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# elni

## REVIEW

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Agrobiodiversity on the Agenda

*Franziska Wolff*

Will the CBD fulfil our Expectations? Conserving  
Biological Diversity

*Monika Brinkmüller*

Access to Genetic Resources and the fair and  
equitable Sharing of the Benefits

*Susette Biber-Klemm*

'Biodiversity Damage' Liability in the Environmental  
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*Birgit Dette*

New Books

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## 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 Brinkmüller* 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 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 wide-spread dimensions.

Last but not least, the “New Books” column presents a review of 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 Hertten, 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](mailto:cedre@fusl.ac.be)

rences, 1. an existing EU law more stringent, the implementation of which is compulsory, such as the Birds and the Habitats Directives; 2. the insight of the Member States that they have to bear the costs of remediation themselves if they do not force the polluter to do so; and possibly also by 3. the lack of ability of economic activities to relocate in other (Non-EU-Member) States.

## 6 Conclusions

The existing international EU and Austrian norms for definitions and remediation duties concerning environmental liability are mostly wider than the norms of the ELD.

In part, the remediation duties concretised through the ELD are more precise than is the case in Austria, but occasionally already existing national provisions are used in the same way in that country.

The applicability of the ELD seems to be subsidiary only with regard to more stringent EU law, to more stringent national law in which the implementation of more stringent EU law is compulsory; and also to more stringent national law (regardless of EU law).

Furthermore, national law has to implement more stringent EU laws than the ELD, such as the provisions of the Birds and the Habitat Directives.

The race to the ELD bottom concerning biodiversity damage liability is likely to be prevented, above all by this more stringent EU law as well as hopefully by the insight of the Member States that they have to bear the costs themselves of compulsory remediation based on more stringent EU law, if they do not impose a comprehensive remediation duty on the operator.

## UN Conference of the Parties to the Convention on Biological Diversity in Bonn The environmental programme

*Hartmut Stahl, Katja Kukatz*

*When Germany hosts the 9th Meeting of the Conference of the Parties to the Convention on Biological Diversity in May 2008, approximately 5000 participants from 190 Member States are expected in Bonn. The delegates of the UN will discuss possibilities for stopping the ongoing worldwide destruction of nature. In the run-up to the conference, about 1200 experts will hold a prior meeting; besides the experts, about 120 environment ministers are expected.*

This means not only a tremendous challenge for the organisers but also for the environment. Experts are anticipating, for instance, additional greenhouse gas emissions of around 20,000 tons of CO<sub>2</sub>-equivalent, mainly caused by the international flights of the delegates. As a result, the Secretariat of the Convention on Biological Diversity as well as the German Federal Government are aiming to create a suitable framework which gives consideration to the concerns of biodiversity and, more generally, to the protection of nature and the environment. On behalf of the Federal Environment Ministry, Öko-Institut is developing a comprehensive environmental programme for the Conference, thereby undertaking an exemplary role. One of the declared goals of the Federal Government is to hold the Conference in a carbon-neutral manner.

“We are delighted about this decision”, says project leader Dr. Hartmut Stahl of Öko-Institut. “We know from experience that the implementation of an ambitious environmental programme can bring about con-

siderable results for the environment.” This was also the case with the environmental programme for the Football World Cup in 2006 (‘Green Goal’) for which Hartmut Stahl’s input was instrumental.

Key areas that are addressed by the environmental programme for the UN Conference in Bonn comprise waste management, the environmentally friendly transportation of the participants, the conservation of resources in the area of energy and water as well as a catering service that makes a contribution to the promotion of agrobiodiversity. From a global perspective, climate protection is currently one of the greatest challenges of environmental policy and therefore plays a key role in the environmental programme.

### 1 Waste management

The primary goal of waste management is to avoid creating waste from the outset; thus, on the basis of good prior organisation, it needs to be made sure that large quantities of waste are not produced at the conference in the first place. In all areas, for example, systems for returnable items shall be preferentially implemented. Moreover, experts recommend that printed information leaflets be avoided as much as possible and that the internet be used to inform participants and interested parties.

The amount of created waste that cannot be avoided ought to be consistently separated when collected at source. This will generally take place in the back-

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".

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[www.bmu.de/english/nature/un\\_conference\\_on\\_biological\\_diversity\\_2008/general\\_information/doc/39656.php](http://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.<sup>1</sup> Following the Dutch, British and Danish example, the German government launched an administrative burdens baseline measurement of the existing body of

<sup>1</sup> 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)

## Imprint

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Martin Führ (fuehr@sofia-darmstadt.de)

The Editors would like to thank **Vanessa Cook** (Öko-Institut) for proofreading the *elni Review*.

**Focus of the forthcoming issue :**

The next issue of the *elni Review* will focus on Environmental Impact Assessment and the Revision of the IPPC Directive.

Manuscripts should be submitted as files by email to the Editors using an IBM-compatible word processing system.

The *elni Review* is the double-blind peer reviewed journal of the Environmental Law Network International. It is distributed twice a year at the following prices: commercial users (consultants, law firms, government administrations): € 52; private users, students, libraries: € 30. Non-members can order single issues at a fee of € 20 incl. packaging. The Environmental Law Network International also welcomes an exchange of articles as a way of payment.

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*The views expressed in the articles are those of the authors and do not necessarily reflect those of elni.*

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## elni Membership

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.

The membership fee is €52 per year for commercial users (consultants, law firms, government administration) and €21 per year for private users and libraries. The fee includes the bi-annual elni Review. Reduced membership fees will be considered on request.

Please transfer the amount to our account at **Nassauische Sparkasse** – Account no.: **146 060 611, BLZ 510 500 15**, IBAN: DE50 5105 0015 0146 0606 11; SWIFT NASSDE55XXX.

“Yes, I hereby wish to join the Environmental Law Network International.”

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

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

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

#### **The Environmental Law Division of the Öko-Institut:**

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

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

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

The Institute fulfils its assignments particularly by:

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

Main areas of research:

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

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

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

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

The areas of research cover

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

sofia is working on behalf of the

- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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## elni

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

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

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

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

### **Coordinating Bureau**

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

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

### **elni Review**

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

### **elni Conferences and Fora**

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

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

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

### **Publications series**

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

### **ElNi Website: elni.org**

On the elni website [www.elni.org](http://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.