims for a high reduction of GHG-emissions by the industry.<sup>17</sup> It seems that the existing possibility for using the legal framework for environmental covenants (Decree of 15 June 1994) was no choice as the main concern for developing such a benchmark covenant was presumably not environmentally inspired. The Benchmark covenant is a civil law agreement that contains only obligations regarding efforts as far as no particular obligations are defined as targets that have to be achieved. This Benchmark covenant clearly relates to the Emissions Trading directive as in one of its provisions (Article 6) is stipulated that companies are allowed to use flexible mechanisms if they don't belong to the World top regarding their energy efficiency in 2008. Companies have to proof their efforts on the basis of an energy plan. The decision/regulation of the Flemish Government of 16 July 2004 provides the legal framework for such an energy plan. At present more than 60 companies or installations located in Flanders can be considered as belonging to the World top. These energy-intensive companies are thought to be responsible for 80% of the energy consumption.

<sup>13</sup> Advice 2002/27 of 4 July 2002 on the use of economic instruments in the Flemish Climate policy, see: <http://www.minaraad.be>; see also: Federaal Plan Duurzame Ontwikkeling, o.c., nr. 527.

<sup>14</sup> See: <http://www.minaraad.be/2004/2004-20.pdf>; p. 7: In this advice the Council stressed the need for internal measures to reduce emissions.

<sup>15</sup> SERV- (Social-Economic Council of Flanders) advice of 22 October 2002, p. 27-28

<sup>16</sup> "Kyoto", Sociaal-economische nieuwsbrief N° 85, CRB (Central Council for the Industry), September 2003, p. 37.

<sup>17</sup> See: <http://www.benchmarking.be>

For this voluntary agreement no legal basis was available until the Rational Energy Use-decree was approved on 2 April 2004. This decree aims to regulate a number of items such as the basis for voluntary approaches including energy audit covenants. Another fundamental objective of this decree is the fact that it provides for an elementary transposition of the Emissions Trading directive. This is done mainly in Articles 20 and 21 of the REU-decree.

Article 20 transposes in a very general way a number of articles of the ET-directive. It concerns the following provisions: article 4 (permit), article 6 (conditions and contents of the permit), article 14 (monitoring, reporting), article 15 (verification), article 9 (national allocation plan), article 11 (emission rights), article 12 (transfer, surrender and cancellation of allowances), article 13 (validity of allowances) and article 19 (registry).

Article 21 contains some general provisions transposing the core of the Linking directive that amended the ET directive. As the Linking directive was not yet finally approved at the time of the adoption of the REU-decree, the Flemish Government preferred to take this (very small) risk. The use of JI- and CDM-projects to realize the Kyoto Protocol-objectives are a clear part of the Flemish and national climate policy intentions.

Both articles of the REU-decree delegate a lot to the Flemish Government and its explanatory note does not offer more than repetitions of provisions of the ET-directive...<sup>18</sup>

The drafting and final approval of the Flemish Allocation Plan took about one year. The first draft was approved on 2 April 2004 and between 7 and 14 April 2004 a first public consultation (citizens, stakeholders such as the industry and other branches of the civil society) took place. In order to improve the draft plan research was being done too. Taking into account the outcome of the public consultation a second draft of the Allocation Plan was approved on 28 May 2004. Afterwards the Flemish AP became part of the Belgian NAP that was approved by the Commission on 20 October 2004. From 17 to 26 November 2004 a second public consultation was organized about the further amended 2nd draft. It included improvements based on the Commission's comments and it also indicated the allocation of emission rights for individual installations. On 18 February 2005 the Flemish Government approved the final Allocation Plan and 127 companies knew

<sup>18</sup> T. VERMEIR & T. VERSTRAETEN, Het juridisch kader voor rationeel energiegebruik en verhandelbare emissierechten, in: DEKETELAERE, K. & M. DEKETELAERE (eds), *Jaarboek Milieurecht 2004*, Die Keure, Brugge, 2005, p. 80.

how many allowances they were allocated. For this allocation, the benchmark covenant was being used as part of the “counting rules approach”, including existing information and additional monitoring and reporting figures that were collected in the course of 2004.

The Flemish Allocation Plan was approved by a regulation (decision or executive order) of the Flemish Government but has its legal basis in another regulation/decision that was adopted by the Flemish Government on 4 february 2005 (ET-regulation). This ET-regulation amends the Flemish Environmental Regulations (Vlarem I & Vlarem II, for which the legal basis is the Decree of 28 June 1985) in order to transpose in more detail the requirements of the ET directive.<sup>19</sup> The ET-regulation is based on the REU-decree and refers also to the Environmental Permit Decree of 28 June 1985, the Co-operation agreement of 14 November 2002 and the Benchmark covenant. It took quite a long time before this ET-regulation was finally approved and many drafts have circulated and were discussed in different fora.<sup>20</sup>

The ET-regulation contains 53 articles and 1 annex. No less than 31 definitions are included. The ET-regulation provides for a mix of new duties for the government as well as new obligations for a number of companies (ET-installations). The first substantial element concerns the procedure for drafting the Allocation Plan (Articles 2-7). Concerning the first phase of this drafting process some timing provisions are included, but given the role for federal and European institutions in the final phase of the process, there are no fixed deadlines in the end. The annex contains the criteria to be applied for the elaboration of the Allocation Plan. Such a plan shall also contain counting rules to be applied for the allocation of the amount of allowances each operator may obtain (Article 8). The Environment Administration has the responsibility to develop proposals and the final allocation has to be done by a decision of the Flemish Minister for the Environment (Article 11). The decision is published on the

internet and in the State Gazette (Article 12). New entrants shall receive allowances from an Allocation Reserve as far as they are available (Article 9 - 10). For the first trading period, allocations are issued yearly for one third of the total amount, afterwards it will be one fifth (Article 13). There are other specific provisions for new entrants and depending the situation of their environmental permit the allocation of allowances could be adjusted and such rights become part of the Allocation Reserve (Article 14). Valid allowances can be transferred freely as far as the operator sticks to the rules such as the possession of a verified and validated CO<sub>2</sub>-emission year-report (Articles 15-18). These provisions and also others like the ones on the cancellation of allowances (Articles 19-21) are almost identical to the ET-directive-provisions.

Article 22 concerns the sanctions and elaborates the sanction provision already included in the REU-decree (Article 26). If operators don't comply, the Environment Administration has to impose an administrative sanction. It is an administrative fine but the procedure includes some steps and provides for procedural guarantees such as an appeal opportunity for the operator. Names of operators who do not comply are to be published on the internet. Article 23 of the ET-regulation concerns the criteria for verification of CO<sub>2</sub>-emissions. The Verification Bureau of the Benchmark covenant has an important role in the verification process. The criteria for the verification-task are quite generally formulated. A positive verification report means that a CO<sub>2</sub>-emissions year-report is considered to be acceptable or sufficient when the Verification Bureau concludes that the total emissions are not basically wrong presented...!

The ET-regulation also contains a number of provisions that mainly further transpose the Linking-directive (Articles 24-32). So in practice operator will have the opportunity to obtain allowances when surrendering CER's or ERU's. These provisions do not really elaborate the Directive's provisions and delegate further work to the Flemish minister for the Environment.

As already mentioned the ET-regulation also contains amendments to the Environmental Permit Regulations (Vlarem I, Vlarem II). These amendments incorporated in two chapters (Articles 33-46) of the ET-regulations, contain procedural and technical amendments in order to allow operators of GHG-installations to apply for a GHG emission permit.

The main amendments concern not only new definitions, but definitely the new requirements regarding the permit for GHG installations. That means that an energy study or energy plan needs to be submit-

<sup>19</sup> State Gazette, 28 February 2005, "Besluit van de Vlaamse regering inzake de handelbare emissierechten voor broeikasgassen en tot wijziging van het besluit van de Vlaamse Regering van 6 februari 1991 houdende vaststelling van het Vlaams reglement betreffende de milieuvergunning en van het besluit van de Vlaamse Regering van 1 juni 1995 houdende de algemene en sectorale bepalingen inzake milieuhygiëne"

<sup>20</sup> For descriptions and comments on earlier drafts, see: J. DE MULDER, "De handhaving van de Richtlijn inzake CO<sub>2</sub>-emissiehandel binnen de EU: enige aspecten vanuit het Vlaamse perspectief", in: L. LAVRYSEN & L. MICHIELS, *Milieurecht in de lage landen*, Boom Juridische Uitg., Den Haag, 2004, p. 129-161; en J. DE MULDER, "De omzetting van de CO<sub>2</sub>-emissiehandel-richtlijn in het Vlaamse gewest : het REG-decreet als spil van klimaatregelgeving", in: MAES, F. (ed.), *Verhandelbare emissierechten als klimaatbeleidsinstrument - L' échange des droits de pollution comme instrument de gestion du climat*, Die Keure, Brugge, 2004, p. 115-162;

ted as part of the permit application when the installation is on the "Vlarem"-list of energy intensive installations. For a GHG-installation it means also that the submission of a monitoring protocol and a calculation of the expected and relevant GHG emissions in the year of upstart of the activities and afterwards on. The Verification Bureau has to approve three types of documents. Vlarem II that contains technical provisions is supplemented with a new chapter on GHG emissions. Actually only a subchapter on CO<sub>2</sub>-emissions has been elaborated in five articles. These new provisions contain the additional obligations for operators such as the monitoring in accordance with the company's monitoring protocol, and the drafting and submission of the CO<sub>2</sub>-emissions year-report in accordance with the validated monitoring protocol by 1 February of each year. The Verification Bureau has to verify this report by 20 March and afterwards the Environment Administration has time until 31 March for the validation. Validated reports shall be published on the internet. The Flemish Minister for the Environment has elaborated formats for the monitoring protocol<sup>21</sup> and the CO<sub>2</sub>-emissions year-report (Article 48).

Given the late adoption of these new provisions, the ET-regulation also contains flexible transitory provisions (Article 47). Basically they say that GHG-installations are considered to have a GHG-emission permit when at the moment of the entry into force of the ET-regulations, they have an environmental permit for the activities and processes that cause CO<sub>2</sub>-emissions. Anyhow, there is definitely a need for updating these environmental permits. Installations that just need a GHG-emission permit can make use of an existing special "light" procedure, that has to be considered as an exemption of the standard procedure given the total changes that have been introduced by the new ET-regulations.

Furthermore Article 49 contains the announcement that by 1 June 2005 the Environment Administration has to submit an evaluation of the implementation of these regulations to the Minister of the Environment. Article 50 also indicates the Environment Administration as the competent authority for the duties included in the Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to the ET-directive 2003/87/EC and Decision No 280/2004/EC.

<sup>21</sup> On 25 March 2005 a Monitoring Protocol-approach has been approved

## 7 Difficulties, barriers, challenges and approaches

With respect to the implementation of the ET-directive, the major difficulty was the need to agree on an intra-Belgian burden sharing in order to start the preparations for drafting the national Allocation Plan. It is rather difficult to describe the discussions in Belgium on the EC-Burden Sharing Agreement and the transposition of the Belgian commitments into a national burden sharing as legal discussions. Given the economic and political structure of Belgium the core of the discussions were non-legal. There is a general understanding that Belgium's commitment (- 7,5%) in the EC Burden Sharing Agreement is beyond its capacity in relationship to the population and the economic productivity. Certain reports however have stressed that the reduction target is realistic when all necessary and possible measures would be taken and implemented.

As mentioned earlier the adoption of the co-operation agreement of 14 November 2002 was not sufficient as a basis for the work on the National Allocation Plan. Only after the political agreement of 8 March 2004 actions were really initiated. Each region as well as the federal level drafted a plan

According to Belgian civil servants responsible for the transposition of the ET Directive, the Commission should have agreed in advance with the fact that the Belgian NAP includes 3 regional allocation plans. The approval decision of the Commission of 20 October 2004 contains in its consideration (4) references to letters from the Flemish and Walloon governments. There has been separate (bilateral) contacts between the Walloon administration and the Commission, as well as between the Flemish administration and the Commission. The proposal from the Flemish Environment and Nature Advisory Council to draft one NAP and organise national public consultations was not followed.

The Belgian State Council that advises on draft legislation has in several advises on draft Walloon and Flemish ET-legislation (N° 37.039/4 of 17 May 2004 on the Walloon draft ET-decree; N° 37.522/3 of 24 December 2004 on the Flemish draft ET-regulation) stated that the ET-Directive requires one National Allocation Plan for each Member State and that no internal (Belgian) legal basis was available for the followed approach to draft four parts that together would constitute the National Allocation Plan. More precisely the State Council stated that a new co-operation agreement was necessary and that the above-mentioned burden sharing agreement of 8 March 2004 had no legal significance and did not provide for a NAP as required by the ET Directive.

The drafting of the different allocation plans was actually started without any legal basis being available.

Given the Belgian state structure, several legal acts were necessary:

- For the Brussels region: a Regulation was adopted on 3 June 2004 that introduces an ET-regime in the existing permit system;
- For the Walloon region: the Decree of 10 November 2004 introduces an ET-regime in the existing permit system;
- For the Flemish region: there is the above-mentioned REU-Decree of 2 April 2004 and the ET-regulation (Executive Order) of 4 February 2005 that introduces an ET-regime in the existing permit system
- At the federal level some executive orders are being developed.<sup>22</sup>

The dates of these legislations reveal that the ET-directive was not transposed in due time.

Both in the Walloon and Flemish regions, a framework for voluntary agreements was already available earlier (Benchmarking covenant in Flanders, „Accords de branche“ in Walloon region, 2002). Whilst the Walloon voluntary agreements are considered as environmental covenants, the Flemish arrangement is based on the separate REU-decree. These agreements are aimed to „smoothen“ more direct regulation or expected taxation. Certain stakeholder advices did question the legality of certain provisions of the Flemish Benchmarking covenant. Also the Walloon approach seems to be in conflict with certain federal regulation. At least certain stakeholder publications are critical but contain different opinions (employers versus environmentalists). Further to these „Belgian“ developments, Belgium favoured during the negotiations on the ET-directive the incorporation of „benchmarking“ as an element to be considered/used when applying the allocation criteria for the NAP.<sup>23</sup> No particular public attention was given to this issue, however certain publications (including newspapers and

magazines) when reporting on climate change issues did mention the fact that Belgium was not able to transpose in due time the ET Directive.

The Flemish Allocation Plan was the last one to be finally approved by the regional government on 18 February 2005. In Wallonia the first draft plan was ready by 17 June 2004. A 1st public consultation on the draft-AP was organised between 3 May and 2 June 2004, after which the AP was amended, approved became part of the Belgian NAP submitted on 23 June to the Commission. Further to remarks of the Commission, the Walloon government decided on 30 September to amend the regional plan. After approval from the Commission a 2nd public consultation took place in November 2004. A revised AP was finally approved on 27 January 2005. In Brussels, the draft-AP was ready on 15 April 2004. In this region only 15 installations are covered by the ET Directive. Also in Brussels two public consultations were organised.

On the federal part of the National AP two public consultations took place (10 to 21 April and 25 October to 4 November 2004). The consultation was only with respect to the „federal“ part of the NAP, namely some installations in two sites of nuclear power plants, for which an opt-out was requested (and accepted by the Commission). From the applied approach it is clear that the public was fully informed of the draft „national allocation plan“ and there were possibilities to comment or to rectify the original data. The drafts contained initially information that was already available and additional information. Where possible, updates were done. In Flanders a letter was sent to companies in order to submit an inventory of CO<sub>2</sub>-emissions of the installation(s) for the year 2003. The information was to be submitted before 26 March 2004. The allocations to individual installations were part of the regional and federal AP. Final ministerial decisions were published in the State Gazette (Staatsblad, Official Journal). For the Walloon region (decision of 27 January 2005) published on 10 February 2005; for Flanders (decision of 28 February 2005) published on 4 April 2005.

Both the Walloon and Flemish AP explicitly state that no other criteria were used than the ones included in Annex III of the ET-Directive. The Walloon AP is more explicitly about the use of voluntary covenants, but also the Flemish AP has been criticized for being too loose on the use of the benchmarking approach. Nevertheless, it has been said that compared to other NAP's from Member States, the Belgian NAP (so mainly the AP's from the Walloon and Flemish region) could be considered as rather stringent. Appeals to the published individual allocations are not known. However the Walloon legislation (decree) contains an explicit

<sup>22</sup> The trading approach is under development, but the responsibility for supervising the trading will be shared amongst the regions and the federal level. For the register, Belgium has opted for the French system.

<sup>23</sup> The Belgian participation to the discussions in the ENV-WG of the Council were prepared in a steering group that is part of the intra-Belgian structural co-ordination approach for preparing Belgian viewpoints, positions and declarations EU- and multilateral meetings (CCIM – co-ordination committee international environmental policy, also based on a co-operation agreement). This steering group contains representatives from all regions, the federal level and all involved sectoral branches (e.g. environment, energy etc...). Representatives are civil servants and staff members from Ministerial cabinets. Reports of the meetings of the steering group are not publicly available.

appeal opportunity, such a provision is not included in the Flemish ET-regulation.

All planned measures in Belgium are not sufficient to fulfil the required reduction. At present there is a shortage of 14,03 million CO<sub>2</sub> eq/annually. Federal measures should lead to a reduction of 4,8 million ton CO<sub>2</sub> eq annually or 34,2% of this shortage. Purchase of emission rights by the federal government should cover 2,46 million ton CO<sub>2</sub> eq annually or 17,5% of the shortage. So in total the federal government covers 51,7% of the shortage. The Belgian federal government is planning to acquire emission reduction units from JI and CDM projects for an initial budget of 10 millions Euros in 2005. A first public tender for the purchase of these units is currently being finalised and is scheduled to be launched by the end of May 2005.<sup>24</sup> A regulation (Royal Order) of 28 October 2004 (based on the Law of 29 April 1999, see above) has created this particular opportunity in the existing arrangement on the “Kyoto Fund”. The law of 29 April 1999 provides for a “Kyoto Fund”, that contains 25 million euro annually (since 2003).<sup>25</sup> This fund shall also receive the retributions from account holders in the National Registry.<sup>26</sup>

The Belgian State will purchase emission reduction units through a two stage procedure. In the first phase, potential suppliers will be selected on the basis of an “Expression of Interest” that will have to be submitted before 23 September 2005. Through this EoI they will have to express their interest in selling emission reduction units and justify their administrative, technical and financial capacity to deliver these units. In the next phase, the potential suppliers that have been selected out of the first Phase will be invited to submit a “Proposal” (November 2005 to February 2006). A validated Project Design Document (PDD) will be requested and the projects will be evaluated on the basis of their contribution to sustainable development, their certainty of delivering emission reduction units and the price per units. Successful suppliers will then be invited to enter into contract negotiations and subsequently to sign an Emission Reduction Purchase Agreement with the Belgian State. So until 2007 the federal government shall only use JI and CDM. A technical committee shall select the projects based

on their sustainability and costs. The purchase of these emission rights will be financed by the ‘Kyoto’-fund. After 2007 an evaluation shall be done in order to assess if the Kyoto-fund can completely cover the purchase of emission rights via JI and CDM. If costs will be too high to reach the federal objective, emissions rights could be acquired via International Emissions Trading. The advice of a technical committee with expertise in financial markets shall be taken into account. Also ODA-finances could be used for certain aspects of CDM-projects (e.g. capacity building, research and other transaction costs) (e.g. capacity building, research and other transaction costs).

## 8 Some observations and conclusions

The EU-strategy to adopt the ET-directive rather “urgently” has led to a complex transposition operation in Belgium and its regions. This complexity has many reasons. It is obvious that “emissions trading” as a (potential) new environmental policy instrument never got that much attention in Belgian academic and political circles. Even now some particular features or elements need further research. Also the contents of the ET-directive and the way it raises questions related to the use of other policy instruments (IPPC-permit, BAT, voluntary agreements) are not considered to be helpful when addressing the transposition- and implementation-issues.

When it became obvious that emissions trading would become an unavoidable reality, a number of planning and regulatory activities were initiated at the different involved policy levels (sectoral, horizontal, vertical) in the Belgium and its regions. In Flanders the approach revealed at certain moments rather fragmented and even minimalistic features. This may have been enhanced by a respect for the “institutional boundaries” of the involved policy fields including their regulations and instruments. Examples are the adoption of the REU-decree that contains a rather void – or extreme formalistic – transposition of the ET-directive. Also the refusal to amend the Environmental Permit decree or the exclusive incorporation of ET-directive – elements in the Environmental Permit – regulations (Vlarem I, Vlarem II) illustrate the Flemish fear for a fundamental and coherent development of an ET-legal framework. As the Benchmark covenant was the first real Flemish “climate policy – instrument” (inspired by its Dutch example, and steered from the energy policy field) it is obvious that the environment policy field had missed an opportunity. On the other hand, the reluctance of industries to accede to the Benchmark covenant due to its rather unclear legal design, was also a signal that the tar-

<sup>24</sup> The Flemish government has already organised a tender (end 2004) that was not very successful. For this reason a (Flemish) Ministerial decision was approved on 9 November 2004 (State Gazette of 18 November 2004). It mainly offered an outline to be applied for the tender and also some general selection criteria. Article 13 of the Walloon ET-decree also announces the creation of a Walloon Kyoto Fund. The Brussels region decided on 2 December 2004 to invest 9,5 million \$ in the World Bank Carbon Fund. (<http://www.ibgebim.be>)

<sup>25</sup> Royal Order of 24 March 2003

<sup>26</sup> Law of 27 December 2004, State Gazette, 31 December 2004

getgroup was waiting for a coherent legal framework – even including the necessary command-and-control-elements – as part of a clear ET-strategy.<sup>27</sup>

At present each region has linked the GHG-permit to the environment permit and most duties and responsibilities for the planning and permitting remain within the environment administrations that co-operate closely with the energy Administrations. At the federal level a Climate Unit (within the federal Environment Administration) has been established and quite well staffed in order to play a national co-ordinating and supervising role.

In general the actual ET-legislation in Belgium and its regions does not show much coherence. In Flanders the Decree on General Provisions for Environmental Policy of 5 April 1995 has not been used, however it could have been another option next to the two that have been mentioned before (REU-decree and Environmental Permit Decree). The introduction of a new chapter on Emissions Trading in this decree could have created a framework for the future elaboration of additional trading regimes (next to CO<sub>2</sub> or GHG). The introduction of the new economic instrument would have been definitely done in a more “economic” way.

However the real challenge in addressing the problem seems not be the choice between economic, voluntary or classic ‘command and control’ – instruments but the willingness to operationalize the policy-, governance- and management principles to control effectively CO<sub>2</sub> – (and other) emissions. At first sight it may be attractive to consider legal issues, and they are obviously important. Nevertheless technical aspects of compliance are undisputably as crucial: “ (...) compliance in a permit system depends on the technical ability to detect violations and the legal ability to deal with the violations.”<sup>28</sup> And this author observes also “ (...) research has mainly focused on the issue of non-compliance in the sense of not holding enough permits to cover all emissions and has more or less neglected non-compliance in monitoring and reporting”.<sup>29</sup> This message is clear!

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<sup>27</sup> H. VAN DEN BERGH, *Het Vlaams benchmarking covenant energie-efficiëntie*, tekstbundel Studiedag Vlaams klimaatbeleid, Technologisch Instituut – KVIV, Antwerpen, 2 oktober 2003, 3.

<sup>28</sup> S. PETERSON, *Monitoring, accounting and enforcement in emissions trading regimes*, Paper, OECD Concerted Action on Tradable Emissions Permits Country Forum, 17-18 March 2003, doc: CCNM/GF/SD/ENV (2003)5/FINAL, 4.

<sup>29</sup> id, 16.

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.

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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
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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

sofia is working on behalf of the

- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
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## elni

*In many countries lawyers are working on aspects of environmental law often with environmental initiatives and organisations or as legislators, but have limited contact with other lawyers abroad, although such contact and communication is vital for the successful and effective implementation of environmental law.*

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

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

*elni coordinates a number of different activities:*

### **Coordinating Bureau**

The Coordinating Bureau was originally set up at and financed by the Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit making research institute. The Bureau is currently hosted by the University of Applied Sciences in Bingen. The Bureau acts as an information centre where members can obtain information about others working in certain areas thus promoting the development of international projects and cooperation.

### **elni Review**

The elni Coordinating Bureau produces and sends to each member the elni Review twice a year containing members' reports on projects, legal cases and developments in environmental law. elni therefore encourages its members to submit such articles to be published in the Review in order to allow 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 bring together scientists, policy makers and young researchers, giving the opportunity to exchange views and information as well as developing new perspectives.

### **Publication Series**

The elni publications series contains 12 volumes on different topics of environmental law.

- Environmental Law and Policy at the Turn to the 21st Century, Liber amicorum, Betty Gebers, Ormond/Führ/Barth (eds.) Lexxion 2006.
- 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.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd. London 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd. London 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
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### **elni Website: elni.org**

The elni website at <http://www.elni.org> contains news about the network and an index of elni articles, gives an overview of elni activities, and informs about elni publications. Internships for young lawyers/law students at the Öko-Instituts environmental law division are also offered on the web.