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elni REVIEW

CONTENTS

Editorial

The main topic of this issue of the elni Review is the *Convention on Biological Diversity (*CBD). The ninth meeting of the Conference of the Parties (COP 9) will be hosted by Germany and held in Bonn from 19 to 30 May 2008. The global community will discuss measures against the ongoing destruction of biodiversity as well as ways towards a fair and responsible use of genetic material. The issues for in-depth consideration include:

- Agricultural and forest biodiversity
- Global strategy for plant conservation
- Invasive alien species
- Ecosystem approach
- Progress in the implementation of the strategic plan and progress towards the 2010 target and relevant Millennium Development Goals.

Non-Governmental Organisations take great interest in the success of this process and have made a number of recommendations to the negotiating parties.

The COP 9 issues are discussed in several articles in this issue: "Agrobiodiversity" is still an unknown quantity for most people, observes *Franziska Wolff*. Her contribution provides background information on the loss of agrobiodiversity and discusses recent international policy developments as well as the challenges that lie ahead pertaining to a reversal of this trend.

Monika Brinkmöller asks "Will the CBD fulfil our expectations?" Her article considers whether the acronym CBD also stands for "Conserving Biological Diversity" in a fair and responsible manner.

Another important topic is the "Access to Genetic Resources and the fair and equitable sharing of the benefits that result from their use", which is analysed by *Susette Biber-Klemm.* Furthermore, *Hartmut Stahl* discusses the environment programme for the UN Conference on Biological Diversity in this issue.

'Biodiversity damage' liability as laid down in the Environmental Liability Directive is the topic of the contribution by *Volker Mauerhofer*. He scrutinises the definition in the Directive and its distinction from more stringent EU, international and national norms.

In the context of the "Better Regulation" initiative on the EU level, *Jochen Gebauer* takes a look at the the economic cost of environmental legislation. From an environmental law perspective, he discusses whether the German standard cost model measurement can contribute to the EU action programme in terms of the reduction of administrative burdens.

Finally, *Birgit Dette* elaborates on the Alpine Convention as an international agreement with widespread dimensions.

Last but not least, the "New Books" column presents a review of the the second edition of the Negotiator's Handbook on "Multilateral Environmental Agreements" by *Simone Hafner*.

The next issue of the *elni review* will focus on Environmental Impact Assessment and the Revision of the IPPC Directive. Please send contributions on this topic as well as other interesting articles to the editors by the end of June 2008.

Martin Führ
March 2008

elni forum
Producer responsibility and WEEE revision

takes place on Thursday, May 15, 2008, at 6 p.m.,
at the ***Facultés universitaires Saint-Louis,***
Boulevard du Jardin botanique 43 (Metro Botanique/Rogier), 1000 Brussels, Salle du Conseil, 4th Floor, at the invitation of CEDRE (Environmental Law Study Center)

Enforcement of individual producer responsibility through (smart) Labelling of electric and electronic products?
with an introduction by
Gerhard Roller, University of Applied Sciences Bingen/I.E.S.A.R
Martin Führ, University of Applied Sciences Darmstadt/sofia

The state of revision of the WEEE-Directive
with an overview by
Kurt van der Herten, European Commission

Gerhard Roller and Martin Führ will present results of a research project that has been carried out by three Universities (Darmstadt, Pforzheim and Bingen) and funded by the German Ministry of Education and Research.

Please confirm your participation by e-mail to cedre@fusl.ac.be

ground of the conference and constitutes, therefore, a challenge for the personnel employed, for instance, for the catering as well as those responsible for the setting-up and the post-conference dismantling and clear-up.

2 Energy management

The energy and water consumption necessary for the infrastructure of the conference should also be kept as low as possible. One important aspect is the usage of renewable energy sources. In this light, the total power supply needed for the entire duration of the conference will be covered by certificated 'green' power.

3 Transport

The transport concept is geared towards providing the participants with a comprehensive and environmentally friendly public transport system on the way to and from the conference. With regard to such vehicles as, for example, the fleet of passenger cars, especially high environmental standards are planned. Free usage of public means of transport in Bonn for the journey to the conference location also makes up part of this programme.

4 Catering

Environmental protection depends on the participation of many; it should also be an experience for the participants. The catering makes up the backbone of the culinary experience at the conference; therefore, organic food will be on the menu and, with biodiversity in mind, regional specialities will be offered. In addition, fair-trade products will be available.

5 Climate protection

The declared goal of the government is to organise the conference using a carbon-neutral approach, meaning without climate impact. Part of the programme is thus first of all to reduce greenhouse gas emissions in, for example, the areas of transport and energy as much as possible. But as many participants are forced to travel by plane due to long distances for the journey to and from Germany, options to reduce the emissions are limited. The unavoidable greenhouse gas emissions will be compensated by investment in climate protection projects elsewhere.

"We have proposed extensive measures for all of the areas mentioned so that the set goals can be reached", explains Hartmut Stahl. That the environmental programme is communicated to the participants as well as internally is central to its success. It is also of key importance that an environmentally friendly path be paved during the awarding of contracts to service providers in the run-up to the conference. This encompasses, for example, meetings and drawing up contracts as well as the instruction of personnel. The delegates, helpers and guests as well as the public must also be made aware of the programme. "To this end we recommend that press releases are issued and that corresponding information is provided prior to and during the event".

Further information: h.stahl@oeko.de; www.oeko.de
www.bmu.de/english/nature/un_conference_on_biological_diversity_2008/general_information/doc/39656.php

The Economic Cost of Environmental Legislation: Looking at the German Standard Cost Model Measurement and the EU Action Programme for the Reduction of Administrative Burdens from an Environmental Law Perspective

Jochen Gebauer

Introduction

One prominent feature of the many ongoing initiatives under the umbrella concept of Better Regulation is the measurement and reduction of administrative burdens. Administrative burden is the cost of the "paperwork" or "red tape" that firms and citizens complain about, including inter alia reporting or documentation requirements, labelling, notification, certification, registration, applications for permits and authorisations. The Standard Cost Model (SCM) provides the methodological framework to specifically target these transaction costs as one narrow, but in practical terms highly relevant segment of the overall regulatory cost that is imposed on industry, citizens and administrations by Member State legislation or EU legislation.[1]

Following the Dutch, British and Danish example, the German government launched an administrative burdens baseline measurement of the existing body of

[1] Expectations are high: "The EU Better Regulation Strategy helps to identify the most efficient and least burdensome way of achieving public objectives and legal certainty. It forms part of the overall ten-year Lisbon Reform Strategy (March 2000) to make the EU the world's most dynamic and competitive economy. (…) Building on the Lisbon objectives and these precedents, several consecutive EU Presidencies have helped set out regulatory reform as a key priority within Europe (Annex I of Agreement N° ENT14/CIP/07/F/N02S00 Better Regulation in Europe: An OECD Assessment of Regulatory Capacity in 15 Member States, p. 1)

federal law as of Spring 2006.[2] At about the same time an independent control body (National Regulatory Control Council - NRCC) was set up through a Federal Act and entrusted with the task of supervising the application of the Standard Cost Model to new as well as existing federal legislation. Results of the German baseline measurement were published in October 2007.

At the March 2007 Spring Council the Member States mandated the EU Commission to carry out a similar measurement exercise on the level of EU legislation. The measurement started in August 2007. Results of the EU measurement exercise will not be available before the end of 2008.

The measurement of administrative burdens and the Standard Cost Model potentially cover all fields of policy and regulation. Yet the field of environmental and climate regulation seems to play a particular role in the Better Regulation debate. Environmental regulation is often named first when stakeholders complain about obstacles to an industry-friendly and competitive regulatory framework.[3] At the same time all the measurements that have actually been carried out point to the opposite.

Is environmental regulation more likely to result in additional "transaction costs" than other policy areas? Are the costs of environmental legislation perceived differently? Why are businesses apparently less prepared to accept administrative costs in the field of environmental legislation, whereas they readily accept relatively high administrative costs in other areas?

The first part of this article will provide a brief description of the idea and the basic principles of the Standard Cost Model (1), of the German SCM Measurement Process including the results from Germany (2) and of the ongoing EU SCM Measurement Process (3). The second part will look at the specific role of environmental legislation in the political context of Better Regulation and the possible impact that the recent political focus on SCM and administrative cost (as a part of regulatory cost) may have on new and existing environmental regulation and on the implementation of environmental policies (4).[4]

1 Measuring Administrative Burdens with the Standard Cost Model (SCM)

Many initiatives to cut red tape have been started and abandoned after a short period of time. The momentum of the present SCM process in Europe has proven steady for a comparably long time. This success of SCM is usually attributed to its double limitation: Firstly, it is limited to the cost-side of regulation – avoiding the much more complex question of beneficial effects of regulation and leaving the determination of the benefits and the weighing of the costs and benefits for the political discourse. That makes SCM – in theory – a non-political technical instrument, focussing on questions of efficiency. Every one readily subscribes to the claim that "high environmental standards should be delivered in a most efficient way and at least cost".[5]

The second limitation is the limited scope of SCM. Not all the costs incurred by regulation are taken into account in the SCM measurement. The cost of the "paperwork" is separated from the cost for complying with the material standards set by the legal rule. The classical example from environmental law is the requirement to install a new filter. The cost for the filter itself will not appear in the SCM count. The time and money spent on the *notification* of the successful installation of the new filter to the supervising authority will be entered in the books on the SCM administrative burden account.[6]

To put it in the words of the German SCM Methodology Manual: "The SCM focuses above all on two analytical questions: Which government-imposed information obligations exist/arise and what costs do they entail or are they likely to entail? The benefit associated with a law or with an information obligation is not examined in the context of the SCM. Assessment of the benefit of statutory regulations remains a political decision. From the standpoint of costs, however, the SCM provides indispensable information for designing legal norms as efficiently as possible in order to avoid unnecessary red tape, sim-

2 Cabinet Decision of 25th April 2006, www.bundesregierung.de/Reformprojekte/Bürokratieabbau; the Cabinet Decision is also published as Annex 2 of the German October 2007 SCM Report. See also: Coalition Treaty, November 2005, "Gemeinsam für Deutschland - Mit Mut und Menschlichkeit", pp. 62-63.

3 *Bull,* Umweltverwaltungen unter Reformdruck: Herausforderungen, Strategien, Perspektiven, DÖV 2007, p. 695 „(...) muss fast immer die Umweltverwaltung herhalten, wenn Beispiele für vermeintlich überflüssige „bürokratische" Investitionsbremsen gesucht werden; p. 696 „zunehmend polemische Bürokratiedebatte"; the usefulness of environmental ‚bureaucracy' is underlined by Chancellor *Merkel* in a speech delivered at the conference of dbb (Deutscher Beamtenbund) in November 2007: „Bürokratieabbau ist (...) im Detail schwierig, weil die abgebaute Bürokratie uns dann gerade im entscheidenden Moment fehlen könnte. Ich kenne das ja auch. Ich war lange Umweltministerin. Da wurde manchmal gefragt: Was, die Zahl haben Sie nicht? Sie werden doch mal gucken können, wie die Genehmigung vor 15 Jahren ausgestellt wurde? (...)".

4 The author works in the Better Regulation Unit of the Federal Chancellery (Berlin). In this article he expresses solely his private views.

5 *Hontelez,* What Better Regulation should achieve, Better Regulation and outcomes for the environment, Brussels, 19th March 2007, Conference Papers p. 1.

6 It becomes obvious from this example that in some cases the SCM cost (EUR 150 for the paperwork) can be much lower than the overall compliance cost (EUR 50,000 for the installation of the new filter). SCM may therefore be criticised as half-hearted. There is a cost grey zone which can be considered both as SCM costs or compliance costs. One typical borderline case is the *cost of inspections*. Another example that will be discussed in part (d) of this paper is the cost for risk assessments or environmental assessments carried out by an applicant in the context of an authorisation or licensing procedure.

plify procedures and achieve a balanced cost-benefit ratio especially for the addressees of the norms."[7]

Another asset of SCM is its relative simplicity: The measurement of administrative burden pivots on two key notions – "information obligation" and "standard activity" – and on one basic mathematical formula: cost = time x tariff x number x frequency.

(a) Administrative burdens are focused on the paperwork. Only those costs are relevant that result from a legal *information obligation*. These are defined as "obligations existing on the basis of laws, ordinances, by-laws or administrative regulations to procure or keep available for, or transfer to, authorities or third parties data and other information."[8] Examples of information obligations are: Reporting requirements, Obligation to collect and document data, Notification, Certification, Application for authorisations/permits, Labelling for third parties, Entry and Registration, Applications for subsidies and grants, and Accounting obligations. The notion of "information obligation" is interpreted in a wide manner. The scope of SCM therefore is not limited to "reporting requirements for statistical reasons" as many SCM sceptics mistakenly claim.

What does an information obligation look like in a legal text? A random example from the EU level can be given, namely Art. 3 and 4 of the Regulation (EC) No 1013/2006 on shipments of waste: *"Art. 3: Shipments of the following wastes shall be subject to the procedure of prior written notification (…). Art. 4: Where the notifier intends to ship waste as referred to in Art. 3 (1) he/she shall submit a prior written notification to and through the competent authority of dispatch (…). When a notification is submitted, the following requirements shall be fulfilled: …… (…)"*. The legal base for the information obligation is Art. 3 of the Regulation. In Art. 4 the data requirements for the information obligation are laid down.

(b) In order to be able to actually measure the time needed to comply with the information obligation, each obligation has to be split into so-called standard activities. Empirical studies have shown that with a set of a limited number of steps/actions one can describe all relevant processes that take place within a company when complying with an information obligation. The German SCM Manual lists 14 different standard activities, in the chronological order of a typical case: Familiarisation with the information, receiving the information, collecting the information, assessing the required information and data, filling in or entering required data, making calculations and/or estimates, printing out/recording the results, checking and possibly correcting the results, obtaining information from third parties, consultation, declarations/ explanations, settlement/payment, sending the information and finally filing the information.[9]

Note that not all standard activities apply in all information obligations: Simple information obligations very frequently consist of three or four standard activities only. More complex information obligations (such as application procedures for authorisation/permitting) run through up to ten different standard activities, adding up to several thousand minutes of work to be spent on the fulfilment of one information obligation.[10]

How is the time needed for each standard activity actually being measured? The methodology of the Standard Cost Model provides a set of different measurement methods, all involving the target group, that is the companies that are dealing with the information obligation in everyday practice: Telephone interviews, face-to-face interviews, expert interviews, questionnaires and – in some exemplary cases – the so-called stopwatch method.[11] In the German measurement exercise, the prevailing measurement method was the questionnaire, as far as information obligations with a simple structure were to be measured, and expert interviews or expert panels for more complex information obligations.[12]

The administrative burden of a legal provision can then be calculated from the formula that has already been mentioned: Administrative burden (or administrative cost) = time x tariff x number x frequency.[13] To give an example from the German Manual: An administrative activity – the filling out of a tax declaration form – is found to take an average of three hours. The tariff for the employee who is carrying out the activity is EUR 10.00. The price of the activity is

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7 German SCM Manual, p. 5, see: www.bundesregierung.de/Reformprojekte/Bürokratieabbau -Methodenhandbuch or: www.administrative-burdens.com - Involved Countries – Germany – Publications. NB: Readers will find most of the documents referred to in this article on www.administrative-burdens.com.

8 German SCM Methodology Manual, pp. 8-10; see also German National Regulatory Control Council Act of August 14th 2006, Art. 2 para 1, BGBl I 2006, 1866-1868.

9 German SCM Methodological Manual, p. 47; the German Guidelines for the ex-ante assessment of administrative burdens list 14 standard activities, p. 9; the Commission Guidelines for Impact Assessment, Annex 10, list 13 standard activities, p. 39; the International SCM Manual lists 16 standard activities, pp. 25-26.

10 To give another random example from the German measurement exercise: The obligation information no. 200609291649455 in the German SCM data base concerns the obligation to submit a diary to allow verification of the proper disposal of wood waste (§ 12 para 1 and 3 of the Wood Waste Ordinance/AltholzVO). On the result sheet you will discover that it takes 1,800 minutes per year to check on the entries in the diary, 1,200 minutes for photocopying, etc., etc., adding up to 10,140 minutes in total to keep the diary, that the average wage is at EUR 27.70 or 38.90, depending of the respective standard activity, that an extra EUR 625 are needed for specialised equipment. Roughly 1,300 diaries of this kind exist, making for an administrative burden totalling EUR 8.9 million each year.

11 German SCM Manual, pp 42-46.

12 German SCM Report October 2007, pp 18-19.

13 German SCM Manual, pp 20-22 and in particular Figure 2 on pp. 23. The distinction between the notion "administrative burden" and "administrative cost" has been stressed in some methodologies (International SCM Manual, p 7; British SCM Report "HM Government Simplification Plans – A Summary" December 2006, pp. 4-5, 31) but does not play a decisive role in practice.

therefore EUR 30.00 (3 x 10). If the information obligation is incumbent upon 100,000 enterprises, which must each fulfil the obligation two times per year, the quantity is 200,000 administrative activities per year. The total administrative cost per year equals: 200,000 x EUR 30.00 = EUR 6 million.[14]

At first glance the quantity (also called 'population') – the number of companies/ citizens concerned by a particular information obligation and the frequency with which the obligation recurs every year – seems a relatively uncomplicated and easy element of the SCM formula. Yet in the German measurement exercise, the determination of this factor (which is of eminent importance for the overall "cost" of a legal rule) has turned out to be an unexpectedly difficult and lengthy task. This was partly due to the federal structure of the German political and administrative system. The number of enterprises concerned by a certain sectoral rule or the frequency of certain inspections, applications, etc. in most cases was not known by the relevant Federal line ministries. It was necessary to consult stakeholders, local or regional agencies charged with the implementation of the Federal rules "in situ", a long, drawn-out and costly process. In January 2008 – one year after the mapping of the information obligations had officially been completed – several hundred information obligations still do not have a "population/number" and/or "frequency" label. However, for the vast majority of information obligations the population figures have successfully been searched for. Even if the measurement and the reduction of administrative burdens should not lead to countable, noticeable and lasting results, this "by-product" of the baseline measurement was worth the effort and will serve as a valuable data base for future impact assessments and ex-ante administrative burden assessments. From now on the German officials working on a draft proposal will have easy access to data on how many firms or citizens – by order of magnitude – are likely to be concerned by a planned provision.

2 Implementing SCM in Germany

The foundation for the introduction of the SCM methodology in Germany was laid in the Coalition Treaty of the present government, following the September 2005 elections.[15] Better Regulation, simplification and the reduction of administrative burdens are highlighted as priority political areas. With regard to the implementation of the Standard Cost Model in Germany, the Coalition Treaty's unusually explicit reference to the good example of successful SCM measurement and burden reduction projects in other countries, in particular the Netherlands, does not leave much leeway for interpretation: The Cabinet Decision of 25th April 2006 on the "Bureaucracy Reduction and Better Regulation Programme" stipulates the Standard Cost Model as a binding standard for the German administrative burden reduction project. Apart from that, the Cabinet Decision contains a number of other Better Regulation instruments, including institutional changes such as the creation of a new and independent Regulatory Control Council. This Council is supposed to examine the Federal government's draft proposals on the basis of the administrative costs.[16] It was the German Parliament that finally paved the way for this new institution. In August 2006 the Regulatory Control Council Act entered into force, making the Standard Cost Model a legal standard for the assessment of administrative burdens in the existing and the planned legislation.[17]

2.1 The German SCM baseline measurement – Results – Cost of Environmental Legislation

How was the German SCM Baseline Measurement carried out in practice? A central unit was set up in the Chancellery (Better Regulation Unit). All ministries and the Federal Statistical Office agreed on a tailor-made German version of the SCM methodology (The German SCM Manual). About 500 officials in the line ministries were trained in SCM techniques in the summer of 2006. By the end of 2006 the line ministries had screened 4,500 federal laws and ordinances and identified almost 11,000 information obligations for businesses ("mapping"), which were fed into a central data base.[18] About 1,100 of these information obligations can be attributed to the Federal Ministry for the Environment.[19]

The actual measurement of these 11,000 information obligations started in January 2007 and will be finished by mid 2008. By February 2008 roughly 7,500 information obligations have been measured. The German government has published the "results" of the SCM baseline measurement in October 2007. At that time only around 3,000 information obligations had

14 German SCM Manual, p. 22.

15 Coalition Treaty, November 2005, "Gemeinsam für Deutschland - Mit Mut und Menschlichkeit", pp. 62-63.

16 See Cabinet Decision of 25th April 2006, p. 2 for the NRCC and pp. 2-3 for the baseline measurement.

17 German National Regulatory Control Council Act of August 14th 2006, BGBl I 2006, 1866-1868.

18 The focus of the German baseline measurement in 2006/2007 was on information obligations for businesses. In 2008 the baseline measurement will gradually be extended to information obligation on citizens and on administration itself. On a voluntary basis and for reasons of practicability some line ministries have "mapped" the information obligations for citizens and for administration together with the information obligations for businesses. The overall number of information obligations in the Federal Statistical Office's central data base therefore amounts to more than 20,000.

19 The repartition of the 11,000 information obligations amongst the line ministries does not necessarily correlate with the ministries' share of the actual administrative burden, because the cost of the individual information obligation varies greatly. For the results classified by ministries and legislative level (national/EU) see: German SCM Report October 2007, p. 17, 22.

been measured.[20] Why can the results be called "results" with only a small proportion of the information obligations having been measured? This is due to a particularity of the SCM method, building on the so-called 80/20 rule and on the experience from the countries that have carried out similar baseline measurements already. The 80/20 rule is based on the fact that not all of the 11,000 information obligations have a similar impact on the overall burden. It is assumed – and found to be true in the Dutch and German example – that a substantial share of the overall burden is attributable to a small share of very costly information obligations, notably those with very high population figures. The Federal Statistical Office therefore classified and ranked the 11,000 information obligations in order of expected costliness.[21] By October 2007 roughly a third of the overall number of information obligation had been measured. The most costly top hundred information obligations account for more than 90% of the overall burden to date.[22]

The result of the German measurement is an overall administrative burden of EUR 27 bn per year, plus an extra EUR 19 bn for the cost of bookkeeping.[23] Of the total EUR 27 bn a share of 28% (7.6 bn) is attributable to national laws. The biggest share of 55% (14.9 bn) comes from the grey zone of "broadened EU law". This category refers to information obligations which are based on EC legal acts and have been transposed into German law, and which contain requirements that the German legislator has added to the minimum requirements of the EU legal provisions. Which part of these EUR 14.9 bn will eventually be accounted for on the national level (as a case of national "goldplating") and which part will have to be left for the EU level to deal with ("EU minimum requirements"), has not been determined yet. The dividing line between goldplating and minimum requirements is very difficult to draw and will have to be determined on a case-by-case basis by the line ministries when they start implementing their simplification and administrative burden reduction programmes.

Of the total EUR 27 bn a share of 17% (4.5 bn) is resulting directly from EU legislation. This share is likely to grow with the completion of the measurement of the purely international and EU information obligations scheduled for the first half of 2008.[24]

What is the contribution of environmental legislation to this overall burden? Of the 15 federal ministries[25] the Federal Ministry for the Environment comes sixth with a total of EUR 633 million, equalling a share of less than 2.5%. The repartition amongst the ministries is extremely heterogeneous, the Ministry of Finance alone being attributed a total of EUR 17.9 bn. A significant impact of EU legislation on the administrative burden total is recognized for some of the ministries, in particular in the fields of company law, agriculture and the environment.[26]

The list of the top hundred most expensive information obligations is led by examples from the tax and company law and the health sector.[27] There are eight information obligations from environmental law in the top hundred list, four from waste/packaging legislation (approx. EUR 300 million), one from nature conservation (approx. EUR 100 million) and three from Pollution Prevention and Control legislation (approx. EUR 180 million).

Starting from this baseline, the German government has committed itself to a burden reduction of 25% by 2011, aiming at a 12.5% in 2009 as a stepping stone for the second half of parliament before the September 2009 elections. The German SCM October 2007 Report on the results of the German SCM measurement gives a list of planned or completed measures to reduce administrative burden. Most measures are simply

20 German SCM Report October 2007, p. 20.

21 The basic criteria for this ranking are described in the German SCM Manual, pp. 33-41, namely: level of complexity according to the ministries estimation when mapping the information obligation, quantity component and/or population figures, the expected impact on industry according to the size of the relevant industry sectors concerned.

22 In order to concentrate efforts on the perceivable burden from the most costly information obligations, it was decided to speed up the measurement of the remaining smaller information obligations by introducing a simplified measurement technique. However, a potential pitfall of this 80/20 approach shall not go unmentioned: The prioritisation (ranking) of the most costly 20% of the 11,000 information obligations depends on the reliability of the data on complexity and on the population figures. This data on population figures has been very poor at the beginning of 2007, so there is a chance of cost-intensive information obligations hiding amongst the remaining 80%.

23 German SCM Report October 2007, pp. 20-21; the cost of bookkeeping is split from the administrative burden total for methodological reasons. The German overall administrative burden does not – generally – include overheads or taxes. It includes administrative burdens from information obligations to third parties. It does not (yet) fully include the administrative burden stemming from purely international or EU law. These parameter have to be considered carefully before comparing the results with the results of other SCM baseline measurements, see: British SCM Report "HM Government Simplification Plans – A Summary" December 2006, p. 8, "13.7 bn pound plus the cost for Financial Services Authority and HM Revenue and Customs that have been counted separately; Dutch Annual Report "Reducing Administrative Burdens – Now full steam ahead", June 2005, p. 5 "more than EUR 16 bn per year".

24 All in all, the German total annual cost of EUR 27 bn – if the EUR 19 bn for bookeeping and the missing overheads and EU costs are taken into account – comes surprisingly close to the rough estimations that had been circulated before the start of the SCM measurement, namely EUR 46 bn (Institut für Mittelstandsforschung, 2004) or EUR 80 bn (Bertelsmann-Stiftung, 2005), see also: *Manssen*, Verwaltungsrecht als Standortnachteil, Schriften der Juristischen Studiengesellschaft Regensburg, Heft 30, pp. 12-13

25 There are 14 Federal Ministries in Germany. For the purposes of the SCM measurement exercise the Federal Government Commissioner for Culture and the Media is considered a line ministry, too.

26 The EUR 633 million administrative burden of environmental legislation are split into EUR 131 million on the national level, Eur 441 million on the level of broadened EU law and – so far – EUR 61 million on the level of EU legislation. Some information obligations from EU environmental law will be measured in 2008.

27 Preservation of accounts, submission of tax declaration, obligation to prepare the annual and group accounts, etc. The full top hundred list is available in English as Appendix 1 to the German SCM Report October 2007, on the internet site of the SCM network (www.administrative-burdens.com).

described in word. However, some have already been monetised. The respective line ministries have used the SCM to calculate the difference in burden before and after the reduction measure, thus allowing for an exact account of the measure's benefits in terms of reduced administrative burden. Up to now a total of EUR 2.6 bn of reduction is either projected or implemented already.[28] Not all of these 2.6 bn reduction measures can be linked to SCM directly. The figure includes "windfall profits" of some ministries, who had simplification projects and burden reduction projects underway when the SCM process was launched. In an attempt to not disadvantage these "early movers", the "windfall profits" are being treated like other reduction measures that directly respond to the SCM project.

In the field of the environment, the impressive administrative burden savings of nearly EUR 200 million per year through the planned simplification of the Packaging Ordinance and the EUR 5 million savings achieved through the simplification of the rules for the allocation of carbon dioxide allowances under the Emission Trading System are the only measures quantified in the October 2007 Report. Other simplification measures are listed; their quantification has been completed in the meantime or will follow suit, the most prominent example being the overarching codification project of combining all relevant environmental provisions under the roof of a new Environmental Code.[29]

2.2 SCM and the assessment of new legislation – National Regulatory Control Council (NRCC)

SCM in Germany does not only apply to the existing body of rules, but also to new proposals. According to Art. 2 para 1 of the National Regulatory Control Council Act all legal proposals have to be submitted to the Control Council before they can be discussed and decided in Cabinet.[30] The German Joint Rules of Procedure have been amended to this aim.[31] The officials in the line ministries are responsible for carrying out the required ex-ante assessment of the administrative burdens that will occur pursuant to the new (envisaged) legislation.[32] The NRCC's power of control is strictly limited to the question of whether this assessment is in accordance with the methodological requirements of the SCM method. The NRCC has no right of veto.

In its first year of activity almost 400 draft proposals have been submitted to the NRCC for scrutiny. The NRCC has issued more than 300 opinions, most of which are favourable. This is due to the fact that the officials in the line ministries tend to discuss their draft proposals and their draft ex-ante assessments with the NRCC staff at an early stage of the legislative process.[33] In the field of the environmental legislation, a negative opinion of the NRCC has not yet arisen. The impact of the informal coordination between the Ministry for the Environment and the NRCC on the final shape of the draft proposals is difficult to trace and to quantify but in some recent cases is supposed to be relatively high.[34] For a more detailed balance of the NRCC's work in 2006/2007 see the NRCC's September 2007 Report "Strengthening Cost Consciousness for Better Regulation".[35]

3 The EU Action Programme for the Measurement and the Reduction of Administrative Burdens

The European Commission carries out a baseline measurement similar to the Dutch, British, Danish and German model with a view to identifying, measuring and eventually reducing the administrative burdens stemming from EU legislation, including direct regulation (EC Regulations) as well as EC law, that will be effective in the Member States legal spheres only after

28 German SCM Report October 2007, p. 88

29 The draft proposal for the Environmental Code will be subject to public consultation in April 2008. The ex-ante administrative burden assessment of the proposal indicates a moderate but noticeable reduction of approx. 10% to 15% compared to the status quo ante as far as Pollution Prevention and Control provisions are concerned.

30 German National Regulatory Control Council Act of August 14th 2006, Art. 2 para 1, BGBl I 2006, 1866-1868.

31 Joint Rules of Procedure of the Federal Ministries, December 2006, Art. 44 (Regulatory Impacts) paragraph 5 „The Federal Ministries must determine and set out administrative costs as defined in Art. 2 para 1 of the [National Regulatory Control Council Act]" and Art. 45 para 1 "Before a draft bill is submitted to the Federal Government for adoption, the lead Federal Ministry must involve the Federal Ministries affected by the bill and the [Regulatory Control Council] within the framework of its legal competence at an early stage for any preliminary work and the drafting of the bill".

32 The minimum requirements as well as practical guidance as to how to conduct such an ex-ante-measurement within the time constraints and resource constraints of modern ministerial administration are laid down in the „Ex-ante Assessment Guidelines" agreed upon and formulated jointly by the German line ministries, the Better Regulation Unit in the Federal Chancellery and the National Regulatory Council. The "German Guide on ex-ante assessment" is found at www.administrative-burdens.com - Involved Countries/Germany/Publications.

33 Note that NCCR has no right to veto and has been very careful not to overuse its sharpest weapon, namely the negative opinion on a legislative proposal before it goes to Cabinet. Rather, it tries to influence the drafting at an early stage, communicates with officials, desk officers in charge of the proposal, and quite often manages to shift the parts of the proposal connected to information obligation into a "lighter" version etc.; *Dietze/Färber*, Ein Jahr Normenkontrollrat – Tätigkeitsschwerpunkte, Erfahrungen, Perspektiven, Verwaltung und Management 2007, pp. 281-288, 285; *Schröder,* Der Nationale Normenkontrollrat: Ein neuer Schritt zum Abbau von Bürokratiekosten, DVBl 2007, pp. 45-49; *Röttgen,* Normenkontrollrat: Der Koalitionsvertrag als Wegweiser zu besserer Rechtsetzung und weniger Bürokratie, ZRP 7/2006, pp. 235-236.

34 This is the case for the climate change regulation package of December 2006. It might be worth the effort to give this informal role of the NRCC a closer look and try to evaluate the influence of the Better Regulation and/or SCM criteria on the successive versions of the draft proposals in the drafting process.

35 www.normenkontrollrat.de. Since December 2007 the NRCC is involved also in the EU legislative procedure, see Annex 4 of the German SCM Report October 2007.

having been transposed by national provisions (EC Directives).[36]

The EU Action Programme for the Measurement and the Reduction of Administrative Burdens is part of the broader Better Regulation Strategy, which also encompasses the review and strengthening of the Commission's impact assessment practice for legislative proposals (including the ex-ante assessment of administrative burdens according to the SCM method,[37] the simplification of existing legislation, the codification exercise and other features such as the use of modern-type regulatory instruments (co-regulation, self-regulation) and an improved implementation of EU legislation in the Member State legal systems.[38] Although all these aspects have got strong links with the administrative burden reduction programme and have potentially relevant impacts on the EU environmental legislation/policies, the focus shall remain in this article on the administrative burden reduction programme and baseline measurement and its implications from an environmental perspective.

The methodology of the Commission's administrative burden measurement is analogous to the methodologies of the Dutch, British or German SCM exercises. The Commission has summed up the experiences of the so-called "SCM countries" and merged their methodologies into an "EU SCM" methodology. In Annex 10 of the Commission Impact Assessment Guidelines the EU SCM methodology is laid out with respect to the (ex-ante-) assessment of new legislative proposals. For the baseline measurement the methodology had to be completed by adding a chapter on measurement methods, because the measurement looks at existing regulation that is already in place, where the cost can be actually measured, and not "planned" regulation, where one can only speculate about possible future cost. This new methodology has not yet been published.[39] However, from looking at draft versions it can be expected that there will be no major deviations from the mainstream SCM concept.

Unlike the Dutch, British or German SCM measurement, the EU baseline measurement is a priori limited to a relatively small number of legal acts, namely 29 Directives and 13 Regulations in 13 so-called priority areas. These priority areas are: Agriculture, Company Law, Cohesion Policy, Environment, Financial Services, Fisheries, Food Safety, Pharmaceuticals, Public Procurement, Statistics, Tax Law, Transport, and Working environment/Employment relations.

How did the Commission choose these provisions and how can it justify calling this measurement a "baseline measurement"? The Commission is applying the 80/20 rule that has been described in the context of the German SCM measurement project. Unlike in the national processes the Commission is applying it from the very outset of the project, not only to the measurement phase but also to the mapping phase. The 80/20 rule has proven to be a constant factor in all national measurement exercises. The Commission more specifically is basing its choice of legal acts to be mapped and measured on the outcome of a 2006 pilot study that summarises the main findings of the Dutch, Danish, British and Czech national measurement exercises.[40] These findings indicate that at least 70% of all administrative burdens stemming from EU regulation can be attributed to nine priority areas, and more precisely to 25 legal acts.[41]

Interestingly enough, the pilot study does not name environmental legislation among these most burdensome policy areas, an outcome which has recently been confirmed by the German results. However, when the Commission finally published the Action Programme in January 2007, the list of nine priority areas was extended to 13 areas, now also including "environmental legislation" as a priority area. The Action programme gives the following explanation for this choice: "The priority areas (…) have been identified on the basis of the findings of a pilot project completed in October 2006, stakeholder contributions to the rolling simplification programme and the results of the consultations launched by the Commission working paper adopted on 14 November 2006. The selected priority areas cover the legislative requirements that account for the majority of the administrative costs on business, thus allowing the Commission and the responsible legislators to concentrate their efforts and resources on areas where most significant impact on improving the regulatory environment for business can be made."[42] The inclusion of environmental legislation into the list of priority areas in spite of the outcome of the pilot study is not fully explained by this passage. An explanation can be found in the introduction of a new category of administrative burdens, namely "irritating legislation" or "irritants". This

36 In practice many EC Regulations also require implementation through Member State legislation to some extent.

37 Annex 10 of the Commission Impact Assessment Guidelines.

38 See COM(2006)689 "A Strategic Review of Better Regulation in the European Union" for the Commission's so-called Better Regulation package of 2006 and more recently the COM Communication COM(2008) "Second Strategic Review of Better Regulation in the European Union". Interestingly enough, in another recent document (COM(2008)35) the baseline measurement is no longer called "baseline measurement", but more accurately "large-scale measurement" (p. 6); *Ahrens / Leier*, Bessere Rechtsetzung in der EU nach der deutschen EU-Präsidentschaft, Zeitschrift für Gesetzgebung 2007, pp. 383 ff.

39 The baseline measurement has started in September 2007, the methodology had not been published by the time of this article's copy deadline in February 2008.

40 Pilot Project on administrative burdens, WIFO-CEPS October/December 2006, see: COM(2007)23, Action Programme for Reducing Administrative Burdens in the European Union", p. 3, footnote 3.

41 Pilot Project on administrative burdens, WIFO-CEPS October/December 2006, pp. 113-119, 137-138, 143.

42 COM(2007)23, Action Programme for Reducing Administrative Burdens in the European Union, pp. 3-4.

concept originates from the British and Dutch administrative burden reduction exercise and has been inserted into the final version of the EU administrative burden programme: "Unnecessary and disproportionate administrative burdens can have a real economic impact. They are also seen as an irritant and a distraction for business and are often identified as a priority target for simplification"[43] This new category of "irritants" is a paradigm shift in the SCM methodology. It diverts effort and focus from the "measured burden" back to "perceived burden". It thus moves from an objective back to a subjective approach towards administrative burdens.[44]

In the field of the environment, four Directives and one Regulation are subject to scrutiny: Directive 2003/105/EC on the control of major-accident hazards involving dangerous substances, Regulation (EC) No. 1013/2006 on shipments of waste, Directive 96/91/EC concerning integrated pollution prevention and control (IPPC), Directive 2002/96/EC on Waste Electrical and Electronic Equipment, Directive 2000/53/EC on end-of-life vehicles. By January 2008 in these five legal acts about 40 information obligations have been identified by the Commission.

An explicit reason to specifically target these five environmental legal acts is not given by the Commission. All of these Acts have been under review, so presumably the Commission services are hoping to be able to convert scheduled amendments and simplifications in the near future into administrative burden reduction assets.

The list of 13 priority areas and 42 legal acts is not exhaustive. It can be extended in the further process of the measurement.[45] The choice of additional areas and/or legal acts to be included in the EU Action Programme is one of the explicit competences of the so-called Stoiber-Group that has been set up to support the EU administrative burden measurement and reduction project (see infra).

Compared to the overall number of Directives and Regulations in the EU acquis the Commission appears to be mapping and measuring a rather limited segment of EU legislation. Can the exercise still be called an "EU baseline measurement"?[46] The question may well be asked. The time and money channelled into this SCM exercise has to be justified politically. Vice President Verheugen predicts a benefit for the EU economy of 1.4% of the EU GDP or EUR 150 bn in the medium term per annum if the reduction target of 25% can be met.[47] The EUR 20 million spent on the measurement seems a small investment compared to this potential benefit. Still, in absolute terms (and with the expected benefit being far from sure) the EUR 20 million have to be justified, too. Therefore the limitation to the (supposedly) most burdensome EU legal acts is understandable and reasonable.

The Commission carries out the mapping and the measurement with the help of external consultants. The EU Action Programme is coordinated by a specialised Unit in Directorate General for Enterprise and Industry (DG ENTER).[48] The other Commission Services (DG ENVI, DG AGRI, etc.) are involved in the screening of the EU legal acts for information obligations ("mapping EU"). The actual measurement of the EU information obligations cannot be done without an understanding of the national legal orders and the legal provisions that transpose the information obligation into national law. In the case of an EU Directive, the mapping therefore has to be a two-step procedure. Firstly the Commission and their consultants identify and feed into the database all EC provisions containing an information obligation. In a second step the corresponding national provisions have to be identified and fed into the database. In this second phase of mapping – as well as later on in the phase of the actual measuring – the COM and the consultants will have to rely on the cooperation of the Member States, especially the national officials in the federal and regional ministries, but also national stakeholder groups, experts and businesses.[49]

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43 COM(2007)23, Action Programme for Reducing Administrative Burdens in the European Union, p. 2, 7-8.

44 The German baseline measurement has not followed this backlash yet. However, the experiences in the early SCM countries (NL/UK) seem to point into the direction that a more "subjective" approach to SCM is needed in order to make SCM results more visible and perceptible from the perspective of a single enterprise or from the perspective of a particular industry. The results in the German Report of October 2007 are results aggregated on the level of the national economy. For the further administrative burden reduction programme it is envisaged to present the results also on sectoral levels and on the level of individual (real or role model) firms.

45 COM(2007)23, Action Programme for Reducing Administrative Burdens in the European Union, p. 4. The Habitats and the Wild Birds Directive have been mentioned in this context. However, they are presently subject to an evaluation programme and it is not advisable to include them into the EU administrative burden measurement and reductino project before the end of the evaluation process.

46 In the most recent document on the EU Action Programme the Commission calls the measurement a "large-scale measurement" and no longer a "baseline measurement", Reducing administrative burdens in the European Union – 2007 progress report and 2008 outlook, COM(2008)35, p. 2. It is a borderline case, but in conclusion it must be admitted that the difference between the Commission's and the Member States' approach to "baseline" measurement is only a question of degree and that the Commission may also call its measurement a "baseline measurement" if it chooses to do so. The Commission is relying on the 80/20 rule more heavily than the SCM countries have done. In addition, the list of priority areas and priority legal acts is not exhaustive and the Commission is actively communicating these limitations.

47 *Gelauff, G.M.M. and A.M. Lejour (2005),* Five Lisbon highlights: The economic impact of reaching these targets. CPB Document 104. CPB, The Hague, see: COM(2007)23, Action Programme for Reducing Administrative Burdens in the European Union, p. 4.

48 Directorate B (Industrial Policy and Economic Reforms), UnitB/3 (Impact Assessment and Economic Evaluation). In the Secretariat-General the Unit SG-C-2 (Better Regulation and Impact Assessment) is in charge of the broader Better Regulation Strategy and in particular of the implementation of the Commission's impact assessment system and the quality control of the impact assessment (Impact Assessment Board).

49 A "Single Point of Contact - SPOC" in each Member State is serving as an interface between the Commission and the national level. In Germany the

In the measurement phase not all information obligations will be actually measured in all 27 Member States. The exact methodology for the measurement phase will be laid down in the new SCM methodology for the EU baseline measurement which is due for the beginning of 2008. Most likely the measurement phase will rely on three main pillars: Transferral of the results from preceding national measurements to the EU databases,[50] new measurements in some countries and the extrapolation of results to countries where no measurement will take place.[51]

The EU baseline measurement is not a goal in itself, but a means to lead to a substantive and lasting reduction of the administrative burden for businesses in Europe. The EU Action Programme therefore is not limited to the baseline measurement. In order to be able to achieve the 25% reduction by 2012 which the Member States committed themselves to at the 2007 Spring Council, reduction proposals will be collected from stakeholders in all Member States via different channels, including a new internet site[52] and local workshops organised jointly by the Commission and the Member States in 2008.[53] The simplification and administrative burden reduction proposals coming from these workshops or other proposals submitted to the Commission will be scrutinised and "filtered" by the Commission and their consultants, but also by a newly created advisory group, the "High Level Group of Independent Stakeholders on Administrative Burdens". This is the so-called "Stoiber-Group" – named after its Chairman, the former Prime Minister of Bavaria, Dr. Edmund Stoiber. Environmental interests are represented by John Hontelez, Secretary General of the European Environmental Bureau (EEB), consumer interests by John Murray, Director of the Bureau Européen des Unions des Consommateurs (BEUC).[54] The group has met for the first time in January 2008. Its mandate is limited to consulting the Commission at the Commission's request.[55]

The timetable for the Commission administrative burden reduction programme is ambitious. Mapping shall be completed by Spring 2008. Measurement by the end of 2008. Simplification proposals shall be collected simultaneously and converted into an administrative burden reduction package by the end of 2009. In order not to lose time and to materialise "quick wins" the Commission suggested ten simplification measures at the 2007 Spring Summit – the so-called "fast-track-actions", formerly known as "low-hanging-fruits" – on which all relevant decision-makers were thought to agree. These ten simplification measures represent a EUR 1.3 bn reduction potential in administrative burdens per year.[56] Nine out of ten have been agreed upon under the German and Portuguese presidency. One fruit has been hanging higher than expected: A proposal to cut back reporting requirements in the field of food safety is still being discussed in Council. There are no proposals from environmental law among the ten fast-track proposals.

SCM does not only apply to the existing body of EU legal rules, but also to new legislative proposals coming from the Commission. According to Annex 10 of the Commission's Guidelines on Impact Assessment, "whenever a measure is likely to impose significant administrative costs on business, the voluntary sector or public authorities, the [EU SCM] must be applied."[57] This ex-ante assessment according to the SCM methodology can be regarded as a specialised part of the routine assessment of the economic impacts

Federal Chancellery's Better Regulation Unit is entrusted with the role of SPOC. For obvious reasons Member State officials sometimes tend to be sceptical about too close a cooperation with the Commission on these issues. The need to match EU provisions with corresponding national provisions that transpose the EU requirements bear some ressemblance to the much-disliked "Correlation Tables". The two-step mapping exercise may indeed lead to a conflict of interests: What if the Commission or the national official helping the Commission come across a (real or supposed) case of non-transposition? Before being granted access to the German SCM databases, the Commission and their consultants signed a commitment not to use the information from the databases for any other means than the ongoing measurement exercise. The distrust of some national officials towards the Commission and their fear of infringement procedures appear to be deeply rooted. The EU Action programme is a Commission programme. However, the Member States have endorsed the programmee and launched the programmee unanimously at the 2007 Spring Summit.

50 The Commission has got access to the results of several national baseline measurements and intends to build upon these "regional" results for its own measurement. One of the findings of this attempt to tap into the national data bases was, that very frequently (both during the mapping and during the actual measurement), two different persons doing the mapping and/or the measuring, will come up with two different solutions – the transferral of national results into the EU measurement should therefore be done with care and aware of the limited accuracy. However, the national results can give very valuable indications as to the order of magnitude of the time for each standard activity and in particular of the population figures (number of businesses concerned/frequency) are indispensable input into the EU measurement exercise.

51 See the Specifications of the General Invitation to Tender for the "EU Project on baseline measurement and reduction of administrative costs" No ENTR/06/061, pp. 36-37, 42-44, available on the calls-for-tender internet site of DG enterprise.

52 http://ec.europa.eu/enterprise/admin-burdens-reduction/index_en.htm

53 The Homepage was set up in September. According to information from Commission officials the results have been rather disappointing to date. The so-called country events or local simplification workshops will take place in 2008.

54 Other members of the group are the three Chairmen of the German, Dutch and British Independent Regulatory Control Bodies, Dr. Johannes Ludewig (Normenkontrollrat), Robin Linschoten (Actal), Rick Haythornthwaite or Michael Gibbons (Better Regulation Commission) and the Munich-based consultant Roland Berger, see Frankfurter Allgemeine Zeitung vom 22.01.08, p. 17 "Ich werde natürlich Krach schlagen" – Der ehemalige bayerische Ministerpräsident Edmund Stoiber nimmt den Kampf gegen die EU-Bürokratie auf.

55 Commission Decision C(2007)4063 of 31 August 2007 setting up the High Level Group of Independent Stakeholders on Administrative Burdens. The concrete role of this new group and the interesting question as to whether this group might be regarded as the nucleus of a future independent Regulatory Control Council on the EU level will have to be reconsidered as the EU Action programme develops in the coming months and years.

56 COM(2007)23, Action Programme for Reducing Administrative Burdens in the European Union, pp. 12-13 and Annex III.

57 SEC(2005)791, Impact Assessment Guidelines, 15 June 2005 with 15 March 2006 update, Annex 10, p. 35.

of a planned new regulation. The "administrative burden test" is listed amongst the "economic impacts" in the checklist of the Guidelines.[58]

In the past years, the wavering quality of some of the Commission's impact assessments had given rise to internal and external criticism, eventually leading to the creation of the "Impact Assessment Board", a new internal body within the Commission, which is assessing the quality of draft impact assessment reports and giving its opinion on the impact assessment reports. These opinions are publicly available on the Commission's internet site.[59]

4 How does SCM impact on environmental legislation and policy-making?

No administrative burden measurement carried out up to now has shown environmental legislation to be among the very costly and burdensome fields of regulation. Laws on taxes and customs, company law, labour or health care rules have turned out to be of much higher importance for a national economy. Environmental legislation accounts for 2.5 to 5% of the total administrative burden costs on average.[60] Yet in the political discussion, the calls for cuts in the "jungle of environmental regulation" and the warnings against "environmental bureaucracy" as a locational disadvantage and obstacle to competitiveness and economic growth are standard. Due to the close links between the Better Regulation Agenda and competitiveness issues, environmentalists frequently regard Better Regulation as a threat to the "acquis" of environmental rules and to environmental protection standards.[61]

Why is this the case? Is environmental legislation more costly than other policy areas? Does the present focus on SCM camouflage the true economic cost of environmental legislation or does it overstate this cost? Is environmental legislation more likely to be perceived as complicated, costly and burdensome? Is the attitude towards environmental law more emotional and irrational than that towards other legal areas?[62]

From a broader ("governance") perspective: Can the systematic application of the Better Regulation set of rules (or: set of values) and the constant scrutiny of environmental legislation under these Better Regulation rules lead to a gradual modification (erosion?) of the entire body of environmental rules, eventually entailing a shift in the level of environmental protection? To the better: more efficient protection? Or to the worse: cheaper, less effective protection?

4.1 Impacts of the Better Regulation Agenda on legislation and policy-making in general

Firstly and uncontestedly: Environmental legislation is influenced by the EU and national Better Regulation policies in the same way as any other field of legislation. Better Regulation is high up on the political agenda at present and will be so for at least a couple of years, so every political actor dealing with law-making (including environmental law-making) will have to live with the additional set of arguments offered by the Better Regulation discourse and with the institutional and procedural changes brought about by Better Regulation.[63] The German officials, for instance, will have to submit their draft legislation to the NRCC. The Commission officials will have to respect the quality requirements for impact assessment and will have to submit their draft impact assessment reports to the new Impact Assessment Board (IAB). Such changes in the legal and institutional/organisational framework can be conceived as constraints, or as opportunities offered by Better Regulation, depending on how successfully the relevant actor is able to rally his own interests with the interests underlying the Better Regulation policy.

In practice, lobby or interest groups welcome Better Regulation elements in a varied law-making framework as an additional "leverage" to add extra momentum to political pressure. For example, the evidence of disproportionately high administrative costs of a disputed new certification system may tip the scale and halt the proposal in the last minute. Similarly, when

58 SEC(2005)791, Impact Assessment Guidelines, 15 June 2005 with 15 March 2006 update, p. 29.

59 http://ec.europa.eu/governance/impact/practice_en.htm.

60 Less than 2.5% in the German SCM measurement; about 3.8% in the British SCM measurement (Administrative Burdens of Regulation - DEFRA Report 2006, p. 2); about 4% according to the Commission's evaluation of the Dutch, Danish, British and Czech measurements, see EU pilot study WIFO-CEPS of October/December 2006 and COM(2007)195, 2006 Environment Policy Review, p. 14; less that 5% in a survey done by the German Institut für Mittelstandsforschung in 2004, see: *Manssen,* Verwaltungsrecht als Standortnachteil, Schriften der Juristischen Studiengesellschaft Regensburg, Heft 30, p. 13.

61 *Fink,* Better Regulation – Bessere Rechtsetzung in Europa, Freibrief für den Abbau von Umweltregulation im Namen von Wirtschaftswachstum und Schaffung von Arbeitsplätzen oder Basis für eine bessere (Umwelt-) Gesetzgebung, DNR paper, February 2007, p. 1, 15, 28-31 „Trojan Horse"; *Hontelez*, Better Regulation and Outcomes for the Environment, Brussels March 2007, Conference Paper, p. 1, 5; *Castle,* On Better Environmental Regulations, ELFline, Spring 2007, p. 5 "There is scepticism amongst environmentalists that 'better regulation' is synonymous with 'deregulation'"; Deutscher Bundestag Drucksache 16/4204, Entschließungsantrag der Fraktion DIE LINKE „Bürokratieabbau in Europa - Kein Freibrief zum Abbau von Arbeits- und Umweltschutz".

62 See the example of *Frick/Brinkmann/Ernst*, Positionspapier „Moderne Regulierung und Bürokratieabbau", Gütersloh, Juni 2005, p. 6, who speak of the "wrath" that environmental regulation instils in the individual concerned by it" („Regulierungen im Umweltbereich fordern in besonderem Maße den Zorn der Betroffenen heraus – vielleicht weil Regelungen in diesem Bereich meist unmittelbar in die persönliche Lebensgestaltung eingreifen").

63 *Bohne,* Another perspective on the quality of EC environmental legislation, Milieu en Recht 2007, p. 216 „Environmental administrations would be well advised to actively participate in these activities [EC Commission's Action Plan simplifying and improving the regulatory environment and Action Programme for reducing administrative burdens in the European Union] and to influence the content of the programmes."

the legislator has to determine the precise scope of a new legal obligation, his decision on whether to include or exclude a certain segment of industry might be influenced by the prospect of achieving a substantial net reduction in administrative burdens, if this segment is excluded from the obligation.

It becomes obvious from these examples that Better Regulation – notwithstanding all repeated assurances that Better Regulation regulation is not de- or anti-regulation – tends to be a means to halt or impede new legislation rather than a means to encourage or facilitate new regulation. The dogmatics of Better Regulation may tell you otherwise. But looking at the real world impact of Better Regulation and taking into account a mainstream approach to Better Regulation, it is more likely to succeed in getting rid of a planned legislation with the help of Better Regulation arguments than to insert a series of additional new provisions into a draft proposal on the argument of better regulation. In sum the Better Regulation rules favour non-legislative or non-regulatory approaches to legislative or regulatory approaches.

Some of the Better Regulation requirements – independently from any underlying substantial political interests – have got a tendency to slow down the legislative process. This is mostly for practical reasons, such as additional time and human resources needed within an administration to comply with the additional Better Regulation requirements such as impact assessments, more elaborate reasoning for the draft proposal, expanded consultation phase. However, these delays are generally accepted as the "cost" of better regulation. They are justified by the – undeniable – benefits of the better regulation principles: higher quality of regulation, better underlying data, increased transparency, higher acceptance of regulation.

One minor but interesting side-effect of the Better Regulation agenda shall not go unnoticed: The classical legalistic tradition based on rule-making and on the pre-eminence of trained lawyers in the law-making context is challenged by the clear focus on economic evidence and economic arguments in the law-making process.[64]

4.2 Different impacts of different Better Regulation instruments on environmental and other legislation

In order to better understand and classify these findings it is helpful to distinguish four Better Regulation instruments and the way they impact on existing and new legislation:

SCM ex-post measurements: SCM in the narrow sense as described above and limited to the *measurement* of administrative burdens is not likely to have a direct or noticeable impact on legislation. It is a merely descriptive process. However, the results of such measurements can change the *perception* of a particular field of legislation. They can increase or decrease pressure on the legislator, lead to a "stigmatisation" of certain costly domains, making it easier or more difficult for lobby groups to successfully shape or prevent new legislation from happening. From an *environmental* point of view there is no specific risk in SCM ex-post measurements, if the SCM method is applied properly and if the limitations of the SCM method are made transparent when using SCM data in the political debate. All SCM results indicate that environmental information obligations are not excessively burdensome. There will be attempts in the political debate to extend the notion of administrative burdens and to include parts of the normal regulatory cost of environmental legislation into SCM balance sheets and SCM reduction programmes in order to benefit from the political momentum of the SCM process. A transparent debate on these costs and a basic knowledge of the SCM methods and definitions can minimise this risk.[65]

SCM ex-post reduction programmes: SCM in a wider context, including administrative burden *reduction* programmes, can have a direct impact on legislation. The political pressure due to quantified targets that are typical of SCM administrative burden reduction programmes may lead to proposals for which the extraneous concern of achieving a quantified burden reduction of X% equals or outweighs the substantive considerations of the respective subject-matter, that ideally were supposed to guide the legislator in his or her decision-making.

Impact assessment: Impact assessment is not only likely to influence rule-making. It is *aiming* at influencing, namely optimising rule-making. If impact assessments are carried out systematically and over a longer period of time (as has been the case in the EU in the last 3-4 years), and if the impact assessment techniques and procedures filter into an administration's routine, it is supposed that there will be a long-term effect on the "culture" of rule-making in general and on the structure and consistence of the body of rules that will be generated under this system over time ("culture change"). Depending on the fundamental choices inherent to the impact assessment system, these long-term effects can consist in shifting the

64 In the Better Regulation context an almost hostile attitude to law and lawyers can be detected, e.g. *Empter, Frick, Vehrkamp (ed.)*, Auf dem Weg zu moderner Regulierung – Eine kritische Bestandsaufnahme, 2005, pp. 13-14, 16, 42 et al.

65 This risk is not just a theoretical one, see *Bull's* analysis of the cases of "instrumentalization" of the Better Regulation discourse in the economic interest, Bürokratieabbau – Richtige Ansätze unter Falscher Flagge, Die Verwaltung 3/2005, pp. 301-302; *Ahrens / Leier*, Bessere Rechtsetzung in der EU nach der deutschen EU-Präsidentschaft, Zeitschrift für Gesetzgebung 2007, pp. 383, 397, with a reference to *Jann*, Wirtschaftsdienst 2005, pp. 627-628: „Forderungen nach Entbürokratisierung zielen häufig weitergehend auf einen Abbau von Schutzstandards".

centre of gravity of the whole system on the scale between a more liberal and a more regulated system.

SCM ex-ante as part of impact assessment:

A systematic SCM ex-ante assessment is very likely to leave a characteristic imprint on future legislation. This imprint will be even more characteristic if there is a strong and institutionalised practice of SCM assessments in the context of a relatively weak general impact assessment practice. If the impact assessments are limited to an assessment of the expected *cost*, limited to the assessment of *economic* impacts only, or limited to a particular regulatory instrument such as *reporting requirements*, there is a much higher chance of a bias and of a distortion of the system away from the neutrality and "balanced approach" at which it is aiming according to the Better Regulation principles.[66] All three limitations apply to the ex-ante assessment of administrative burdens. A strong focus on SCM ex-ante assessment is therefore found to "make impact assessments unfit as a basis for balanced legislative decision-making".[67]

4.3 Conflict of interests between the Better Regulation Agenda and the underlying values of environmental legislation and policy?

The present Better Regulation Agenda is closely linked to the Lisbon strategy, which has a clearly economic assignment, aiming at economic growth and competitiveness. This closeness to the economic rationale – and to the political and societal actors promoting it – is sufficient to make Better Regulation suspicious in the eyes of many environmentalists.[68] This fear of a pro-economic bias in the institutional and organisational framework and in the choice of instruments is not entirely unfounded. While for example the *theory* of impact assessment with its "balanced approach" treats environmental and economic values equally, the impact assessment *practice* appears to be favourable to economic values. A number of structural imbalances may explain this: Costs are easier to monetise than benefits. Costs are therefore more visible in an impact assessment than benefits, which are only described in words. This may lead to a bias when it comes to weighing the costs and benefits of a proposed legislation. In other words: A proposal with low administrative or other costs and relatively low benefits will have a better chance of being adopted than a proposal with relatively high administrative or other costs and high or even very high benefits. It is assumed that environmental legislation often entails comparatively high regulatory costs for individual economic actors, but at the same time yields very high benefits for society. Environmental legislation therefore finds itself in a more difficult position to justify the necessity for regulation through a convincing cost-benefit-analysis in the impact assessment.

As has been pointed out already, in the present German and EU impact assessment practice, a strong focus is laid on the ex-ante assessment of the administrative burdens for businesses. SCM clearly focusses on the *cost* of regulation, excluding by definition consideration of the benefits of regulation. SCM in the context of ex-ante assessments therefore adds to the bias towards economic arguments.

However, this sceptical judgement is based on two assumptions: On the classical dichotomy of economy and ecology as antagonistic concepts and on the abovementioned structural imbalances in the present impact assessment practice. If the methodology of impact assessment advances and the benefits of environmental legislation are properly monetised and taken into account in the weighing of the costs and benefits, there is a high chance that the Better Regulation Agenda will benefit the goals of environmental legislation rather than being detrimental to it. Similarly, as the traditional antagonistic conception of economy opposed to ecology is slowly disappearing, the link to the Lisbon strategy and its economic rationale of competitiveness and growth will no longer be regarded as a risk or disadvantage to environmental legislation.[69] The enormous potential for environmental policy – if translated into economic terms – has become visible in the climate change debate with the publication of the Stern Review and has also been briefly touched upon in some of the impact assess-

66 *Owens,* A balanced appraisal? Impact Assessment of European Commission proposals, ELNI 2007, p. 5; *Hofmann,* The New European Regulatory Impact Assessment – In Theory and Practice, ELNI 2007, pp. 11-12; *Gebauer,* Die neue Praxis der Folgenabschätzung auf EU-Ebene und die Auswirkungen auf das deutsche Umwelt- und Planungsrecht, in: Ziekow (ed.), Aktuellen Fragen des Fachplanungs-, Raumordnungs- und Naturschutzrechts, Berlin 2007, pp. 114-116, 128-129.

67 *Meuwese,* Impact Assessment in EU Lawmaking, Exeter/Leiden 2008, p. 85; *Maurer,* Gesetzesfolgenabschätzung als notwendiges Element eines Programms zur Besseren Rechtsetzung, Zeitschrift für Gesetzgebung 2006, S. 377, 382 f. „Die Bürokratiekostenmessung nach dem Standardkostenmodell kann keinesfalls die GfA ersetzen oder verdrängen. (...) Es wäre wünschenswert, dem NKR eine Wächterfunktion über die methodengerechte Durchführung von GfAen zu geben."

68 *Krämer,* Better Regulation for the EC environment: on the quality of EC environmental legislation, Milieu en Recht 2007, pp. 71-72; *Fink,* Better Regulation – Bessere Rechtsetzung in Europa, Freibrief für den Abbau von Umweltregulation im Namen von Wirtschaftswachstum und Schaffung von Arbeitsplätzen oder Basis für eine bessere (Umwelt-) Gesetzgebung, DNR paper, February 2007, pp. 1, 15, 28-31 „Trojan Horse"; *Hontelez*, Better Regulation and Outcomes for the Environment, Brussels March 2007, Conference Paper, p. 1, 5; *Castle,* On Better Environmental Regulations, ELFline, Spring 2007, p. 5 "There is scepticism amongst environmentalists that 'better regulation' is synonymous with 'deregulation'".

69 See the position paper of the Network of Heads of European Environment Protection Agencies, November 2005, The Contribution of Good Environmental Regulation to Competitiveness, p. 2. 6. This approximation of the economic reasoning and the ecologic reasoning has to be judged carefully, though, before the "clear all" will sound. It must be made sure that it is not only a case of spurious resemblance or partnership. When comparing economic and ecologic cost and economic and ecologic benefits, the underlying assumptions (discount rates, time frames, etc.) have to be questioned and compared very carefully. Only if the existing short-term-long-term divide between economic and (true) ecological reasoning is overcome, there will be a true equality of arms in the field of Better Regulation.

ments on EU legislative proposals in the field of the environment.[70]

4.4 Characteristic features of environmental legislation that make it more susceptible to influence from Better Regulation policy and Better Regulation instruments

A number of specific features of *environmental legislation* can be mentioned, which may explain why environmental legislation is more susceptible to be affected by the impacts of the Better Regulation instruments than other fields of legislation:

Complexity: Environmental regulation is a complex subject, owing to the complexity of the subject-matter itself. The regulated facts mirror a complex scientific reality, requiring a comparably complex set of rules. This complexity is liable to lead to a diversified structure of the applicable provisions, to more time-consuming administrative action for compliance and thus bring environmental legislation into the reticule of Better Regulation efforts.

Public Interest vs. Private Interest: The same applies because environmental legislation is a subject-matter with a relatively high demand for state intervention. Environmental legislation traditionally intervenes in the common interest. Only in exceptional cases it is supported by parallel individual interests. Mostly it is running counter to individual (rent-seeking) interests. Environmental legislation tries to correct market failures, internalise external cost or avoid depletion of common properties. Environmental legislation is more vulnerable to free riding than other fields of legislation. It therefore needs closer control when implementing it. Closer control is likely to result in more reporting requirements, more inspections.[71]

State Regulation / Self Regulation: On the other hand, environmental legislation is under competitive pressure from the concept of "self-regulation". In no other field is the call for "self-regulation" so loud and constant than in the field of environmental legislation, even if the experience from recent German and EU wide examples have shown that expectations as to what self regulation can achieve should not be overrated.[72] Since Better Regulation has got an inclination towards non-regulatory options, the Better Regulation context makes it more difficult to opt for a legally binding and enforceable set of rules instead of a voluntary approach.

Dealing with risk and scientific uncertainty: Environmental legislation has to react to scientific progress. New technologies involve new conflicts and create the need for new legal rules. Examples are genetically modified organisms or nano technology. Regulation in these areas has to rely on instruments such as reporting, documentation obligations, monitoring requirements, traceability requirements in order to allow the use of risk technologies and at the same time be able to provide a reasonable standard of protection in the presence of scientific uncertainty. These instruments inevitably entail administrative burdens in the SCM sense. If under the Better Regulation Agenda a disproportionately high emphasis is put on the avoidance of additional administrative burdens in the SCM sense, this focus might lead to a distorted perception of a new legal proposal regulating an emerging risk technology.[73]

Environmental protection through information: There are a number of particular cases in environmental legislation for which the SCM methodology and its strict focus on information obligations would lead to potentially very significant costs and thus to a noticeable impact. That is the case for those environmental laws or ordinances that specifically build on "information gathering" as a means of environmental protection. Modern environmental legislation heavily relies on information, as has been discussed in the context of risk regulation. Environmental protection can be achieved by banning a certain substance or a certain kind of behaviour (command and control). Another way to achieve environmental protection is to try and miminize the risk associated with the substance or activity through an enhanced understanding of the substance and the underlying processes, thus enabling society to react and behave in an "informed way". Environmental protection through information has been welcomed by industry and businesses as a flexible, lean and economy-friendly means of environmental regulation, less restrictive and much "cheaper" than 'command-and-control' regulation. The legislation on the access to environmental data or on Envi-

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70 E.g. the Thematic Strategy on Air Pollution, see: *Owens,* A balanced appraisal? Impact Assessment of European Commission proposals, ELNI 2007, p. 5; *Hofmann,* The New European Regulatory Impact Assessment – In Theory and Practice, ELNI 2007, pp. 11-12; *Gebauer,* Die neue Praxis der Folgenabschätzung auf EU-Ebene und die Auswirkungen auf das deutsche Umwelt- und Planungsrecht, in: Ziekow (ed.), Aktuelle Fragen des Fachplanungs-, Raumordnungs- und Naturschutzrechts, Berlin 2007, pp. 123-126.

71 See *Manssen,* Verwaltungsrecht als Standortnachteil, Schriften der Juristischen Studiengesellschaft Regensburg, Heft 30, p. 15 „Ein Staat, der von sich selbst verlangt, fürsorglich, vorsorgend und planend Fehlentwicklungen gegenzusteuern, braucht Informationen und Daten, Nur auf belastbarer Datengrundlage ist ein sinnvoller Einsatz von öffentlichen Mitteln möglich"; *Krämer,* Better Regulation for the EC environment: on the quality of EC environmental legislation, Milieu en Recht 2007, pp. 71-72, 73-74.

72 OECD Study SG/SGR(2003)5, p. 56, "As elsewhere in the OECD, Germany's use of alternatives [to regulation] is most developed in the environmental field"; see as an example for a failed attempt of regulation via voluntary agreement SEC(2007)1723, Impact Assessment of the Proposal for a Regulation to reduce CO_2 emissions from passenger cars, p. 12.

73 The legislator must have the freedom to choose the most adequate regulatory instruments when there is a need to regulate an emerging risk technology for the first time. Better Regulation requirements that value an extraneous element higher than the substance – for example if the administrative burden of new legislation is budgeted and/or substracted from an overall reduction target – are putting environmental legislation and other legislation for emerging and fast-developing policy areas at a disadvantage.

ronmental Impact Assessment (EIA) and the legislation on the "Registration, Evaluation and Authorisation of Chemicals (REACH)" are typical examples. Obviously, this technique of environmental protection through information is heavily relying on information obligations such as reporting requirements, data gathering, documentation and transmittal, statistics, etc. These examples show the limits of the SCM methodology: Can the money spent on research for the registration or evaluation of a chemical substance be counted as "paperwork", as an administrative burden according to SCM? What about the costs of the environmental impact assessment study that an applicant has to submit in order to be granted a permit for his new installation? If these costs of information-gathering were classified as SCM costs, this type of regulation through information would be classified as a very costly regulatory choice and face resistance in a Better Regulation and particularly in an SCM context. Such an outcome would be difficult to reconcile with the system and the rationale of SCM. In constellations like this, the generation of sound, recent and reliable environmental and risk data from first-hand sources is not simply an accessory means in order to implement and control a substantive requirement, such as a limit value or a ban on a hazardous substance. In these cases the information obligation is the subject-matter of the rule itself. It is taking the place of the material protection standard set by substantive requirements in classical 'command-and-control' legal acts. Consequently, the costs of these information obligations should not be considered as administrative burdens. They cannot be accounted for in the SCM measurement and reduction exercise, but should be treated as *regulatory cost*, be accounted for in the regular impact assessment and weighed against the expected environmental, social and economic benefits.[74]

Abstract

The Standard Cost Model (SCM) is a pragmatic and cost-effective method to systematically identify and quantify the cost of "bureaucratic" legal requirements such as reporting obligations, authorisation procedures etc. (administrative burden). SCM is supposed to be a technical instrument. It is not about political choices. SCM does not question the political goal and the benefits of a legal provision. Consequently, SCM does not take into account the cost for complying with substantive legal rules such as limit values or safety standards.

In the SCM baseline measurements carried out so far (Netherlands, Denmark, UK, Czech Republic, and Germany), the cost of environmental legislation has been found to represent only a marginal share of the total administrative burdens (< 5 %). The more costly areas are inter alia tax law, company law, health, labour law. In spite of these findings, environmental legislation continues to be considered as very "bureaucratic" and burdensome ("irritant factor"). The results of a similar measurement on EU legislation, including European environmental provisions, will be available by the end of 2008.

When SCM is used for assessing the expected cost of new legislation (ex-ante assessment), there can be a risk of structural imbalance. A legislative system with a strong focus on assessing administrative burdens might place environmental interests at a disadvantage: The short-term economic costs of a new proposal are easily quantified - and thus highlighted - with the help of SCM, whereas its long-term benefits are not.

To minimise the risk of such a bias to the detriment of environmental and other non-economic, long-term interests, the methodological limitations of SCM must be made transparent when discussing a new legal proposal. SCM ex-ante assessment must not edge out the more general approach of an integrated impact assessment. A strong SCM practice (as in Germany) should therefore not be regarded as a substitute for impact assessment, but as a stepping stone to a similarly strong practice of comprehensive and integrated impact assessments for new legislative proposals, weighing up the economic, social and environmental implications of the planned measures and quantifying – whenever possible – not only the costs, but also the benefits.

74 Since REACH has not yet reached the level of national legislation, these questions have not been practically relevant for the German SCM baseline measurement. In similar cases (e.g. cost for risk studies in the authorisation procedures of a new medical drug), a Solomonic compromise has been applied: wherever possible, the overall cost for the authorisation procedure has been ascertained and then divided into an SCM share (*paperwork* related to the risk studies) and a compliance cost share (cost for the *risk studies themselves*; fees). For reasons of transparency the database will display both results. It was left for the respective line ministry to determine whether the compliance costs (or parts of the compliance costs) are counted to reach the overall SCM result. As for environmental legislation, compliance costs with a reasonably close nexus to SCM (e.g. cost for inspections or calibration of meters; certain fees) have been included as a rule in the final administrative burden result.

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If you want to join the Environmental Law Network International, please use the membership form on our website: **http://www.elni.org** or send this form to the **elni Coordinating Bureau,** c/o IESAR, FH Bingen, Berlinstr. 109, 55411 Bingen, Germany, fax: +49-6721-409 110, mail: Roller@fh-bingen.de.

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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.

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

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

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

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

Coordinating Bureau

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

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

elni Review

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

elni Conferences and Fora

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

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
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- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

Elni Website: elni.org

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

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