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## REVIEW

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## The Directive on Ecodesign, the way forward regarding IPP ?

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The European Commission, in its communication of 18 June 2003<sup>1</sup>, has paved the way for a shift in conceiving environmental policies on products. It does indeed plead for the adoption of an « integrated product policy » (IPP), a concept we shall summarize as being built around three keywords : life-cycle approach, involvement of stakeholders and diversification of instruments.

What IPP means precisely is not so easy to master. One way to get a better idea of what the concept does really cover is to have a closer look at the way legislation is being developed at European level, regarding the environmental impact of products, after this turning point of June 2003.

In that perspective, the Directive on establishing a framework for the setting of Eco-design requirements for Energy-Using Products is worth to be scrutinized.

### I. The foundations of the Directive

In August 2003, the Commission adopted a proposal for a framework directive for the setting of ecodesign requirements for energy-using products<sup>2</sup>. The proposal is the outcome of the merger at the end of 2002 of proposals for a Directive on ecodesign for electrical and electronic equipment (EEE) and for a Directive on energy efficiency requirements (EER).

Its objective is to ensure the free movement of energy-using products within the EU and to contribute both to environmental protection policy and to security of energy supply.

The Economic and Social Committee delivered its opinion on 31 March 2004. The European Parliament adopted its opinion at first reading on 20 April 2004, approving 78 amendments. The Commission made an oral presentation of its modified proposal on 27 April 2004. On 29 November 2004, the Council issued its common position<sup>3</sup>.

#### A. A clear link to IPP

According to the Commission itself, the draft Directive contributes to the integration of life-cycle

thinking, one of the basic principles of the Integrated Product Policy (IPP), into product design<sup>4</sup>:

*“Given the many environmental aspects of products, the risk exists that sectoral policies may focus on particular aspects or phases of the product’s life cycle to the detriment of others, which may lead to contradictory and counterproductive legislation. This situation can be avoided by using an IPP approach. This has been elaborated in the aforementioned Green Paper on IPP and is further expanded in the Communication on the issue. IPP seeks to reduce the environmental impacts of all products and services across the whole of their life-cycles. It is based on life-cycle thinking, stakeholder involvement, the continuous improvement of products and the use of a variety of different policy instruments, including eco-design measure”.*

The Commission further states that the IPP principle, according to which environmental impacts must not merely be transferred from one phase of the life cycle to another, shall be followed when drafting implementation requirements.

The draft Directive is even presented as a test case for IPP: “experiences with its implementation will contribute to judging the appropriateness of establishing similar parallel framework Directives for other products, or general obligations on producers to undertake eco-design. Activities that will be pursued in the follow-up to the Communication on IPP”<sup>5</sup>.

The preamble of the draft Directive, as presented in the Common Position of 29 November, states that “the ecodesign of products is a crucial factor in the Community strategy on Integrated Product Policy. As a preventive approach, designed to optimise the environmental performance of products, while maintaining their functional qualities, it provides genuine opportunities for manufacturers, for consumers and for society as a whole”.

One can say that the draft Directive is indeed a good example for further investigation on how the Commission plans to implement IPP, as described in its communication of June 2003.

<sup>1</sup> COM(2003) 302final of 18 June 2003

<sup>2</sup> COM(2003)0453 of 1 August 2003

<sup>3</sup> OJ, C38 E/45, 15.2.2005.

<sup>4</sup> COM(2001)68final

<sup>5</sup> COM(2003) 453 final, memorandum, point 2.

### B. A sustainable development Directive?

Sustainable development is one of the major policy goals of the European Union. Article 2 of the EC Treaty calls for a sustainable development of the economy of the Community. Article 6 of the EC Treaty requires environmental considerations to be integrated into the other Community policies and activities, with a view to promoting sustainable development. The Cardiff European Council in 1998 reaffirmed the need for integration of the environment into other policies. In December 1999, the Helsinki European Council emphasised the three dimensions of sustainability: economic, social, and environmental.

According to the Commission, the draft proposal perfectly fits with the goal of sustainable development: "it aims at creating the framework for improving the environmental performance of energy-using products while preserving and enhancing a sound economic environment for this significant sector of activity with regard to the free movement of goods within the EU and the competitiveness of industry. It is therefore fully in line with the requirements for promotion of sustainable development and at the same time constitutes a concrete example of integration of environmental aspects in other Community policies and implementation of the IPP concepts in a wide product area".

Is this to forget the social dimension of sustainability? There are indeed no considerations at all in the draft Directive about the social and working conditions under which products are being *manufactured* in Europe or elsewhere and, in this regard, one can question the assimilation of the draft Directive (and of the IPP strategy itself) to a true incarnation of the sustainable development concept, as the draft Directive should then include, on the same footing with environmental and economic considerations, a stronger social pillar, which should not rest with merely making sure that prices of EuPproducts do not rise, in the advantage of consumers on the EC market. The draft Directive can be considered as an important step towards a more sustainable way of production and consumption but does not fully embrace the three pillars of the sustainable development concept.

### C. The legal basis

The Directive is based on Article 95 of the Treaty. Such a choice leads to various consequences:

- the adoption procedure of the Directive is co-decision, involving both the Parliament and the Council;
- the Commission, in its proposal, when dealing with health, safety, environmental protection,

and consumer protection, must take as a basis a high level of protection;

- the possibilities left to Member States to adopt stricter standards than those set under the Directive are very narrow, once the negotiation process is closed: Article 95(4) and (5) provides the possibility for Member States to maintain or introduce national provisions relating to the protection of the environment on the grounds of a specific problem and based on new scientific evidence, but under very strict and difficult to match conditions.

Member States are submitted to such restrictions because disparities between the laws or administrative measures adopted by the Member States can create barriers to trade and distort competition in the Community. The aim of Article 95 is precisely to favour the harmonisation of legislation at European level in a way that guarantees the proper functioning of the internal market.

With article 95 as a legal basis, it is crucial to guarantee, during the negotiations, that a high level of environmental protection is not only taken as a basis but also maintained during the whole process, in order to make sure that the final project does really incorporate a valid target regarding environmental protection. If this is not the case, it will be too late or very difficult for the Member States, afterwards, once the cake is cooked, to try to adopt stricter standards.

Discussions are still taking place on whether Article 175 of the Treaty, which is the dedicated legal basis for legislation on the environment, would not be more appropriate<sup>6</sup>. Article 175 does indeed offer more flexibility for Member States to adopt or maintain stricter environmental standards, after the adoption of the European legislation. Its objective is not, above all, to achieve the internal market; its target is to favour a good protection of the environment.

The literature is very full of comments regarding the choice of proper legal bases and the pro and contra of Article 95 of the Treaty versus Article 175<sup>7</sup>. We shall just note here that product policies are most often confronted with the dilemma, as soon as they involve environmental protection. Products have indeed a need to be traded and to move across the borders, which is not the case of a habitat or a power plant for instance. Any regulation

<sup>6</sup> See amendment 1 of the European Parliament,

<sup>7</sup> See e.g. J.H. JANS, *European Environmental Law*, Groeningen, Europa Law Publishing, 2000 - L. KRÄMER, *EC Environmental Law*, Fifth ed., Thomson, Sweet and Maxwell, 2003

on the environmental impact of products does consequently raise the issue of the proper legal basis.

The choice of the legal basis is not left to the discretion of the Community institutions, but has to be based on objective criteria, such as the stated objective and the content of the measure. The *centre of gravity* of the measure (the main purpose) is generally the key concept for cutting short the discussions when a measure pursues more than one objective and in this regard we can notice that Article 95 gets the preference of the legislator<sup>8</sup>.

In theory, when a measure simultaneously pursues several objectives which are not incidental in nature, multiple legal bases may be proposed, provided that the procedures can be conciliated. Both Article 95 and 175 are now based on co-decision by the Parliament and the Council but the residual powers they provide for Member States under Art. 176 and 95, §§ 4-9, are so different that a double legal basis can create considerable legal uncertainty. Authors have diverging positions on the admissibility of such a dual legal basis, in cases where both aspects (environment/internal market) would be *equally essential*<sup>9</sup>.

In the case of the Ecodesign Directive, the addition of Art.175 as a double legal basis would probably not provide the expected results regarding the broader latitude left to Member States, for a strong lock has been inserted in the text itself, which states that "*Member States shall not prohibit, restrict or impede the placing on the market and/or putting into service, within their territories, on grounds of ecodesign requirements (...) covered by the applicable implementing measure*" and this even if the existing implementing measure does not contain any ecodesign requirement (Art.5). With such a drafting, Member States have no latitude at all for reinforcing the objectives pursued by the implementing measures, whatever the legal basis.

If left so, it shall be extremely important that the negotiators make sure that implementing measures do incorporate sufficiently strong environmental requirements, as no prospects for any reinforcement of the objectives shall be left to Member States, except for changing the implementing measure itself or from removing the lock from the framework directive.

<sup>8</sup> Are based on Article 95: the packaging and the batteries Directives in the waste management area; the RoHS Directive; the Directive on noise from equipment for use outdoors on emissions from engines for mobile equipment (other than road vehicles); the directives on minimum energy efficiency requirements; the framework directive on labelling concerning energy consumption of domestic appliances.

<sup>9</sup> L.Krämer, p.73; J.JANS, p.54.

This shall have to be dealt with via the comitology process, in accordance with Decision 1999/468/EC, as the implementing measures shall be adopted by the Commission via this procedure. Implementing measures shall not take the form of daughter-directives, which would have required an adoption via a co-decision procedure involving the Parliament and the Council.

## II. Main features of the new regime

### A. A mere framework

The Directive provides a framework for the setting of eco-design requirements for a specific category of products, called the "energy-using products".

It does clearly limit itself to providing a framework, without setting any environmental requirements yet. The box is there, but still empty, the real substance being expected to be produced later on. As a consequence, the proper working of the new regime is for now a question mark, as it is fully dependent on the adoption of implementing measures, which are still to be adopted<sup>10</sup>, if ever.

In the meantime, EuP's are not submitted to any generic requirement by the Draft Directive regarding their eco-design or any other aspects, such as the environmental soundness or energy efficiency.

It is an important feature of the proposal indeed, which marks a difference with the Product Safety Directive<sup>11</sup>. The Product Safety Directive is built upon such a generic clause which imposes that all products put on the market must be "safe".

« Art.3.1. "*Producers shall be obliged to place only safe products on the market*".

Art.2.b. A "*safe product*" is any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons, taking into account the following points in particular: i) the characteristics of the product, including its composition, packaging, instructions for assembly and, where applicable, for installation and maintenance;

<sup>10</sup> Except for the content of three existing Directives, Directives 92/42/EEC (boilers), 96/57/EC (freezers) and 2000/55/EC (ballasts), which are turned into implementing measures by Article 17 of the Draft proposal.

<sup>11</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, *O.J. L 011*, 15/01/2002, pp.4-17.

(ii) the effect on other products, where it is reasonably foreseeable that it will be used with other products;

(iii) the presentation of the product, the labelling, any warnings and instructions for its use and disposal and any other indication or information regarding the product;

(iv) the categories of consumers at risk when using the product, in particular children and the elderly. »

*The feasibility of obtaining higher levels of safety or the availability of other products presenting a lesser degree of risk shall not constitute grounds for considering a product to be "dangerous".*»

## B. Energy-using products

The Directive deals with energy-using products.

A "EuP" is a product which, once placed on the market and/or put into service, is dependent on energy input (electricity, fossil fuels and renewable energy sources) to work as intended, or a product for the generation, transfer and measurement of such energy, including parts dependent on energy input and intended to be incorporated into an EuP covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently (Art. 2.1).

Vehicles and all means of transport for persons or goods are excluded from the scope of the Directive (Art.1.2).

## C. Ecodesign

Ecodesign means the integration of environmental aspects into product design with the aim of improving the environmental performance of the EuP throughout its whole life cycle (Art.2, 22).

## D. The scheme

The regime which is being built by the Directive can be summarised by a set of eight key elements.

*1. The ultimate goal: an optimal access to the market for EuPs.*

The Directive guarantees a non-restricted access to the European market to those EuPs that do comply with the implementing measures (Art. 3 and 5).

*2. No further constraints by Member States.*

Member States can, in no way, try to restrict the access of those EuP to the European market, for any reason whatsoever (Art. 3 and 5). This is true even where the implementing measure would not include any requirement regarding eco-design (Art. 5.2);

*3. Implementing measures: not the first option.*

Implementing measures, which are a key element for the functioning of the regime, must be adopted by the Commission in accordance with Art.12<sup>12</sup>.

But they shall not necessarily be adopted for all products. For three reasons.

a) Not all products are worth being submitted to the new regime: only those complying with three criteria are targeted: 1st sale and trade volume of more than 200 000 units/a year, 2nd significant impact on the environment, 3rd significant potential for improvement, on basis of three parameters: absence of other relevant Community legislation, a failure of market forces to address the issue, a wide disparity in the environmental performance. A working plan shall be elaborated which proposes a list of the product groups to be considered as a priority in the coming years (article 13).

b) The need for implementing measures is evaluated on the basis of relevant self-regulation, such as voluntary agreements, or other measures adopted by the industry. This can mean that if a voluntary agreement leads to satisfaction regarding a given product group, the choice shall be made not to adopt implementing measures (Article 12.3,b).

c) The need for implementing measures is tested against the priorities of the European Community regarding the environment and Climate change in particular (Article 12.3,a).

*4. Implementing measures: not a priority for environmental criteria*

Implementing measures must meet the criteria set in Article 12 of the Directive. The substantial criteria are more economic than environmental (*see infra*).

*5. Implementing measures: comitology*

The implementing measures are adopted by the Commission, via the Comitology procedure (Article 12). However, in order to make sure that all stakeholders (industry, NGO's, trade unions, etc...) are involved in or kept informed of the process, a "consultative forum" is created (Article 14).

*6. The manufacturer must assess the impact of its product*

The manufacturer must carry out an assessment of the EuP's conformity with all the requirements of the implementing measure (either via internal design control, set out in Annex IV, or the management system, set out in Annex V).

<sup>12</sup> The Draft Directive states now that the Commission shall adopt implementing measures, where the first version was much weaker (the Commission "may" adopt implementing measures).

### 7. *The presumption of conformity and the new approach*

Before placing an EuP on the market or putting it into service, the manufacturer must assess the EuP's conformity with all the relevant requirements of the applicable implementing measure. A CE conformity marking shall then be affixed on the EuP by the manufacturer. Member States shall regard an EuP bearing the CE marking as conforming to the implementing measures.

An EuP shall also be presumed to be conforming to the implementing measure (where existing):

a) when it is conforming to harmonized standards, "the reference of which have been published in the Official Journal of the European Union";

b) when it has been awarded the Community ecolabel.

### 8. *The powers of Member States in case of non-conformity*

Control of the trustworthiness of the presumption of conformity is in the hands of the Member States. They are given the responsibility to control the use of the EC marking and they must bear the burden of proof. They are in charge of organising appropriate checks on compliance and require all necessary information by the parties concerned.

Under some conditions, they can take the decision to restrict or prohibit the placing on the market, or to withdraw the EuPs which have already been placed on the market. Member States are required to inform the Commission immediately and other Member States of their decision, and this shall lead the Commission "to enter into consultation with the parties concerned without delay". If the Commission considers that the decision is unjustified, it shall immediately inform the Member States to that effect.

The sharing of information is to be organised by Member States, possibly with the help of the Commission. The precise nature and structure of this process must be decided via the comitology procedure.

## E. Implementing measures

In preparing and adopting implementing measures, the Commission must take a large set of criteria into account. Those are of procedural and substantial nature and are stated under Art. 12 and the Annexes.

### 1. *The preparation of the implementing measure*

In preparing a draft for implementing measures, the Commission shall, according to Art.12,4:

- consider the life cycle of an EuP;

- carry out an impact assessment, which must not only focus on the environmental impact of the measure but also on the impact on consumers and producers (competitiveness, innovation, market access, costs and benefits); prepare a memorandum thereabout;
- take into account existing national environmental legislation that Member States consider relevant;
- carry out appropriate consultation with stakeholders;
- set implementing dates, staged or transitional measures or periods;
- take into account possible impact on small and medium enterprises.

### 2. *The content of the implementing measure*

#### a) Non-environmental criteria

An implementing measure must meet a large set of criteria, which are very clearly an objective of cost reduction and protection of competitiveness (Art.12, 5):

- the requirements do not have a significant negative impact on the functionality of the product, from the perspective of the user; health and safety must not be affected neither;
- there shall be no significant negative impact on the affordability of the product for the consumer and on the *life cycle cost* of the product;
- the measure must not have a significant negative impact on manufacturers' competitiveness, including on markets outside the Community;
- the setting of an eco-design requirement should not, in principle, have the consequence of imposing proprietary technology on manufacturers;
- the measure must not lead to an excessive administrative burden for the manufacturer.

The requirements must also be formulated so as to ensure that surveillance is made possible and the implementing measure shall specify whether verification can be achieved directly on the EuP or on the basis of the technical documentation.

#### b) Environmental criteria

Implementing shall lay down ecodesign requirements (Art. 6,§1) but can also specify that no ecodesign requirements are necessary for some specified parameters (Art.6,§3).

An ecodesign requirement means any requirement in relation to an EuP, or the design of an EuP, intended to improve its environmental performance, or any requirement for the supply of information with regard to the environmental aspects of an EuP. Quantified and measurable requirements (the so-called specific ecodesign requirements) shall only be introduced for "selected environmental aspects

which have a significant impact” (Art.6, §2). Generic ecodesign requirements aim at improving the environmental performance without setting limit values and are based on the ecological profile as a whole.

The ecodesign requirements must be adopted in accordance with the Annex I and/or Annex II.

Annex I does not only deal with the appropriate method setting generic ecodesign requirements, but also with the requirements containing no limit values. It draws up a list of parameters among which the Commission shall have to pick to choose those relevant for the EuP covered.

The life-cycle of a product is divided in six stages: 1. raw material selection and use; 2. manufacturing; 3. packaging, transport and distribution; 4. installation and maintenance; 5. use; 6. end-of-life.

It sets the aspects (an element or function that can interact with the environment during its life cycle) which are to be assessed, *where relevant or appropriate*, when drafting the implementing measure. Among those: consumption of energy, water and other resources throughout the life cycle, use of hazardous substances, ease for reuse and recycling, extension of lifetime (i.e. reparability), emissions to air, water and soil.

According to Annex II, the quantified levels set via the specific ecodesign requirements shall be based on a selection of representative models and technical options *for improving the environmental performance of the product*, keeping sight of the economic viability of the options and avoiding any significant loss of performance or of usefulness for consumers.

Concerning energy consumption in use, the level of energy efficiency or consumption shall be set aiming at the life-cycle cost minimum to end users.

Annex VII sets the minimal content of the implementing measure, in accordance with Art.12.8. The implementing measure must specify:

- the exact definition of the type of EuP covered;
- the ecodesign requirements (generic and/or specific), with implementing dates and transitional measures;
- the ecodesign parameters relating to which no ecodesign requirement is necessary;
- the requirement on installation of the EuP, where relevant;
- the measurement standards or methods (possibly harmonized standards, where available);
- the details for conformity assessment;
- requirements on information to be provided by manufacturers to the authorities;

- the transitional period during which Member States must accept EuPs which comply with the regulations in force in their territory on the date of adoption of the implementing measure;
- the date for the evaluation and possible revision of the implementing measure.

### III. Testing the eco-design Directive against IPP

#### A. IPP according to the Commission Communication of 2003.

According to the Commission Communication of 2003, an Integrated Product Policy must be based on the following principles<sup>13</sup>:

a) Life-Cycle Thinking : it considers a product’s life-cycle and aims at a reduction of its cumulative environmental impacts - from the “cradle to the grave”. In so doing, it also aims at preventing individual parts of the life-cycle from being addressed in a way that just results in the environmental burden being shifted to another part. By looking at the whole of a product’s life-cycle in an integrated way, IPP also promotes policy coherence. It encourages measures to reduce environmental impacts at the point in the life-cycle where they are likely to be most effective in reducing environmental impact and saving costs for business and society.

b) Working with the market : In the opinion of the Commission, the integrated product policy is mostly a market based approach, setting incentives to move the market in the most sustainable direction by encouraging the supply and demand of green products (= products that have lower environmental impacts throughout their life-cycle when compared to similar products fulfilling the same function). The different market users must be left with the responsibility for the choices to make. The Commission clearly seems to favour non-binding instruments;

c) Stakeholder involvement : it aims at encouraging all those who come into contact with the product (i.e. industry, consumers and government) to act on their sphere of influence and to encourage cooperation between the different stakeholders. Industry can look at how to better integrate environmental aspects in the design of products while consumers can assess how they can purchase greener products and how they can better use and dispose of them. Governments can set the economic and legal framework conditions for entire national economies and also act directly on markets, for instance by purchasing greener products.

<sup>13</sup> COM (2003) 302 final, p. 5.

d) Continuous improvement : The integrated product policy aims at continuous improvement in design, manufacturing, use and disposal of products, taking into account the parameters set by the market, rather than setting a precise threshold to be attained.

e) Variety of instruments : The integrated product policy requires a variety of policy instruments to reach a global environmental impact reduction of products, but the tendency is clearly to work with voluntary measures. The determining factor will be the effectiveness of the tool to achieve the desired result with regard to sustainable development. The instruments listed by the Commission are in particular: a. taxes and subsidies, b. public procurement regulations, c. legislation, d. voluntary agreements, e. standardisation, f. life-cycle information, g. consumer information, h. pilot projects.

We analyse hereunder how the ecodesign Directive fits with these principles.

### B. Life-cycle thinking

The Directive does indeed take as a basis a life-cycle approach.

This is clear from the definition of the “ecodesign” concept itself (“the integration of environmental aspects into product design with the aim of improving the environmental performance of the EuP throughout its whole life cycle” - Art.2, 22) and from the definitions of “environmental aspect”, “environmental impact” and “ecological profile” (“a description, in accordance with the implementing measure applicable to the EuP, of the inputs and outputs (such as materials, emissions and waste) associated with an EuP throughout its life cycle which are significant from the point of view of its environmental impact and are expressed in physical quantities that can be measured”) and from the requirements set under Art.12 and in the annexes. The Commission must indeed consider the life cycle of the product when preparing the implementing measure and the manufacturer must assess the impact of its product throughout its life cycle (art. 12, 4, a), based upon realistic assumptions about normal conditions and purposes of use (Annex 1, Part 3).

Life cycle is understood under the Directive as “the consecutive and interlinked stages of an EuP from raw material use to final disposal” (Art.12, 12). The various phases of the life-cycle are enumerated under Annex I, part I:

- raw material selection and use;
- manufacturing;
- packaging, transport, and distribution;
- installation and maintenance;

- use;
- end-of-life, meaning the state of the EuP having reached the end of its first use until its final disposal.

The conceptual phase of the product design itself, preceding the physical birth of the product, is not included in this enumeration but it is referred to in the preamble as the best stage to consider the environmental impact of a product throughout its whole life cycle, as it provides a high potential to facilitate environmental improvement in a cost-effective way.

The Directive does not give any clear indications on how the possible transfer of the environmental impact between the various stages of the life cycle must be taken into consideration, nor on how the balance should be made with various environmental impacts of the product.

It does however indicate that,

- within each stage of the product design, in so far as they relate to product design, the most significant environmental aspects must be identified when preparing generic ecodesign requirements (Annex I, I). The environmental aspects are the elements or functions of an EuP that can interact with the environment during its life cycle (Art.2, 10), such as energy use, raw material at the production stage and, most probably, impact on infrastructure and land planning (where applicable, the case of mobile phones for instance);
- the manufacturer, when assessing alternative design options, shall base its choice on the possibility to achieve a reasonable balance between the various environmental aspects and other relevant considerations, such as safety and health, technical requirements for functionality, quality and performance, and economic aspects, including manufacturing costs as marketability, while complying with all relevant legislation (Annexe I, III).

The Directive also introduces the concept of “life-cycle cost”:

- by stating that the implementing measure must not have a significant impact on consumers regarding the life-cycle cost of the product (Art. 12, 5, c);
- by setting criteria for the elaboration of the specific ecodesign requirements: consumption of resources must be set at a life-cycle cost minimum for end users (Annex II), taking into consideration the consequence on other environmental aspects.

A life-cycle cost method is provided for: it uses a real discount rate on the basis of data provided from the European Central Bank and a realistic lifetime for the EuP; it is based on the variation in purchase

price (resulting from the variations in industrial costs) and in operating expenses, which result from the different levels of technical improvement options, discounted over the lifetime of the representative EuP models considered. The operating expenses cover primarily energy consumption and additional expenses in other resources (such as water or detergent).

Life-cycle cost is to be used in parallel to the life cycle approach. It is a crucial condition for the acceptability of the implementing measure, based on the consideration that the cost of the product to consumers is directly related to the operating expenses and the price of primary resources, during its lifetime. But, contrary to the life cycle approach concept, it does not include any environmental externalities.

The requirement set by the Commission Communication of 2003 that the environmental impacts of products should be addressed “at the point in the life-cycle where they will best and most cost effectively for business and society reduce the overall environment impacts and resource use” is not illustrated by the Directive. There is no explicit requirement to base the implementing measure on the sole stage of the life-cycle where the action would be the less expensive possible. Except for the declaration that the product design phase itself is surely the most appropriate to prevent the environmental impact of the product during its whole life, for economic reasons (preamble, 10).

### C. Working with the market and the voluntary agreements

In assessing the *need* to prepare a draft implementation measure, the Commission must take into account “*relevant self-regulation, such as voluntary agreements or other measures taken by industry*” (article 12, §3, b). Moreover, an EuP shall only be covered by an implementing measure where there is a significant potential for improvement in terms of its environmental impact without entailing excessive costs and, among other parameters, where the market forces failed to address the issue (article 12, §2, c).

From those meager provisions, it is to be inferred that the existence of a voluntary agreement dealing with a EuP, if proved to be satisfactory, is a right motivation for deciding not to adopt implementing measures.

It is also a call for the manufacturers to organize themselves in a way that it is so satisfactory and convincing that the Directive itself does not need any more attention, via the adoption of implementing measures, for the EuP covered.

In its initial proposal, the Commission states indeed that the adoption of a framework directive on eco-

design requirements would reinforce the potential impact of self-regulation by the industry. The industry, aware that the Community possesses an efficient tool to set requirements rapidly through the adoption of implementing measures, could seize the opportunity to conclude satisfactory self-commitments. On the contrary, it would support compulsory requirements where it is clear that too many “free riders” would not share the same environmental improvement targets, especially where the market at stake is very fragmented. Still according to the Commission, an implementing measure shall provide a quick *alternative* should a self-commitment prove not to work.

#### 1. Definition, categories and conditions of acceptability of agreements at EC level

According to the Commission Communication of 2002 on Environmental Agreements at Community Level - Within the Framework of the Action Plan on the Simplification and Improvement of the Regulatory Environment<sup>14</sup>, environmental Agreements at Community level are those by which stakeholders undertake to achieve pollution abatement, as defined in environmental law, or environmental objectives set out in Article 174 of the Treaty.

These environmental agreements are not negotiated with nor adopted by the Commission. They can merely be acknowledged either by an exchange of letters with the Commission, by a Recommendation by the Commission, by a Recommendation accompanied by a Parliament and Council Decision on monitoring or under coregulation decided by the Community legislators. These environmental agreements must be distinguished from the environmental agreements entered into by the Member States, possibly as a national implementation measure of a Community Directive: at national level, the public authority often enters into the agreement itself, by endorsing commitments (rights and obligations), where this is not the case at Community level. The EC Treaty does not indeed include the voluntary agreements into the list of instruments left to the European Institutions for carrying out their policies<sup>15</sup>.

Environmental agreements, by their very nature, are self-regulatory practices with no legally binding effects at Community level. However, according to its proposals in the Action Plan, the Commission may also encourage or acknowledge them (under self-regulation) or propose to the legislator to use them when appropriate (coregulation).

<sup>14</sup> COM(2002)0278 final

<sup>15</sup> List including Directives and Regulations, among others.

The Commission institutes indeed a distinction between:

- self-regulation, which does not involve a legislative act. They are merely encouraged or acknowledged by the Commission but are not adopted within a specific legislative framework;
- coregulation: environmental agreements are concluded in the framework of a legislative act allowing the implementation of a specific piece of Community legislation by the conclusion of agreements. Within this regulatory framework, the legislator establishes the objectives that are achieved via the agreement; the deadlines and mechanisms relating to its implementation; methods of monitoring the application of the legislation and any sanctions which are necessary to guarantee the legal certainty of the legislation. Coregulation is usually initiated by the Commission, either on its own initiative or in response to voluntary action on the part of industry. In any event, in cases where using the coregulation mechanism does not produce the expected results, the Commission can exercise its right to make a traditional legislative proposal to the legislator. The legal act could therefore include intermediate targets which would allow an assessment of whether the agreement is likely to achieve its objectives. In case of failure to meet these intermediate targets, coregulation could define the conditions under which the Member States have to apply supplementary provisions defining how the objectives are to be reached. The appropriate mechanisms should be carefully designed on a case-by-case basis.

## 2. Assessment criteria

The 1996 Communication identified a set of criteria which were considered necessary for the appropriate use (and success) of environmental agreements. Those were: prior consultation with interested parties, a binding form, quantified and staged objectives, the monitoring of results as well as the publication of the agreement and of the results obtained. These criteria should make it possible to avoid the stipulation of merely vague objectives, lack of transparency and possible distortion of competition caused by free-riders ». In its communication of 2002, the Commission recalls that an environmental agreement must deliver added value in terms of a high level of protection of the environment and that community policy on the environment shall always aim at a high level of protection. Therefore, before acknowledging an environmental agreement, the Commission must make sure that it also fulfils this condition. Its objectives should be derived in the first instance from the 6th Environmental Action Programme, other key policy documents or from

multilateral environmental agreements. This should ensure that the agreement delivers more than "business as usual".

## 3. Procedural requirements

The Commission proposes procedures which should be respected when acknowledging (self-regulation) or specifically providing for the use of environmental agreements (coregulation). Those are quite demanding and vary according to the use of the instrument (self-regulation or coregulation).

For the environmental agreements used as an instrument of self-regulation, the Commission's evaluation and conclusion as to the appropriateness of an environmental agreement will be made publicly available, for example on the Commission's web site, in order to give the wider public a possibility to be informed of the proposed agreement and to comment thereupon. After considering any comments received, in particular those from the European Parliament and the Council, the Commission may take the decision to proceed by recognising an environmental agreement. The Commission will verify, by appropriate monitoring and reporting mechanisms, if the underlying environmental objective is actually reached. The monitoring results and the reports will be communicated to the European Parliament and the Council, and will be made accessible to the public by electronic means. The Commission may also propose monitoring and reporting mechanisms for evaluating the attainment of the environmental objective in the form of a Decision by the European Parliament and the Council. If an agreement considered in a Commission Recommendation or exchange of letters fails to deliver the expected results, the Commission can make use of its right of initiative and propose appropriate binding legislation.

For the environmental agreements used as an instrument of coregulation, key elements - notably the environmental objective and monitoring requirements - and potentially also a follow-up mechanism in case of failure of an environmental agreement to deliver, are *integrated into the legal act itself*. The latter is subject to stakeholder consultation during its preparation, in line with the Commission Communication on minimum standards for consultation, and is adopted under normal co-decision procedure.

Where the Commission decides that coregulation is the best means of achieving an environmental objective and where key elements of its proposal are based on an existing or proposed voluntary agreement, which is satisfactory from the Commission's point of view, the Commission will include these elements in its proposal and pursue them in discussions with the other institutions. The environmental

agreement should be made public on the Commission's website. Monitoring results and associated reports should also be made available by electronic means.

Under coregulation, as for self-regulation, the Commission can always make use of its right of initiative and propose appropriate binding legislation if the agreement fails to deliver the expected results. These procedures should ensure that environmental agreements are appropriately used wherever they are considered a genuine complement to existing policy tools. At the same time, they should guarantee the involvement of European institutions in the process as appropriate.

#### 5. Voluntary agreements under the Eco-design Draft Directive

The vocabulary in article 12 of the Draft Directive and its preamble is quite clear about the kind of link made to voluntary agreements within the Draft Directive: voluntary agreements are presented as a process of self-regulation (article 12,§3,b), and Chapter 6 of the Commission Communication is referred to as it could « *provide useful guidance when assessing self-regulation by industry in the context of this directive* ».

One can wonder though why the Draft Directive is so laconic about the possible acknowledgement of an instrument which is called to play an ever-increasing role in a context of deregulation and singularly on the way towards an integrated product policy.

There are indeed absolutely no indications on what shall be the *criteria* for considering that a voluntary agreement, preexisting or newly concluded, can be deemed acceptable and promising to such a degree that it can motivate the decision not to adopt an implementing measure with the very important consequence that the EuPs at stake shall fall outside the scope of the application of the new regime, with all its possible consequences, among which a non-restricted access to the EC market.

The opportunity is not geared to define how the monitoring and reporting on the agreement will occur and what would be the criteria for deciding that an agreement did not deliver the promised result<sup>16</sup>.

One can wonder also why the Commission did not propose to stimulate the use of voluntary agreements via a coregulation process, where agreements

would not be an *alternative* to implementing measures but would, on the contrary, be *part of it*.

The Draft Directive could indeed have set criteria and targets that should be complied with, either by regulation, either by voluntary agreements. In that hypothesis, the instrument would have been much better controlled and would make sure the EuPs at stake and their producers do benefit from all the advantages that could be provided for by the new framework. It would also have given more strength to those voluntary agreements, when confronted with the possible control of Member States.

In the current situation indeed, EuPs which shall be dealt with by voluntary agreements shall not only be offered an eased access to the European market, as they are not entering into the scope of Article 5 of the Draft Directive. Member States remain perfectly free to impose their own environmental conditions to them, in due respect of the EC Treaty.

#### D. Stakeholder involvement

The Directive provides for the creation of a Consultation Forum, where all stakeholders should meet in accordance with the rules of procedures which shall be established by the Commission. This should ensure that the Commission, in the conduct of its activities, in respect of each implementing measures, *observes* a balanced participation of Member States representatives and all interested parties concerned with the product/product group in question. Among those are industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumers organisations (article 14).

This requirement was not in the original version of the Draft Directive but has been called on board by the European Parliament and by the Economic and Social Committee. It remains to be seen, however, how that participation is going to take place in the daily practice and how the requirement for a *balanced* participation shall be met and controlled.

The Consultation Forum shall be consulted by the Commission when establishing the working plan for the coming three years, establishing an indicative list of product groups which will be considered as priorities for the adoption of implementing measure (Article 13). But no information can be found on how the various stakeholders shall be invited to participate in the elaboration of those implementing measures, to be prepared by the Commission via a Comitology process, except for the provision in Article 12,§4, stating that “*in preparing a draft implementing measure the Commission shall carry out appropriate consultation with stakeholders*”. One could have expected, regarding the Communication on IPP, the setting-up of specific product groups or product forums, in charge of

<sup>16</sup> Despite an amendment proposed by the European Parliament in order to solve the issue.

providing a structured advice during the preparation of an implementing measure concerning a given EuP<sup>17</sup>.

### E. Continuous improvement

The requirement for continuous improvement of the environmental performance of the EuP can be found at various places in the Directive, in particular in the definition of “ecodesign”.

One must admit however that this level of improvement is not easy to evaluate in the absence of (newly written) implementing measures, due to the very important weight of economic considerations in the conditions set for adopting the implementation measures (Art. 12, 5 in particular) and due to the absence of any general requirement regarding the level of protection of the environment.

In this light, it is important to come back to our discussion on the legal basis of the Directive and to specify, after a better grasp of the content of the proposal, that the environment is surely not the main objective, not can it put at an equal footing with the objective of harmonisation of the internal market. If this was perhaps the case in its very early stages, the balance has now struck in favour of the internal market.

Under the Commission Communication of 2003, “continuous improvement” has a peculiar meaning, as it indeed means that « improvements can often be made to decrease a product’s environmental impacts across its life-cycle, whether in design, manufacture, use or disposal, taking into account the parameters set by the market. IPP aims for a continuous improvement in these cases rather than setting a precise threshold to be attained. As a result, companies can set their own pace and can focus on the most cost efficient improvements ».

This is partly reflected in the ecodesign Directive as :

- precise thresholds are not required in all ecodesign requirements but only in the « specific » ones. Generic ecodesign requirements, on the contrary, aim at improving the environmental performance without setting limit values and are based on the ecological profile as a whole;
- requirements must take into account possible impact on small and medium enterprises. and contained stages or transitional measures or periods.

Manufacturers are invited to establish the « ecological profile » of their product and to test their per-

formances against benchmarks which shall be established by the Commission in the implementing measure. They must evaluate alternative design solutions, taking into consideration a proper balance between environmental considerations and others, including manufacturing costs and marketability (Annex I,3).

### F. Instruments

We have already analysed the room left to voluntary agreements in the mechanism created by the directive: a satisfactory agreement is a sufficient justification for deciding not to adopt an implementing measure and, therefore, not to set the regime created by the Directive into motion. The conditions under which an agreement is considered as satisfactory are not specified by the Directive.

The Directive makes also room for other instruments which are promoted by the IPP strategy: EMAS, the eco-label and standardization.

#### 1. EMAS

When an EuP is designed by an organisation registered under the EMAS regulation and if the design function is included within the scope of that registration, the management system of that organisation shall be presumed to comply with the requirements of Annex V of the Directive.

#### 2. The eco-label

An EuP which has been awarded an eco-label is presumed to comply with the ecodesign requirements in so far, however, as those requirements are met by the eco-label. The Commission can even decide that other eco-labels fulfill equivalent conditions to the Community eco-label pursuant to Regulation EC/n°1980/2000 and are also presumed conform to the implementation measure (Art.8, 3 & 4).

#### 3. The standardization

Harmonised standards, which are to be adopted via the so-called “new approach” under a mandate from the Commission (Art.2,26) intervene in the Directive as *another possibility of presumption of conformity* with an implementing measure (Art.8), where existing.

In this perspective, the regime can be summarized as such:

- an implementation measure is adopted for an EuP;
- the manufacturer must assess the conformity of its EuP to the implementing measure;
- such an assessment is not necessary where the EuP is conform to an harmonised standard, published in the Official Journal and conforming to all the relevant requirements of the applicable implementing measure to which the harmonised standard relates.

<sup>17</sup> See *Cooperative Approaches to Integrated Product Policy (IPP) – Reflections on how to structure a product forum*, IOWI Ministry of the Environment Baden-Württemberg, 2004.

Where a Member State or the Commission considers that harmonised standards do not entirely satisfy the implementing measure, the Standing Committee set up under Art.5 of Directive 98/34/EC must be informed and shall issue an opinion as a matter of urgency (Article 9.3). In the light of this opinion, the Commission shall decide to publish, not to publish, to publish with restrictions, to maintain or to withdraw the references of the harmonised standards concerned in the *Official Journal*. The Commission shall inform the European Standardization body concerned and, if necessary, issue a new mandate for the revision of the standard.

The harmonised standards are also referred to in the chapter dedicated to the conformity assessment by the manufacturer: a presumption of conformity to the requirements of the Annex V is provided for when the EuP is designed by an organisation having a management system which includes the product design function and which is implemented in accordance with harmonised standards, the references of which have been published in the *Official Journal*.

In this general context, one can wonder what shall be the influence of the current standards on the elaboration of the implementing measures on ecodesign requirements. Shall new standards be elaborated in order to conform the implementing measures or shall it be the other way round: shaping implementing measures on the content of existing standards? Where shall be the steering force?

#### IV. Conclusions

The Draft Directive establishing a framework for the setting of ecodesign requirements for energy-using products provides us some indication indeed on what « integrated product policy » (IPP) might mean, when implemented in new regulation.

First, some light is shed on how the reliance on a mix of instruments is supposed to be understood in an IPP strategy. In this regard, the most interesting element in the Draft Directive is probably the way voluntary instruments are being used in the proposed regime. A successful voluntary agreement is a motive for not adopting an implementing measure under the Draft Directive (Article 12), at the risk of turning the Directive itself into an empty box. The main key elements of the framework Directive are indeed built in such a way that they shall only start functioning when related to an implementing measure. If a decision is taken that no implementing measures is necessary for a given EuP, due to the acknowledgement that market forces do successfully

address the issue (with no indications however on what this could mean), the whole regime shall be rendered void for that EuP (and this means no guarantee for free access to the market, no conformity assessment, no presumption of conformity via standardization for the EuP), because the relevant provisions can only be brought to life when confronted with those implementing measures, adopted by the Commission. One can actually ask where the incentive for the industry shall lay : in concluding successful agreements in order to avoid the whole new regime and remain in a self-regulatory process, avoiding so the probably heavy participatory requirements for developing implementing measures in cooperation with other stakeholders or, on the contrary, to stimulate the adoption of Commission decisions which should offer them a favoured access to all markets and a guarantee that probably no other national measures shall be adopted. We wonder, on the other hand, why the Draft Directive did not choose for a true coregulation process, where voluntary agreements would be proposed as one possible way to implement the framework itself, instead of being an alternative to it. This would have provided the producers with all the guarantees of the new regime.

Another consideration regarding the « mix of instruments » concerns the room made for standardization. The Draft Directive is not a so-called « new-approach » directive<sup>18</sup> as no mandate is given to standardization bodies for preparing the implementing measures themselves. The standard is instead to be used as a tool allowing the EuP to be presumed as conforming to all the requirements of the implementing measure. It is a facilitator in proving the conformity of a product to the requirements. The process is kept twofold : implementing measures are to be prepared via the comitology, with the help of the concertation forum ; standards shall be developed afterwards or in parallel in order to match those implementing measures and to allow the manufacturer whose product would respect the standard not to carry out the conformity assessment. Or shall the process be reversed in practice, with preexisting standards guiding the elaboration of the implementing measures themselves ?

Still regarding the instruments, a very positive and important stand is taken in favour of promoting knowledge building on the environmental impact of products, on the side of both the producers and the consumers. A « conformity assessment » is indeed imposed, in principle, to the manufacturer, under various possible forms (including the « ecologic

<sup>18</sup> Council resolution of 7 May 1985 on a new approach to technical harmonization and standards, OJ, C136, June 1985.

profile »), and implementing measures can consist in requiring the supply of information for consumers on how to correctly use the product and to ensure its optimal life-expectancy.

The life-cycle approach permeates the Draft Directive, in the conditions set for the elaboration of implementing measures. The life of a product is divided in six stages, and for each of them a list of environmental aspects must be analysed, together with an evaluation of the potential for improvement. The Draft Directive does not give any indication on how a balance should be made between the possible impacts of the various stages themselves. The only clear criteria according to which a proposed « technical package » shall have to be assessed are the economic considerations set under Art. 12,§5. In so far as the implementing measure does not have a significant negative impact on consumers (affordability) or on competitiveness, a better performance for each stage of the life-cycle is supposed to be recommended. The Directive does not confornt the opinion set in the Commission Communication on IPP that the environmental impacts of products should be addressed “*at the point in the lifecycle where they will, best and most cost effectively for business and society, reduce the overall environment impacts and resource use*”. There is no explicit requirement to base the implementing measure on the sole stage of the life-cycle where the action would be the less expensive possible, what is surely better in line with the prevention principle. But there is no requirement neither to act on all stages necessarily (see the definition of “improvement of environmental performance”: “the process of enhancing the environmental performance of an EuP over successive generations, although not necessarily in respect of all environmental aspects of the product necessarily”). The ecological profile which must be elaborated by the manufacturer is also a life-cycle based concept.

At last, on the question whether the Draft Directive is an instrument for sustainable development, we note that the balance struck under the framework Directive is not in equilibrium. A very clear stand is adopted in favour of privileging the economic development and the free movement of goods. Environmental considerations come only alongside, in the process of drafting new implementing measures. Awaiting them, there is absolutely no indication about the *level of protection* of the natural resources at large which is being sought with the new regime. Of course, Article 95 impose to take a high level of environmental protection as a basis for the negotiation process but this does not help us with testing the final result itself. There is no generic provision in the Draft Directive which would state that, for instance, « all EuPs must be environmentally sound ». Even in the procedure for adopting the implementing measures, no indication is given about the *objective* which should be reached or at least pursued ; the provisions give only details on *what* criteria must be taken into account, but do not provide indication on the level of performance which should be enhanced. On the other hand, the economic objectives which should be pursued with adopting the implementing measures are clearly stated : the proposed measures must truly enhance competitiveness, keep prices low (this could be seen as some kind of social consideration), including during the use stage (with the concept of life-cycle cost), and even not impose proprietary technology on manufacturers. An environmental measure which does not match with those conditions shall not be admitted to the Directive. The whole regime is streamlined towards better economic performances and the harmonisation of access to the market and environmental requirements are only accepted if they fit with these economic objectives, not if they distort them.

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)
- Federal Ministry of Consumer Protection, Food and Agriculture

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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.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wil-mowsky/Roller, P. Lang 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

### **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.