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elni REVIEW

CONTENTS

Editorial

Waste law was, in 1975, one of the first environmental issues to be regulated by the European Community. The Waste Framework Directive has served as an important harmonisation instrument for about 30 years without substantial change. Now, a new directive has been adopted and must be transposed into national law by the end of 2010. Moreover, a comprehensive jurisprudence of the Court of Justice has influenced national waste law in the last years. Around 60 waste-related EU legal acts have been adopted in the last decades to cope with an estimated 2.6 billion tonnes of waste generated in the European territory each year. Finally, the transboundary shipment of waste was given new legal ground in 2006. Reason enough for the current issue of *elni Review* to lay its main focus on waste law.

This issue of *elni Review* (1/2010) includes valuable insights into this matter, on the basis of the following contributions:

In an article entitled "Remarks on the Waste Framework Directive", *Ludwig Krämer* comments on the directive, in particular on those provisions where the legal situation has changed from previous legislation.

"Chinese e-waste legislation, current status and future development" is the subject of the article by *Martin Streicher-Porte, Katharina Kummer, Xinwen Chi, Stefan Denzler and Xuejung Wang*. This article provides detailed insights on several environmental laws and regulations concerning both waste of electrical and electronic equipment as well as the production of electrical and electronic equipment in China.

"The EU Waste Shipment Regulation and the need for better enforcement" by *Thomas Ormond* discusses the background of waste shipment law, traces the recent developments in waste trade and legislation and sets out current problems and issues.

Beside waste law this issue of *elni Review* also deals with two subjects which are both relevant to the current environmental debate: The article "Quality and Speed of Administrative Decision-Making Proceedings: Tension or Balance?" by *Chris Backes and Sander Jansen* reflects the prevailing tensions concerning administrative decision-making: the necessity of speedier procedures – resulting from the economic crisis – the quality of the proceedings and the rights of citizens.

Further *Gerhard Roller* addresses the legal role of NGOs in court proceedings in Germany in an article entitled "Locus standi for environmental NGOs in Germany".

Moreover, this edition of *elni Review* covers the recent developments concerning the debates about the EU Waste Implementation Agency, as well as the latest news about the Commission warning the UK about the unfair cost of challenging decisions.

The next issue of the *elni review* will focus on environmental law in developing and emerging countries. Contributions on this issue are very welcome. Please send contributions on this topic as well as other interesting articles to the editors by mid-July 2010.

Nicola Below/Gerhard Roller

April 2010

ELNI-VMR-VVOR congress

on Friday 17th September 2010
at ***Ghent University*, Belgium**

"Talking about the environmental effects of industrial installations: the European Directive on Industrial Emissions"

On the occasion of the upcoming recast of the European Directive on Industrial Emissions, the Environmental Law Network International, the Vereniging voor Milieurecht (VMR) and the Vlaamse Vereniging voor Omgevingsrecht (V.V.O.R.) are co-organising a congress on IPPC, IED, and all possible and impossible questions in this field..

At the end of the day, there will be an unforgettable ELNI birthday party!

Please confirm your participation at:
http://www.omgevingsrecht.be

More information on this event can be found in this issue of *elni Review* on page 39.

Quality and Speed of Administrative Decision-Making Proceedings: Tension or Balance?

Chris W. Backes and Sander Jansen

1 Introduction

Procedures to receive a permission concerning environmental issues and procedures to receive a permit for building plants, highways, airports and so on often take long and not seldom very long. The administrative proceedings involved are very often complex. In several countries, there is an increasing desire to speed up administrative decision-making proceedings, especially in the field of complex infrastructure projects (see examples above). The current economic crisis enhanced this necessity. Both developments, the incumbent economic crisis and the above mentioned dissatisfaction with the current system of decision-making, resulted in planned or taken measures. With regard to these planned or implemented (legislative) measures, a possible clash may occur between, on the one hand, speedier decision-making and, on the other, the quality of the proceedings and the rights of the citizens.

It is undisputed that discussions regarding the acceleration of administrative decision-making are taking place in most European countries. It seems interesting for lawyers in each European country to ascertain whether inspiration can be provided or even lessons can be learned from the ideas and measures that have been developed in these areas in other states and from some practical experiences that meanwhile have been gained.

In the course of the summer of 2009, the administrative law department of Maastricht University carried out a comparative law research on this issue. The research involved an exploration of the ways in which issues relating to complex decision-making procedures are dealt with in Germany, the United Kingdom, France and the Netherlands and the experiences after certain acceleration measures have been implemented. Besides analysing the relevant statutes, case law and legal writings, the researchers interviewed stakeholders who are engaged in the decision making process in practice, like civil servants, judges, advocates and representatives of environmental groups. This article is based on a selection of findings of that research.

A general observation was that the political discussions unjustifiably focuses on the possible streamlining of statutory procedures, whilst there are a great many non-legal factors that are of at least equal importance when it comes to determining the amount of time consumed in decision-making procedures. Factors such as poor decision-making management, frequently adapted policy (rules), low budgets, an insufficient number of civil servants and/or incorrect and delayed implementation of EC Directives heavily influence the duration of administrative decision-making. Nevertheless, in all countries examined, the political discussion mainly concentrates on procedural rules, especially on restrictions of the rights of individuals and environmental organisations.

When considering changes of law, one can attempt to find solutions within the system of the general administrative (procedural) law, and, if such acts exist, as in the Netherlands and in Germany, in the general acts regarding administrative law and its rules of legal procedure. However, another approach which possibly offers solutions to the problems consists in creating separate legislation. A recent example of this is the Dutch Crisis and Recovery Act ('Crisis- en herstelwet'). Although it raises a lot of controversy in legal literature, this Act of Parliament has recently been approved by Dutch Parliament. Hence, in the Netherlands, the problems related to decision-making in complex proceedings are currently mainly tackled by means of separate legislation. This Crisis and Recovery Act contains several provisions which restrict the rights of citizens, organisations and governmental bodies to contest administrative decisions.

2 Decision-making process

In the UK the discussion is centred upon the administrative decision-making process. Most attention is paid to the 'public inquiry', a kind of an early preparatory proceeding. This public inquiry is an instrument elaborated upon in legalisation and is widely used in the case of complex projects. Remarkably enough, in France there is little discussion with regard to the necessity of accelerating the decision-making process. In contrast, the past few years the French implemented elements in the decision-making process which primarily aimed at enhancing the possibilities for public participation. These measures actually cause the procedures to last even longer. Like in the UK the public inquiry ('enquête publique'), which is a statutory and extensive early preparatory procedure, plays a major role in France. In Germany, especially in custom and practice, one can find a number of measures designed to enable administrative decision-making procedures to be conducted in an effective, careful and efficient manner, in particular in complex cases.[1] In the Nether-

[1] Germany holds a unique position in Europe, due to the reunification and the substantial investments that infrastructural projects consequently entailed.

lands the duration of the decision-making process in complex and infrastructural projects was deemed to be highly important, so that a special committee[2] was appointed to advise the Government. This committee attached, amongst other things, importance to a thorough preparatory stage that incorporates broad participation at an early stage.

2.1 Extensive preliminary proceedings

We think that it is worth focusing on and exploring the opportunities which the extended preparatory proceedings of the decision-making proceeding offer. In France and certainly in the UK this is already the case. In the Netherlands the search for solutions tends to go into another direction.

As we pointed out, the decision-making process in relation to complex projects in France and the UK are characterised by extended preparatory proceedings with a quite comprehensive consultation and research stadium before the administrative authority selects a concrete subject and renders its decision. Compared to the applicable preparatory proceedings that take place before a decision is issued in the Netherlands, the French and English proceedings of the public inquiry and the 'enquête publique' take longer. At the end of the day, however, the entire duration of the decision-making process could be shortened. For instance, the French 'enquête publique' is rounded off by a declaration of general / public benefit ('declaration d'utilité publique') with which in follow-up proceedings of expropriation the public benefit is a fact and, hence, in that latter stadium proceedings will be shorter.

An interesting finding is that the time needed for public participation, at least in Germany and the Netherlands, is quite limited, related to the length of the whole decision making procedure. According to German figures, the public participation count for only 5-6% of the whole procedure.

2.2 Integrated decision-making

The integrated nature of the joint public planning approval procedure ('Planfeststellungsverfahren'[3]), which is one of the characteristics of the German system, deserves elaboration. As part of the joint public planning approval procedure the applicable statutory requirements in relation to consent under the relevant sector-specific legislation continue to apply. The power to issue the decision is, however, assigned to a single governmental body, the so-called 'Planfeststellungsbehörde' (joint public planning approval authority). This administrative authority consults all interested parties, including the bodies under public law, which originally had the power to issue a decision with regard to a specific requirement in relation to consent. This consultation usually takes place within three months in the form of a parallel approval procedure ('Sternverfahren'). The comments that are submitted are taken heed of.[4] The joint public planning approval authority takes a *single decision* ('Planfeststellungsbeschluss'). Against this decision legal proceedings may be initiated in a *single procedure* of judicial review. This German procedure seems to be a very effective one. On the one hand, it reduces the administrative burden by integrating various procedures to a single one. On the other hand, it seems to ensure that all different aspects and interests are balanced in a thorough way.

The new Dutch Crisis and Recovery Act contains a somewhat similar procedure as the German 'Planfeststellungsverfahren'. The Dutch procedure represents a limited step in the German direction as described above, it is however not as far-reaching in its application. The Dutch procedure mainly applies in the case of medium-sized residential construction projects. It excludes the applicability of some statutory provisions which prescribe permit or consent requirements instead of concentrating all required consents in the hands of one administrative authority in one decision, as in Germany. A more extensive application of the Dutch procedure in the case of complex projects is barred because of limitations that apply under European law. After all, legal obligations that transpose European requirements, like EIA requirements or species protection provisions, may not be excluded. As far as the arrangements in Germany are concerned this is not the case, as all of the statutory requirements with regard to consent remain intact. Therefore, the German Planfeststellungs-procedure clearly offers some important advantages compared with the newly introduced Dutch provisions.

2.3 Procedural management

Besides legal instruments to structure the decision making process, there are diverse interesting management tools, formally regulated or not, to make decision making more efficient. An example is the former Art. 71a-71e of the German Act on Administrative Procedures (Verwaltungsverfahrens-gesetz), which introduced, for example, procedural advisors or a joint meeting of all public authorities and private parties engaged in the decision making. The British 'Code of Practice on Consultation of the Cabinet Office's Regulatory Impact Unit' which provides key principles for good decision making is right another example. The impression is that these aspects of good procedural management and the possible efficiency benefits thereof are, compared with suggestions to restraints of participation rights, much underestimated.

Not only a series of legislative measures have been taken, a great deal of practical experience has been gained as well.

2 Named, after its President, the Elverding Committee.

3 Art. 72 ff. Verwaltungsverfahrensgesetz (Act of Administrative Procedures).

4 In some cases it is also necessary to obtain the agreement of a different administrative authority.

3 Legal protection

3.1 Access to court

Next to the importance of the features of the decision-making process, it is of utmost relevance what role courts (can) play. When it comes to the influence of courts more or less two sides of the same coin can be recognised: involving a court can result in a significant delay of the final decision, but a court can also, by several means, contribute to settle the dispute.

3.1.1 Limitation of the right of recourse of governmental bodies

A possible step to achieve acceleration of final decision-making consists in the limitation of the right of recourse of government bodies. In German administrative law such limitation exists. Small wonder, since it can be considered to be a consequence of the 'Individualrechtsschutz' and the focus on (hence restriction to) the protection of subjective individual public rights. The new Dutch Crisis and Recovery Act also contains a provision[5] that restricts the right of recourse of decentralised government bodies. It is, however, unlikely that this limitation will result in the intended acceleration. Cases in which only a governmental body brings a case before court are rare. Often also one or more individuals or an environmental organisation start proceedings against a decision in the case of large infrastructural or environmental administrative decisions. In addition to that, decentralised government bodies keep the right to contest such a decision in a civil law suit, which probably will cause extra delay.

3.1.2 Limitation of the right of environmental organisations

Especially in environmental matters, often organisations instead of individual citizens want to challenge a decision. If the right of access to court for environmental organisations is restricted, a highlighted question mark must be placed on the basis of EC law in case the right to bring an appeal is reserved related to the amount of members. The ECJ ruled in a judgment against Sweden (15 October 2009)[6] that the number of members required cannot be fixed by national law at a level which runs counter to the objectives of Directive 85/337 and in particular the objective of facilitating judicial review of projects which fall within its scope. The ECJ prohibits national legislators to fix the required members of environmental organisations at a preconditioned level, excluding beforehand certain organisations. The ECJ states: "*Art. 10a of Directive 85/337, as amended by Directive 2003/35, precludes a provision of national law which reserves the right to bring an appeal against a decision on projects which fall within the scope of that directive, as amended, solely to environmental protection associations which have at least 2000 members.*"

In the same case of the ECJ (C-263/08) the Court stated:

"*Members of the "public concerned" [italics: ChB, AMLJ] within the meaning of Art. 1(2) and 10a of Directive 85/337, as amended by Directive 2003/35, must be able to have access to a review procedure to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.*"

It is crucial to define the term 'the public concerned'. According to (an advice of) the Dutch Council of State public participation in decision-making proceedings concerning specific activities[7] and plans and programs[8] in the context of the Aarhus Convention[9] must be open for the public in general, not only for the public concerned.[10] Access to court in environmental matters is regulated in Art. 9 of the Aarhus Convention. The Dutch Council of State stated in its aforementioned parliamentary counselling that the Aarhus Convention distinguishes within the category 'the concerned public' and that entitled to access to court (Art. 9(2) Aarhus Convention) are those who belong to 'the public concerned' and have sufficient interest either allege an infringement on a right.[11] In a report drawn upon by order of the European Commission on the implementation of Art. 9(3), of the Aarhus Convention the Dutch regime was not considered insufficient, whilst Germany and Austria received a negative score on the issue of access to court, in relation with the relativity principle (see below, paragraph 3.1.3(i)).[12]

3.1.3 Relativity principle

A principle that deserves attention is the relativity principle or protective rule requirement ('Schutznormlehre'). In short, this principle of a protective rule

5 Art. 1.4 Crisis and Recovery Act.

6 C-263/08.

7 See Art. 6 Aarhus Convention.

8 See Art. 7 Aarhus Convention.

9 See on the Aarhus Convention: United Nations, the Aarhus Convention: An Implementation Guide, 2000, http://www.unece.org/env/pp/aicg.pdf.

10 It therefore follows from the Aarhus Convention the public must be informed in an early stage about the decision-making, must be facilitated to have their say and in the decision the results of the participation must be taken into account.

11 According to the Dutch Council of State as well as leading authors in the field this interpretation corresponds to the definition of interested party as codified in Art. 1:2 GALA, which capacity is a condition for access to administrative court.

12 Milieu Ltd., Measures on access to justice in environmental matters (Art. 9(3)), country report for the Netherlands and summary report on the inventory of EU Member States' measures on access to justice in environmental matters, July 2007 p. 23, 24 and September 2007 p. 7, 18. See http://ec.europa.eu.environment/aarhus/study_access.htm.

requirement limits the rights of recourse available to potential plaintiffs by allowing them to invoke only norms intended to protect their statutory concrete, individual rights. In systems where this principle is applied, it brings about an access to court that is narrower than in case of 'sufficient interest', 'concerned person' and so on, which is the criterion used in most countries. In Germany, Poland and Austria, such a relativity principle exists, whilst in the Netherlands it will be introduced in the (near) future.

(i) Environmental organisations

The problematic category of restrictions by means of the relativity principle covers the right of recourse available to environmental organisations. In German administrative law, the opportunities for such organisations to bring a case before court are limited to norms that pretend to create individual-subjective public rights.[13] The question arises, whether this limitation is in accordance with EC law, more precisely Directive 2003/35/EC, which implements requirements of the Aarhus Convention into European law. The 'Oberverwaltungsgericht' (OVG = Court of Appeal) in Münster asked preliminary questions to the ECJ. [14] Another German court (OVG Schleswig, 12. March 2009) apparently considered it to be obvious and did not find it necessary to ask preliminary questions. It decided that the 'Umwelt-Rechtsbehelfsgesetz' conflicts with International and EC law on this point. Equally, it is questionable whether this limitation complies with Art. 9 of the Aarhus Convention. See paragraph 3.1.2 above.

(ii) Individual persons

Compared to the existing German 'Schutznormlehre' the Dutch suggested relativity principle differs somewhat. The proposed Dutch principle is on the one hand less strict, because an infringement of a subjective individual public right will not be required. At the same time, the Dutch application of the relativity principle, as suggested, reflects a more restrictive approach, due to the fact that – in contrast to German administrative law – in the regulations as proposed no exemption is provided in the event that decisions affect the property of an individual. Hence, it remains an issue whether the Dutch application of the 'Schutznormlehre' complies with the right of property as provided by Art. 1, First Protocol. It comes down to the following question: Does this Treaty provision allow that an 'interested person' has to accept certain unlawful limitations of his property rights, just because the infringed provision is not meant to protect his interests? However, the Dutch judges may be able to solve this problem and prevent an infringement of international and EU law. This is probably possible because the Dutch legislator added the word 'obviously' to the protective rule requirement.[15] According to this new Dutch rule, an applicant may not rely on grounds which are based on legal provisions, which *obviously* do not intend to protect the interests of the applicant. The Dutch judges, whenever they doubt whether an application of the protective rule requirement may infringe international or EC law, can decide that the relevant norms possibly, but not obviously, do not protect the interests of the applicant.

However, there is not only be discussed in the Netherlands; it is also being in the German discourse. The main issue in this discussion relates to the fact that it is no longer the exclusive competence of the German legislator (and courts) to define individual subjective public rights, but that this definition is partly formed by the ECJ as well.[16]

3.1.4 Financial measures

In theory, several measures are thinkable which prima facie influence and accelerate final decision-making and that would avoid court proceedings of long duration. In this context, certain measures which relate to the financial aspects of proceedings can be mentioned. Costs for court proceedings differ widely within the EU. In the Netherlands, citizens have to pay 150 or 223 Euro. In Germany, a procedure before the Federal Administrative Court costs about 4900 - 8700 Euro. In the UK, there is no court fee, but the applicant runs a high financial risk. If he loses the case, he may have to pay up to £ 25,000. A substantial increase in court registry fees will probably limit the number of cases brought before courts. Additionally, a substantial increase of the financial procedural risk could perhaps achieve the same goal: a reduction of contested decisions. To put it bluntly, if the financial costs or risks are extremely high, fewer decisions will be impugned.

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13 According to the applicable 'Umwelt-Rechtsbehelfsgesetz'.

14 See OVG Münster 27. March 2009,C-115/09: Questions referred: Does Art. 10a of Directive 85/337/EEC 1 as amended by Directive 2003/35/EC 2 require that non-governmental organisations seeking access to the courts of a Member State in which administrative procedural law requires an applicant to maintain the impairment of a right may maintain the impairment of all environmental provisions relevant to the approval of a project, that is, also such provisions which are intended to serve the interests of the general public alone and not, at least in addition, to protect the legal interests of individuals? In the case that Question 1 is not answered unreservedly in the affirmative: Does Art. 10a of Directive 85/337/EEC as amended by Directive 2003/35/EC require that non-governmental organisations seeking access to the courts of a Member State in which administrative procedural law requires an applicant to maintain the impairment of a right may maintain the impairment of such environmental provisions relevant to the approval of a project which derive directly from Community law or transpose Community environmental legislation into domestic law, that is, also such provisions which are intended to serve the interests of the general public alone and not, at least in addition, to protect the legal interests of individuals?[...] Are non-governmental organisations entitled directly on the basis of the directive to such right of access to the courts which exceeds provision made under national law?

15 See Art. 1.9 Crisis and Recovery Act.

16 See for instance W.F. Spieth & M. Appel, Umfang und Grenzen der Einklagbarkeit von UVP-Fehlern nach Umwelt-Rechtsbehelfsgesetz, NuR 2009, p. 312 ff.

We tend not to advocate such draconian financial measures. Firstly, it is rather uncertain whether this expedites the process. After all, legal protection should not become a luxury good. Consequently, a substantial increase of financial procedural risks should be accompanied by a contribution towards the financially weak. A reduction of the amount of court procedures would accordingly become quite questionable. Furthermore, it must be pointed out that it is uncertain whether such initiatives would be in accordance with rules of the Aarhus Convention and EC law.

Finally, in case civil rights or obligations are determined, Art. 6 ECHR requires access to court and in this light it is doubtful whether extremely high court registry fees conform with the right of access to court as guaranteed by Art. 6 ECHR.

This is not all just theory. The potential financial risk of proceedings in the UK is an example of a feature of a system that can be in conflict with applicable international and EC law. If the financial risk (potential costs) is very high when the court procedures have been lost (in combination with the fact that these costs can hardly be estimated), this does not comply with rules of international law and EC law. In a case against Ireland, the ECJ ruled that as far as administrative decisions are governed by the Aarhus Convention and EC directives 85/337 (on EIA) or 96/61 (IPPC), implementing the Aarhus Convention, the procedures established in this context must not be prohibitively expensive.[17] The ECJ considered: 'Although it is common ground that the Irish courts may decline to order an unsuccessful party to pay the costs and can, in addition, order expenditure incurred by the unsuccessful party to be borne by the other party, that is merely a discretionary practice on the part of the courts. That mere practice which cannot, by definition, be certain, in the light of the requirements laid down by the settled case-law of the Court cannot be regarded as valid implementation of the obligations arising from Art. 10a of Directive 85/337, inserted by Art. 3(7) of Directive 2003/35, and Art. 15a of Directive 96/61, inserted by Art. 4(4) of Directive 2003/35'. In other words, a principle within the framework of payment of procedural costs on the basis of 'loser pays all' (as exists in Ireland, the UK and Wales) combined with a lack of forseeability does not meet EC law. Furthermore, we draw attention to a complaint against the UK and Wales which is currently pending at the Aarhus Committee.[18]

3.2 Single instance

It goes without saying that (the availability of) two or even three competent (judiciary) instances will influence the total duration of proceedings. Both in France and Germany, legal protection for major infrastructural projects is limited to a single court. In that respect, the legal protection in the case of large infrastructure projects deviates from the regular track of legal protection. Consequently, the entire decision-making process is accelerated. In Germany, this was even regarded as one of the most important measures that could be taken in order to accelerate the decision-making process. In the Netherlands, the developments headed and are still heading in the opposite direction. From 1995 onwards, legal protection at two levels was extended. Additionally, it is scheduled for 2010 to introduce legal protection at two instances in environmental matters as well. So, from then on, two instances (district court and appeal at Council of State afterwards) are available in the majority of infrastructure, planning and environmental cases. Furthermore, as far as we can see at least for the Dutch situation, we have no indications that legal protection provided in only one instance, results in judgments of reduced quality.[19] For the Netherlands, a recommendation could be to (re)consider the possibility to make legal protection in relation to all of the necessary permissions available from the Council of State as the sole competent administrative court. If joint public planning approval (like the 'Planfeststellungsverfahren') were to be introduced, legal protection by recourse to the Council of State would then be a quite obvious solution. In contrast to Germany, it is hardly an issue in the Netherlands whether the administrative court (of last instance) is equipped to decide in single instance because of the existence of an advisory body ('Stichting Advisering Bestuursrechtspraak') with expertise in the field. This body advises the Council of State on issues of facts and related technical norms, whose advice is of an all-embracing nature.

3.3 Instruments administrative court

3.3.1 Curing and irrelevance provisions

The powers with which administrative courts are vested are a self-evidently significant aspect in this context. A first category of court judgements that could bring about final dispute resolution can be found in a widening of the possibilities for incorrect administrative decisions to be rectified by the administrative court. For instance, the Dutch General Administrative

17 ECJ 16 July 2009, C-427/07.

18 ACCC/C/2008/23 (Morgan and Baker). Morgan and Baker were ordered to pay costs of approximately 25,000 pounds, in their opinion prohibitively expensive. See also ACCC/C/2008/33 (Horton, Brockington and Latimer): prohibitive nature of costs related to access to justice.

19 In the Netherlands administrative law mostly offers two court levels: appeal and the possibility of higher appeal. But not in all cases. Sometimes the legislator provided for only one administrative court, like the Council of State. We are aware of the fact the Council of State and its case-law is sometimes criticised, however, we found no indications let alone evidence that the criticism is more fiercely in case the Council of State is acting in its capacity as first and only instance.

Law Act (GALA) contains a provision that enables the administrative court, deciding on an appeal, to allow the challenged decision of the administrative authority to stand despite the fact that a procedural requirement has been violated, if it is clear that this has not adversely affected the interested parties.[20] Currently, a bill is proposed to enlarge the clause to include substantive norms as well. The Crisis and Recovery Act already contains such a provision.[21] Compared with that, the range of the equivalent rule in German administrative law is smaller. The German counterpart provisions regarding the curing and irrelevance of decision defects concern 'an infringement of the regulations governing procedure or form…' and '… infringement of regulations governing procedure, form or territorial competence…'.[22] In France, the main rule is that the administrative court annuls the decision if the appeal is well-founded, also in case the irregularity is of a procedural / formal nature. However, there are some exceptions to this French rule of annulment: Firstly, in case the procedural irregularity is not considered crucial, secondly in case of the lack of any discretionary powers of the administration and finally in case of 'recours de pleine juridiction' where the judge is also empowered to take the decision himself. This recourse is applicable in disputes about environmental matters.[23]

3.3.2 Court judgments

A second category of relevant court instruments concerns the context of final dispute resolution by means of (additional) judgments. If administrative courts are qualified to do more than annulment in their judgments, it can be of huge importance to bring administrative law disputes to final resolution. In Germany, the administrative courts have wide-ranging powers to bring disputes to a final resolution. German administrative courts sometimes even encourage a party to submit subsidiary requests. A factor in this regard is the ability of appellants to request the court to instruct an administrative authority to amend the issued decision in a certain way, as an alternative to, or alongside with the annulment of the decision. If the involved administrative authority agrees to it, the appeal can be declared to be unfounded in the principal action, whilst the interests of the appellants are simultaneously met by granting the subsidiary demand for an amendment to the decision. In handing down a ruling in relation to the case, such an arrangement enables the judge to oblige the administration to amend the decision, or to take a supplementary decision.[24] The administration profits because the appeal is mainly rejected. The advantage for the claimant is that he is directly entitled to let the administration issue a decision which decision guarantees his interests. This approach will result in acceleration because new decision-making proceedings are avoided.

Dutch administrative courts have to get along without this far-reaching power. Traditionally, one of the striking features of the rules of legal procedure of the administrative law in the Netherlands is the fixation on annulment of the decision. Dutch administrative courts are empowered to quash the challenged decision.[25] In theory,[26] they are entitled to direct that the legal effects of the annulled decision or the annulled part of it shall be allowed to stand in full or in part to order the administrative authority to perform another act in accordance with its judgement, or to rule that its judgment shall take the place of the annulled (part of the) decision, but these additional powers were until recently seldom used in practice.[27] The reasons why administrative courts were reluctant are manifold, the separation of powers being one of the most important ones. However, court practice is changing. Final dispute settlement instead of simple annulment of decisions is becoming more important. Amendment of the procedural rules to facilitate final dispute settlement has recently been introduced or is discussed.

4 Some conclusions

It is a common problem in Europe that administrative decision-making proceedings often take long, especially in the case of complex infrastructure projects. Therefore, several measures are proposed or already taken to improve the situation. The causes as well as the potential solutions to the problems can be roughly found in two fields: administrative-decision making and legal protection. Measures to cope with the problems can, however, create a tension between the rapidity of decision making on the one hand, and, on the other hand, the legal quality of the decisions, the rights of the public to participate and legal protection. This is due to the fact that these measures often result in a limitation of public participation in the decision-making proceedings and of the right of access to court and the legal protection. Legislative measures to speed up the decision-making must comply with national law, EC law and international law. This tension is manifest regarding public participation and access to

20 Art. 6:22 GALA.

21 Art. 1.5 Crisis and Recovery Act.

22 See Art. 45 & 46 Verwaltungsverfahrensgesetz.

23 See J.-M. Woehrling, Un aspect méconnu de la gestion administrative: la régulation des procédures et décisions illégales, Revue française d'administration publique 2004/3, No. 111, pp. 537-538.

24 German interlocutors underlined that they consider this multitude of requests crucial for the possibilities to put an end to public law disputes.

25 See Art. 8:72, subsection 1, GALA.

26 See Art. 8:72, subsection 3 and 4, GALA.

27 Recent case law shows an increase in the use of these court instruments and the Council of State sometimes even orders the district court to explore the possibilities of applying these instruments, against the background of final dispute resolution.

court. EC law, the ECHR and the Aarhus Convention luckily put limits to legislators rushing for the fastest procedures possible. They ensure a certain balance between speeding up decision making and ensuring quality and people's rights. It seems that national law does not always guarantee that balance on its own.

When it comes to the decision-making in complex infrastructure projects, we advocate measures like the German 'Planfeststellungsverfahren', in which proceedings the decision-making is concentrated but all authorities involved can have their say or their consent is required. A different question is whether the rules of the 'Planfeststellungsverfahren' still ensure effective participation of interested parties and environmental groups. The amendments of German law during the last ten years have diminished participation rights in that procedure to an absolute minimum. In our opinion, the recommendation to consider making legal protection in relation to all of the necessary permissions available from one administrative court, like a Council of State, as the sole competent court is in line with that concentrated decision-making. Alongside this, profit can be yielded by extensive preparatory administrative decision-making proceedings. Finally, adding to the tool kit of courts, especially introducing more kinds of dicta, to bring disputes to a final resolution is recommended, like the power for the court to ask the administration to amend decisions or take supplementary decisions. Tailor-made solutions of this type probably enable the final resolution of disputes. This may be in favour of all parties engaged in the process of decision making.

Recent Developments

Report on the establishment of an EU Waste Implementation Agency

One of the most serious environmental challenges facing the EU today is the monitoring of waste management to ensure that it is safe and environmentally sound. An estimated 2.6 billion tonnes of waste are generated each year in the EU, over 6 tonnes per citizen, and about 90 million tonnes of this waste is classified as hazardous. [1]

Around 60 waste-related EU legal acts[2] have been adopted in recent decades. The European Commission is taking a series of steps to strengthen the implementation of EU waste legislation and is exploring new initiatives for the years ahead. The aim is to ensure that implementation meets the standards set by EU legislation to protect citizens and the environment. In November 2009, the Commission adopted two reports, which reveal that EU waste law is being poorly implemented and enforced in many Member States.[3] Current gaps in implementation and legislation have led to wide-scale illegal dumping and large numbers of landfills and other facilities and sites that do not meet EU standards. In some Member States, waste infrastructure is inadequate or missing.[4] A lack of inspections and on-the-spot checks was identified as a contributory factor to the illegal shipment of waste. Research by the Commission and recent inspection campaigns organised by IMPEL[5] revealed that around 19 % of the shipments in question were illegal.[6] These are mostly exports which contravene the export ban on hazardous waste or do not fulfil the information requirements for exports of "green", non-hazardous waste.

Several studies were commissioned, one of which addressed the feasibility of a European Waste Implementation Agency.[7] The study was published in February 2010 and outlines the benefits and costs of creating a dedicated agency to support the implementation of EC waste legislation. This agency should monitor the implementation and enforcement of EU waste legislation as well as support the Commission in the updating of legislation and in other work.

The study shows that in many parts of the EU, implementation and enforcement of EU waste legislation fall significantly short of legal obligations. The key problems are:

- Lack of sufficient capacity for the inspections, controls and other enforcement actions in the Member States.
- Organisational problems, such as poor coordination among various national bodies with responsibilities for inspections and controls.
- Implementation of EU waste legislation is considered a low priority in many Member States. This leads to a shortcoming of resources for enforcement.
- Lack of technical capacity for the preparation of waste management plans and programmes.
- Member States have different interpretations of the EU waste requirements.

The study further criticises that many national producer responsibility schemes, waste management plans and other strategies and programmes work poorly in practice. These problems have led to a high level of citizen complaints to the European Commission and many infringement cases against various Member States: the waste sector, together with nature protection, has accounted for the largest share of environmental infringement cases brought before the ECJ in recent years.

The overall situation leads to the conclusion that the overarching goal of EU waste legislation[8] is not achieved. Due to the differences in implementation and enforcement across the EU and the differences in interpretation of EU waste legislation, the actors in the area of waste and in industry generally do not have a level playing field across the EU. In the survey for this study, nearly all Member State officials and all stakeholder representatives who responded saw the need for new actions at EU level to improve the implementation and enforcement of EU waste legislation. Moreover, the Commission lacks investigatory powers as regards EU waste legislation, and when verifying complaints from citizens about possible infringements, it is confined to relying on often contradictory information provided by national authorities, complainants and other parties. This creates difficulties for the

1 Zamparutti, T.; Isarin, N.; Wemaere, M.; Wielenga, F. (et al): Study on the feasibility of the establishment of a Waste Implementation Agency, Revised Final Report, 7 December 2009, p. 1. This report has been prepared by Milieu Ltd, AmbienDura and FFact for the European Commission. Download at: http://ec.europa.eu/environment/waste/pdf/report_waste_dec09.pdf. See also Dedicated EU body needed to ensure enforcement of European waste law, says Commission study, IP/10/113, 1 February 2010. Available online: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/113.

2 Which includes regulations, directives and decisions of EEC and EC.

3 Waste management: Commission calls for better implementation of EU waste law by Member States, IP/09/1795, 20 November 2009. Available online at: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1795&format=HTML&aged=0&language=EN&guiLanguage=en.

4 See *supra* note 3.

5 IMPEL: EU network for the implementation and enforcement of environmental law.

6 See European Commission, Services to support the IMPEL network in connection with joint enforcement actions on waste shipment inspections and to coordinate such actions, Final Report No. ENV.G.4/FRA/2007/0066 of 15 July 2009, p. 60. Download at: http://ec.europa.eu/environment/waste/pdf/impel_report_09.pdf.

7 Zamparutti, T.; Isarin, N.; Wemaere, M.; Wielenga, F. (et al), 2009, *supra* note 1.

8 See Art. 1 of the Waste Framework Directive (2008/98/EC).

Commission in ensuring that EU waste legislation is correctly applied by Member States.

The study has identified a series of possible tasks to be undertaken, based on an analysis of the work of existing European agencies as well as inputs provided by Member State officials and stakeholders through a questionnaire, interviews and two informal workshops. These potential tasks are than assessed prospectively with regard to improving implementation and enforcement of the EU waste management system throughout the EU. These tasks are:

- **Enforcement:** Reviews of Member States' enforcement systems, coordinated controls and various inspections activities.
- **Training of Member State officials as well as related work:** Both direct training and train-the-trainer programmes would be supported by exchanges and other work to coordinate Member State training programmes.
- **Guidance:** Drafting and updating guidance documents, both for enforcement activities and more generally for the implementation of EU waste legislation.
- **Support for the updating of EU waste legislation:** The agency's expertise on waste issues would support the Commission on technical and scientific issues for updating of EU legislation, including support on impact assessments and other technical steps.
- **Other key tasks:** Support to the Commission in the monitoring and assessment of waste management plans and waste prevention programmes and provision of a helpdesk for Member States.

In an examination of institutional options, the study concludes that creating a new European structure, i.e. an EU Agency for waste implementation, provides the most effective way forward for carrying out the recommended tasks.

The study also addresses co-operation measures through a European network of Member States which would support the agency in a number of activities and which is deemed to be a key partner. Information exchange among Member States would also be extended to address common challenges. In addition, the EEA, its Topic Centre and Eurostat would carry out wider work on waste issues and cooperate with the new agency. The proposed mission statement of the agency reads as follows:

"*The European Waste Implementation Agency is dedicated to promoting uniform, effective implementation and enforcement of EU waste legislation across the European Union in order to protect human health and the environment. The Agency's activities support the EU Member States and European Commission in their respective roles.*"[9]

In carrying out a broad range of tasks, the agency would become a centre of knowledge and information on waste issues. Moreover, it would realise important synergies among the tasks it carries out, and the knowledge it gathers would be institutionalised.

The study states that the European body for carrying out inspections and controls should be hosted by the European Commission in order to be as effective as possible.

The study estimates the total annual cost for carrying out these recommendations at just over 16 million Euros. The proposed agency would require just under 50 professional staff members and 11 management and support staff. Additional staff would also be needed by the proposed body for carrying out direct inspections and controls of facilities and sites, possibly hosted by the Commission/DG Environment: 20 new staff, including 15 operational staff for the body. Additional staff would be added at the Secretariat of the European network (2), Member State governments (5), and EEA/Eurostat (1.75 combined). In addition to these annual costs, the agency would require an additional 1.6 million Euros in estimated start-up costs in its first two years.

However, there are conflicting views on the necessity of an EU waste implementation agency. The study states that "*nearly all*" Member State officials who responded saw the need for new actions at EU level.[10] A dissenting opinion by the British government stated that the Commission questionnaire seemed to start from the premise that a European waste agency is necessary while it has not yet been adequately demonstrated that EU action is needed at all. The British government based this assumption on a workshop held on 2 April 2009. The European Commission confirmed that it did not have a proposal to establish a waste implementation agency. The commissioned study was to address the feasibility of establishing such an agency. In the Communication of 11 March 2008, the Commission concluded that it will "*propose no new regulatory agencies until the work of the evaluation is complete (end of 2009)*".[11]

Moreover, if the necessity of an EU action is proven, the Commission should firstly consider whether existing EU agencies could fulfil that need. There is a risk that a new EU agency's work would conflict with what national enforcement authorities are trying to achieve.

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9 See Zamparutti, T.; Isarin, N.; Wemaere, M.; Wielenga, F. (et al), 2009, *supra* note 1, p. 20.

10 See Zamparutti, T.; Isarin, N.; Wemaere, M.; Wielenga, F. (et al), 2009, *supra* note 1, p. 1.

11 See COM(2008) 135 final "European agencies – The way forward", p 10.

Latest News:

Commission warns the UK about the unfair cost of challenging decisions

The European Commission is warning the UK about prohibitively expensive challenges to the legality of decisions on the environment.[1] The Commission sent an initial warning to the UK government in October 2007, and the UK replied that the procedures were under review. Whilst the reviews undertaken since 2007 have been illuminating, they have not resulted in any changes being made to improve the situation as it stood in 2007. The Commission therefore considers that the UK is failing to comply with the legislation. A failure to comply with this final warning could see the UK being brought before the European Court of Justice on the basis of Art. 258 of the Treaty on the Functioning of the European Union.

European law explicitly states that challenges of decisions must not be prohibitively expensive. The Commission is concerned that in the United Kingdom legal proceedings can prove too costly, and that the potential financial consequences of losing challenges is preventing non-governmental organisations and individuals from bringing cases against public bodies.

The warning letter also raises concerns about the requirement in the United Kingdom for applicants for interim injunctions to give expensive and often unaffordable "cross undertakings in damages" (deposits that may be used to compensate defendants) before such orders are granted by the courts. This is a serious impediment to the use of such injunctions.

Several pieces of environmental legislation, including the Environmental Impact Assessment (EIA) Directive and the Integrated Pollution Prevention and Control (IPPC) Directive[2], aim to boost public awareness of environmental matters in Member States and ensure increased transparency. The measures – which are also necessary under the Aarhus Convention on Access to Justice, which has also been signed by the UK – have been transposed to UK legislation, but the current financial obstacles have led the Commission to conclude that the laws covering this area of the Directive have not been fully transposed and are not being properly applied in practice.

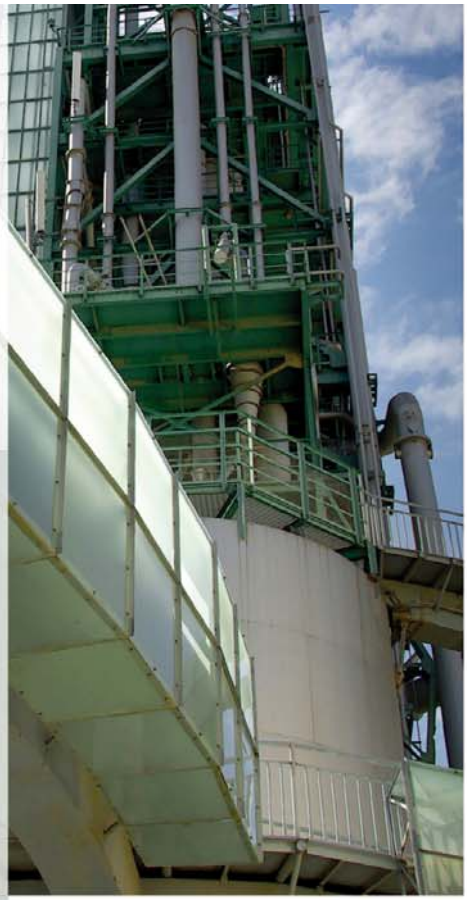
1 This contribution is an excerpt of the press release in RAPID (IP/10/312 of March 18, 2010) available online: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/312&type=HTML

2 In December 2007, the Commission adopted a proposal for an Industrial Emissions Directive (IED). The proposal recasts seven existing directives related to industrial emissions into a single legislative instrument. This recast includes in particular the IPPC Directive. See also ELNI-VMR-VVOR congress "Talking about the environmental effects of industrial installations: the European Directive on Industrial Emissions" in this issue of *elni Review* on page 39.

ELNI-VMR-VVOR-congress

Talking about the environmental effects of industrial installations: the European Directive on Industrial Emissions

Ghent, Ghent University,
17 September 2010



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VVOR

VMR
vereniging voor milieurecht

Talking about the environmental effects of industrial installations: the European Directive on Industrial Emissions

In December 2007, the Commission adopted a proposal for an Industrial Emissions Directive (IED). The proposal recasts seven existing Directives related to industrial emissions into a single legislative instrument. This recast includes in particular the IPPC Directive, which has been in place for over 10 years. One of the keys of the proposal is to strengthen the dynamic Best Available Techniques (BAT) standards.

A lot of questions arise. Among others: which lessons can be learned from IPPC? Will the IED offer the highest level of protection for the environment and human health? Will the existing legislation be simplified? Will unnecessary administrative costs be cut?

On the occasion of the 20th birthday of ELNI, the Dutch and Flemish Environmental Law Associations (VMR and VVOR) decided to co-organise a congress on IPPC, IED and all possible and impossible questions in this respect. At the end of the day, an unforgettable ELNI-birthday party will take place!

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Environmental Law Network International

Vlaamse Vereniging voor Omgevingsrecht
VVOR

VMR
vereniging voor milieurecht

Ghent, Ghent University, 17 September 2010
10h00 - 21h00

Programme

10h00 **Martin Führ**, University of Darmstadt, Welcome and opening speech

I. READING *What about the current status of the regulatory framework?*

10h15 **Filip François**, *European Commission:* Actual status of the Industrial Emissions Directive (IED)
10h45 **Christian Schaible**, *European Environmental Bureau:* New aspects arising from the IED
11h00 **Marga Robesin**, *Stichting Natuur en Milieu:* Relation between the IED and the NEC-Directive
11h15 Discussion – Moderator: **Marc Pallemaerts**, *University of Amsterdam*
12h00 Lunch

II. DOING *What about the implementation in the Member States?*

13h00 **Jan van den Broek**, *VNO-NCW and MKB – the Netherlands:* Practical experiences with IPPC
13h15 **Yolanda Waas**, *DCMR Environmental Protection Agency:* Interpretation, application and review of IPPC
13h30 **Lesley James**, *Friends of the Earth:* Definition of 'Best Available Techniques'
13h45 **Delphine Misonne**, *Facultés universitaires Saint-Louis:* The European Safety Net
14h00 **Chris Backes**, *University of Maastricht:* Emission limit values versus environmental quality standards
14h15 **Jerzy Jendroska**, *Centrum Prawa Ekologicznego:* Link to the Aarhus Convention
14h30 **Ana Barreira**, *Instituto Internacional de Derecho y Medio Ambiente:* Compliance and enforcement
14h45 Discussion – Moderator: **Luc Lavrysen**, *Ghent University*
15h30 Coffee break

III. DREAMING *What about future developments?*

16h00 **Marjan Peeters**, *University of Maastricht:* Alternatives to the environmental permit
16h15 **Isabelle Larmuseau**, *Ghent University:* Introduction of the sustainability criterion
16h30 **Martin Führ**, *University of Darmstadt:* IED and substance related information gathered under REACH
16h45 **Filip François**, *European Commission:* General reflections
17h00 Discussion – Moderator: **Gerhard Roller**, *University of Bingen*

IV. ELNI-BIRTHDAY-PARTY

18h30 **Gerhard Roller**, *University of Bingen:* Birthday speech 'How it all began...'

Ghent, LDR Law Firm, 18 September 2010
10h00 - 13h00

10h00 Follow-up meeting: perspectives for the future of ELNI-VMR-VVOR
12h00 Lunch

Ghent, Ghent University, 17 September 2010
10h00 - 21h00

Locations:

Conference
Filmplateau
Paddenhoek 3
9000 Gent

Lunch & ELNI-Party
Facultaire Raadzaal
Voldersstraat 3
9000 Gent

Ghent, LDR Law Firm, 18 September 2010
10h00 - 13h00

Location:

LDR
Kasteellaan 141
9000 Gent

Practical information

Conference fees:

The participation fee includes all conference materials as well as break refreshments, lunch and walking dinner.

Member fee (VVOR/VMR/ELNI): 60
Standard fee (non-members): 125

Registration: http://www.omgevingsrecht.be

The conference fee can only be paid by transfer to the VVOR bank account (in EURO)

IBAN: BE30 7370 1972 6611
BIC: KREDBEBB

KBC Bank Gent Zuidpark, Graaf van Vlaanderenplein 32, 9000 Gent, Belgium

This payment has to be made in such a way, that necessary provisions are made so that no bank costs will be charged to VVOR. Otherwise VVOR will have to charge these costs on the participant upon arrival.

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Website www.elni.org

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

Focus of the forthcoming issue
Environmental law in developing and emerging countries.

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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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.

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Institut für angewandte Ökologie
Institute for Applied Ecology

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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I·E·S·A·R
Institute for Environmental Studies and Applied Research
FH Bingen

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 develop-ing 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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sofia

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 conversation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

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sofia

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 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.
- 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 Industria Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
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Elni Website: elni.org

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