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elni

REVIEW

- REACH and the safe use of chemicals
- Risk management under REACH
- Key priorities of NGOs on REACH
- Definitions of waste, recycling and recovery
- The UK Government's Ship Recycling Strategy
- Legislating e-waste management
- Exemptions under Article 5 (1) (b) RoHS Directive
- The new strategy of the CEN Environmental Helpdesk
- The power of green public procurement

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The Second Reading of REACH: key priorities of Environmental, Health, Consumer and Women's NGOs

Common policy paper by the EEB, EEN, EURO COOP, Friends of the Earth, Greenpeace, Women in Europe for a Common Future, and the WWF

Will REACH be a wasted opportunity for making chemicals safe in the EU or will it be a first step towards the protection of human health and the environment from the most hazardous chemicals? This is the political choice European legislators have to make in the coming months. NGOs think that there is little left from the already weak original proposal and call for the following four points to be safeguarded in the REACH legislation to deliver a minimum level of protection to citizens and the environment.

1. *PLAY IT SAFE: Replace hazardous chemicals with safer alternatives whenever they exist.*

The REACH system needs to systematically promote safer alternatives, which are suitable to replace chemicals which cause cancer, affect DNA, or the reproductive system or those that build up in our bodies and the environment or interfere with the hormone system. The continued use (Authorisation) of the most hazardous chemicals should:

- only be granted if no safer alternatives are available and the use is essential to society (*as proposed by the European Parliament*).
- be time-limited to a maximum of five years in order to foster innovation and the development of safer alternatives (*as proposed by the European Parliament*).
- take into account the analysis of alternatives and a concrete substitution plan to be submitted by the applicant as well as substitution information provided by third parties (*as proposed by the European Parliament*).

2. *INFORMATION improves trust: Provide sufficient safety information to identify dangerous chemicals and safer alternatives.*

Transparent safety and use (exposure) information via the Registration process is essential to enable companies and the authorities to take informed decisions on the safe management of chemicals and identify safer alternatives. Under REACH, companies should:

- Provide information on long-term effects, including reproductive toxicity, at higher tonnage bands (>10tpa) (*as proposed by the Council*).

- Provide good quality use and exposure information (scenarios) (*as proposed by the Council*)
- Define risk management measures as required in the Chemical Safety Report from 1 tpa onwards (*as proposed by the European Parliament*), otherwise the safety information will not result in any practical improvements.

3. *A LEGAL GUARANTEE: Ensure the chemical industry's responsibility for the safety of their products (Duty of Care).*

Chemical manufacturers, importers and users must be responsible for the safety of their products (*as proposed by the European Parliament*). They should guarantee that these products do not negatively affect human health or the environment. Clear legal provisions must apply for all chemicals, regardless of production volume, which would simply codify existing voluntary commitments by industry.

4. *TRANSPARENCY for consumer products: Establish a right to know for citizens.*

Sufficient information to allow chemical users and consumers to make informed choices must be publicly available. Information must be handed down the supply chain to enable retailers and consumers to find out about hazardous chemicals in products.

- Citizens must have the right to ask about substances present in EU-made and imported products they buy; all articles which contain chemicals of very high concern need to be labelled (*as proposed by the European Parliament*).
- The list of non-confidential information in REACH needs to be extended to all information relevant for the environment and human health, in line with the *Aarhus Convention*.

Industry should always be obliged to give transparent justifications when applying for information to be kept confidential.

Background:

Five years ago civil society organisations called REACH a once-in-a-lifetime opportunity to reform Europe's chemicals policy. Today, following huge concessions to industry, little of that opportunity remains:

- Basic health and safety information will not be provided for the majority of low volume chemicals (two thirds of the substances covered by REACH, or 17,500 substances).
- The same holds for higher volume chemicals, which may be registered without proper assessment of their toxicological effects, such as developmental and reproductive toxicity.
- As a result chemical producers will carry little responsibility for the safety of their products.
- Many important decisions have been delegated to technical bodies or comitology procedure, which excludes democratic oversight by the European Parliament.
- The Chemicals Agency bureaucracy has been increased without an assessment of whether it will be able to properly fulfil its tasks.

On the positive side, a consistent authorisation procedure now applies at least to bioaccumulative and persistent chemicals, which should reduce the use of such chemicals in everyday products and encourage innovation towards safer alternatives. However, this is too little progress for a law that will replace some 40 pieces of legislation, at a time when the health threats of chemicals are increasingly being uncovered. Therefore, we call on all decision-makers to improve the text in key areas

and make sure REACH will protect humans and the environment.

NGOs' 4 key demands:

1. **PLAY IT SAFE:** Replace hazardous chemicals with safer alternatives whenever they exist.
2. **INFORMATION improves trust:** Provide sufficient safety data to identify dangerous chemicals and safer alternatives.
3. **A LEGAL GUARANTEE:** Ensure that the chemical industry has the responsibility for the safety of their products (Duty of Care).
4. **TRANSPARENCY for consumer products:** Establish a right to know for citizens.

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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
 - Risk 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.