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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.

Locus standi for environmental NGOs in Germany: The (non)implementation of the Aarhus Convention by the '*Umweltrechtsbehelfsgesetz*' Some critical remarks

Gerhard Roller

1 Introduction

Access to justice for environmental NGOs in Germany is a long and troublesome story. Since the appearance of a widespread movement of environmental associations in the 1970s, there has been a struggle for the introduction of an association lawsuit in German environmental law. The campaign to open the courtrooms' doors had been observed with scepticism by politicians and traditional lawyers, sometimes accompanied by hostility. There was deep concern that fanatic members of NGOs would bring 'a spate of querulous actions, and the courts would be inundated by environmental litigation.'[1] *It is therefore not surprising that the German government was not too enthusiastic about the Aarhus Convention. This of course did not hinder German representatives actively influencing the wording of the Convention in a restrictive sense during the negotiations. But even then we had to wait until a Red-Green coalition came into effect in 1998 before the Convention was signed.*[2]

Although practical experience over the last 3 decades and a number of studies concerning the situation in other countries have largely disproved the aforementioned fears, there is still great reluctance in Germany concerning the legal role of environmental NGOs in court proceedings. This is all the more surprising as association lawsuits are far from unknown in German law: Under German competition law for instance, consumer associations and associations which have the objective of combating unfair competition have standing to sue against violations of the Unfair Competition Act. In spite of some misuse of this right, in particular by associations formed with the sole aim of earning lawyer fees by serving notices to offenders, the legislator never put into question the importance of these remedies to support enforcement of competition law.

The parallels to environmental law should be obvious, but there is not at all the same political will to put environmental NGOs on the same footing. As a matter of fact, without the driving forces of international and European law, access to justice for NGOs in environmental matters would still be barely existent in German law.

With the coming into force of the Aarhus Convention[3] *and the related EC directives transposing this Convention into community law, the Member States are obliged to transpose the Convention into national law. As a consequence the traditional German concepts which confer only very limited access to the courts on NGOs have to undergo fundamental revision. However, it seems that the German legislator is not yet ready for this change.*

For the present, the Environmental Appeal Act that entered into force on 15 December 2006 is the latest chapter in this story – but certainly not the last.[4]

This article will also be published in: Marc Pallemaerts (ed.), The Aarhus Convention at Ten; Interactions and Tensions between Conventional International Law an EU Environmental Law, Europa Law Publishing (forthcoming 2010).

2 The traditional concept of standing to sue under German administrative law

To understand the legal background of the 'standing problem' in Germany, we have to examine more closely the legal concept of *locus standi* in German administrative law.

Sec. 42(2) of the *Administrative Courts Procedure Act* (*Administrative Judiciary Statute*) provides:

"*Unless otherwise determined by law the suit is admissible only if the plaintiff claims to be violated in his rights by the administrative act or its denial or omission*".[5]

The courts have interpreted this provision in a rather restrictive manner: 'his rights' means that the plaintiff,

1 For a summary of these arguments, see Ormond, T., Environmental Group Actions in West Germany, in: Führ/Roller, Participation and Litigation Rights of Environmental Associations in Europe, ELNI Studies no. 1 Frankfurt a. M. 1991, p. 81 et seq., p. 86. An up-to-date apercu on the pros and cons can be found in Koch, H.J., Die Verbandsklage im Umweltrecht, Neue Zeitschrift für Verwaltungsrecht vol. 4, 2007, p. 369 et seq. (370-372).

2 Sachverständigenrat für Umweltfragen (SRU), Access to Justice in Environmental Matters: The Crucial Role of Legal Standing for Non-Governmental Organisations. Statement, February 2005. (Also available at www.umweltrat.de), p. 4, para 4.

3 Dette, B., Access to Justice in Environmental Matters, A Fundamental Democratic Right, in: M. Onida (ed.) Europe and the Environment, Legal Essays in Honour of Ludwig Krämer, Groningen 2004, p. 3; Jendroska, J., Public Information and Participation in EC Environmental Law, R. Macrory (ed.), Reflections on 30 years of EU Environmental Law, Europa Law Publishing, Groningen 2006, p. 61 et seq.

4 Some introductory explanations on the Act in English can be found on the website of the Federal Environmental Agency, http://www.umweltbundesamt.de/umweltrecht-e/verbandsklage/index.htm.

5 Translation by Ormond 1991, see *supra* note 1, p. 81.

first of all, has to be individually affected by an administrative order or action as a matter of fact and, secondly, that he can show that he is affected in his *individual rights* as a matter of law. Whereas the first condition is always met if pollution or risk of damage may affect the neighbour of a plant, the second condition is only fulfilled if the plaintiff can allege a violation of such provisions that are expressly or implicitly intended to confer legal protection on his individual interests and that are not deemed to have been enacted in the furtherance of an objective that is solely in the public interest.[6] The objective of such a narrow interpretation of the law is to preclude any kind of public interest litigation or class action that would go beyond alleging a violation of individual rights and interests.[7] Thus, private claims in mere favour of environmental protection are excluded from the outset. Moreover, environmental NGOs are not considered to be affected in their individual rights if there is an infringement of environmental law, even if their statutory objectives are to protect the environmental goods at stake.

This narrow concept has only been modified by giving so-called registered environmental associations *locus standi* in limited cases of nature conservation law. It was in German states ('Länder') where, beginning with Bremen in 1979, for the first time under the regional nature protection acts limited areas were tentatively opened for standing to sue.[8] It was only in 2002 that, with the revision of the Federal Nature Protection Act, for the first time NGOs were granted standing to sue against a limited number of decisions related to nature protection law also under federal law.[9]

3 Some empirical findings concerning NGO lawsuits

In the last years, a number of studies have already analysed the legal framework for NGO lawsuits in the EU Member States[10] and also pointed out the advantages of access to justice in environmental matters in terms of supporting enforcement of environmental law. This has also been affirmed by empirical research.

An empirical study that was conducted in 2003 for the European Commission and covering the period of 1996 to 2001[11] came to the conclusion that NGO actions play an increasing role in environmental law but are still few in number compared to the overall number of lawsuits. In the given research period approximately 30 decisions per year[12] were anticipated in Germany on public interest actions compared to 202,562 proceedings decided by the administrative courts in 1998.[13] This shows that the administrative courts have been occupied with public interest action in only some 0.0148% of cases. It can be noted in this context that the argument maintained for decades in Germany against the introduction of the public interest action, namely that it would lead to the courts being overburdened,[14] has been empirically refuted. The number of lawsuits is also limited due to the fact that bringing public interest actions has until now involved a high risk of costs for the NGOs.

NGO lawsuits are successful. In almost all countries public interest actions have a relatively high success rate, with variations between the countries and the courts involved. Approximately 30 % of the legal actions of the recognised nature conservation NGOs in the Federal Republic of Germany are successful or partially successful.[15] This average is higher than the success rate in the whole field of administrative jurisdiction in Germany.

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6 Roller, G., Environmental Law Principles in the Jurisprudence of German Administrative Courts, in: M. Sheridan & L. Lavrysen (eds.), Environmental Law Principles in Practice, Brussels 2002, p. 164; Ormond 1991, see *supra* note 1, p. 81; Steinberg, R., Judicial Review of Environmentally-related Administrative Decision-making, Tel Aviv University Studies in Law, Vol. II, 1992, p. 61.

7 For the narrow conception of association lawsuits in Germany see the comprehensive overview by Ormond 1991, see *supra* note 1, which in its overall conclusions and analysis still holds true. See also Ormond, T., 'Access to Justice' for Environmental NGOs in the European Union, in: S. Deimann/B. Dyssli (eds.), Environmental Rights, London 1995, p. 71 et seq. and Führ/Gebers/Ormond/Roller, 'Access to Justice': Legal Standing for Environmental Associations in the European Union, in: Robinson/Dunkley (eds.), Public Interest Perspectives in Environmental Law, London 1995, p. 71 et seq.

8 See on this: Ormond 1991, see *supra* note 1, p. 83; Ormond 1995, see *supra* note 7, p. 72; Koch 2007, see *supra* note 1, p. 372 et seq.

9 Dross, M., Germany, in: de Sadeleer/Roller/Dross, Access to Justice in Environmental Matters and the Role of NGO's, Empirical Findings and Legal Appraisal, Europa Law Publishing, Groningen 2005, p. 75.

10 Prieur, M., Complaints and appeals in the area of environment in the member states of the European Union, European Council on Environmental Law, study for the Commission of the European Community DG XI, March 1998; Ebbesson, J., (ed.), Access to Justice in Environmental Matters in the EU, Kluwer Law International, The Hague, London New York 2002, with a contribution from Eckhard Rehbinder concerning Germany, p. 248; Epiney & Sollberger, Zugang zu Gerichten und gerichtliche Kontrolle im Umweltrecht, Berichte 1/02 des Umweltbundesamtes (ed.), Berlin 2002. Examples of practical litigation can be found in the volume of Deimann, S. & Dyssli, B., (eds.), Environmental Rights, Cameron May, London 1995.

11 de Sadeleer/Roller/Dross, Access to Justice in Environmental Matters and the Role of NGO's, Empirical Findings and Legal Appraisal, Europa Law Publishing, Groningen 2005. The original study is also accessible online: http://europa.eu.int/comm/environment/aarhus/pdf/accesstojustice_final.pdf. The country reports can be found at: http://europa.eu.int/comm/environment/aarhus.

12 According to the assessment carried out, only 20 cases or 30.5 decisions per year can be ascertained though it has to be taken into consideration that some cases could not be captured by the investigation.

13 See *Statistisches Bundesamt* (Federal Statistical Office), '*Verwaltungsgericht*' (Administrative Courts), p. 1998, p. 14 et seq. (Actions ended by judgement, summary court decision, judicial ruling without including disciplinary and professional disciplinary tribunal proceedings), consecutive No. 2.

14 See Philipp, B. Das Verbandsbeteiligungs- und Verbandsklagerecht der anerkannten Natur- und Umweltschutzverbände in Deutschland, ed. UfU e.V., Berlin 1988, p. 19 et seq; also refer in this regard and for further counterarguments to Bizer, Ormond & Riedel, Die Verbandsklage im Naturschutzrecht, Taunusstein 1990, at p. 55 et seq., with further references.

15 Dross 2005, see *supra* note 9, p. 75 et seq.: compared to only 20 % in other proceedings.

Public interest actions entail considerable benefits. Public interest actions on environmental matters contribute to the enforcement of environmental law in the Member States. This holds true for national as well as for European environmental law. What is more, litigation rights for NGOs acting in the public interest also contribute to public awareness building and to improving participation rights.

4 *The obligations concerning locus standi* which derive from the Convention and from EU law

4.1 Access to the courts if information is denied

The revised directive on public access to information[16] contains provisions on access to justice in case *environmental information has been denied*. Insofar, Art. 6 of the directive requires the Member States to provide for an administrative review procedure by the authority that refused the request for information or by another public authority. In addition, applicants shall have access to a court or another independent and impartial body established by law, which is able to issue binding and final decisions. This provision, which implements Art. 9(1) of the Aarhus Convention, has been transposed by the German legislator in Art. 3(1) of the Environmental Information Act. This provision provides an individual right on access to information held by public authorities without being impaired in further individual interest. This means that the information right as such has to be considered as an individual right to any person who requires the information. Consequently, if information is denied, a remedy is available to the administrative court. Meanwhile, there is a widespread jurisprudence on the details of this right.

4.2 Access to the courts where participation rights exist (Art. 9(2) of the Convention)

The second pillar of the Convention provides for public participation in certain administrative proceedings. The obligation deriving from Art. 9(2) of the Convention which obliges the Parties to ensure that members of the public concerned have access to a review procedure before a court of law and/or another independent and impartial body established by law to challenge the substantive and procedural legality of any decision, act or omission subject to the participation rights granted by the Convention in Art. 6 has been transposed into Community law by Directive 2003/35/EC on public participation.[17] This directive considerably expands litigation rights guaranteed by EC law with regard to the environment. This directive amends Council Directives 85/337/EEC (the so-called EIA Directive)[18] and 96/61/EC (the so-called IPPC Directive)[19] by providing that members of the public concerned have access to a review procedure to challenge the legality of decisions subject to the participation provisions of the directives.[20] While the Member States can require the public concerned to demonstrate either a sufficient interest or the impairment of a right, if the administrative procedural law of the Member States foresees it, non-governmental organisations are deemed to fulfil the national standing requirements.

As explained in chapter 2, Germany is one of the rare countries in which the second alternative of the standing provision applies, i.e. members of the public have to maintain the impairment of a right as a requirement of the administrative procedural law. As far as individual lawsuits are concerned the opinion is held in legal discussions in Germany that the traditional restrictions of the 'Schutznormtheorie' are still applicable although there are also some doubts as to whether this restrictive approach is in line with the objective of the Convention and the respective Community directives to grant wide access to the courts.

As far as NGO lawsuits are concerned, the majority of legal writers argue that there is an obligation under the

16 Directive 2003/4/EC of the European Parliament and the Council of 28 January 2003 on public access to information and repealing Council Directive 90/313/EEC, OJ L 41/26, 14/2/2003.

17 Directive 2003/35/EC of the European Parliament and the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relation got the environment and amending with regard to public participation and access to Justice Council Directives 58/337/EEC and 96/61/EC, OJ L 156/17, 25/6/2003.

18 Council Directive 85/337/EEC of 27 June 1985 on the assessments of the effects of certain private and public projects on the environment, OJ L 175/40, 5/7/1985.

19 Council Directive 96/61/EEC of 26 September 1996 concerning integrated pollution prevention and control, OJ L 257/26, 10/10/1996.

20 See the new Art. 10a of Directive 85/337/EEC and Art. 15a of Directive 96/61/EEC. These articles have almost identical wording and read as follows: Art. 15a: '*Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:*
(a) having a sufficient interest, or alternatively,
(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;
have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.
Member States shall determine at what stage the decisions, acts or omissions may be challenged.
What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any nongovernmental organisation meeting the requirements referred to in Article 2(14) shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.
The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.
Any such procedure shall be fair, equitable, timely and not prohibitively expensive.
In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.'

Convention and the directives to grant *locus standi* to environmental associations under Art. 9(2), also irrespective of the fact of whether an individual interest is sufficient or the impairment of a right is required under the national legal scheme.[21] However, there are some authors who do not share this point of view. In particular it is argued with reference to the implementation guide of the Convention that the national legislator could restrict standing of associations to certain violations of environmental norms as well.[22] This argument is not convincing because it is based on a misinterpretation of the implementation guide. The guide points out that in countries where the impairment of a right is required, 'both individuals and NGOs may be held to this standard.'[23] But then the guide states:

"*However, parties must provide, at a minimum, that NGOs have rights that can be impaired. Meeting the Convention's objective of giving the public concerned wide access to justice, moreover, will require a significant shift of thinking in those countries where NGOs have previously lacked standing in cases because they were held not to have maintained impairment of a right.*"[24]

It would turn the objective of the Convention upside down if we were to interpret this phrase in a minimalist way as legitimating a national scheme whereby *some* rights could be claimed and the overwhelming rest would drop out of judicial control.[25] Parties are not obliged to provide *a minimum of access to the courts*, but *as a minimum that NGOs have standing* in cases where procedural or substantive environmental law which falls within the scope of Art. 6 of the Convention is infringed.

In the review procedure both the substantive and the procedural legality of decisions, acts or omissions can be challenged. Under the revised EIA Directive this covers all decisions of an authority relating to projects listed in annex I and II of the directive. With regard to the IPPC Directive, all decisions about permits which require public participation under this directive fall within the ambit of the litigation regime. The procedure has to be fair, equitable, timely and not prohibitively expensive. The Member States have to make available practical information to the public on access to administrative and judicial review procedures.

Although the changes introduced through the Directive 2003/35/EC grant access to justice for environmental non-governmental organisations with regard to a broad range of administrative decisions, we have to observe that this access still remains limited because connected to a participation right under the EIA or IPPC Directives.[26] The transposition of Art. 9(3) of the Convention still remains a challenge.

5 The German implementation act

A first draft to implement the access to justice provisions of the EC Directive 2003/35/EC was presented by the German federal government in February 2005.[27] Although this draft to a certain extent restricted access to justice concerning the review of procedural infringement and also the review of the substantial legality, it clearly opened up the traditional German system on the crucial point of standing: NGOs would have standing without being obliged to show the impairment of an individual right. However, this draft did not enter into the legislative process due to the premature termination of the governmental coalition in 2005 and the new elections for the German Bundestag in autumn 2005.

The proposal that was finally adopted entered into force on 15 December 2006.[28] In Art. 2 this Act provides that the association has to show that decisions or omissions under Art. 1(1) first sentence violates such regulations relevant for the decision that aim to protect the environment *and provides individual rights*.[29] In this way the old 'protective norm doctrine'[30] is introduced through the backdoor once again. In practice this would mean that NGOs have *locus standi* only insofar as such provisions are violated that confer subjective rights to individuals. It is difficult to find any rationale – beside the firm will to restrict access to

21 Koch 2007, see *supra* note 1, p. 376; Kment, M., Das neue Umwelt-Rechtsbehelfsgesetz und seine Bedeutung für das UVPG, Neue Zeitschrift für Verwaltungsrecht, Vol. 3 (2007), p. 277; Ewer, W., Ausgewählte Rechtsanwendungsfragen des Entwurfs für ein Umwelt-Rechtsbehelfsgesetz, Neue Zeitschrift für Verwaltungsrecht, Vol. 3 (2007), p. 272; Bunge T., Rechtsschutz bei der UVP nach der Richtlinine 2003/35/EG, *Zeitschrift für Umweltrecht,* vol. 3 (2004), p 143; Schlacke, S., Rechtsschutz durch Verbandsklage, Natur und Recht, Vol. 10 (2004), 631; Louis, H.W., Die Übergangsregelungen für das Verbandsklagerecht nach den §§ 61, 69 Abs. 7 BNatSchG vor dem Hintergrund der europarechtlichen Klagerechte für Umweltverbände auf Grund der Änderungen der IVU- und der UVP-Richtlinien zur Umsetzung des Aarhus-Übereinkommens, Natur und Recht, Vol. 5 (2004), p. 290.

22 von Danwitz, Th., Aarhus-Konvention: Umweltinformation, Öffentlichkeitsbeteiligung, Zugang zu den Gerichten, Neue Zeitschrift für Verwaltungsrecht Vol. 3 (2004), p. 279.

23 United Nations Economic Commission for Europe, THE AARHUS CONVENTION: AN IMPLEMENTATION GUIDE, prepared by Stephen Stec and Susan Casey-Lefkowitz in collaboration with Jerzy Jendroska, (New York and Geneva 2000), p. 129, download at: http://www.unece.org/env/pp/acig.pdf.

24 UN Implementation Guide 2000, see *supra* note 23, p. 129.

25 This is exactly what von Danwitz (supra note 22) is ultimately arguing.

26 Thus, any breach of the Habitat or the Birds Directive that are not caused by an EIA or IPPC project would not be covered. A further shortcoming is that all product-linked impacts (as well as chemicals or GMOs) on the environment are not (yet) covered.

27 See on this: Dette, B., Access to Justice in Environmental Matters: the Aarhus Convention and Legislative Initiatives for its implementation, in: Ormond/Führ/Barth (eds.), Environmental Law and Policy at the Turn to the 21st Century, Liber amicorum Betty Gebers, (Berlin 2006), p. 63 (at 77 et seq.).

28 BGBl. I 2006 of 14 December 2006, p. 2816.

29 In the explanatory statement of the Government this reads as follows: 'Das Kriterium 'Rechte Einzelner begründen' begrenzt die Rügebefugnis auf solche Rechtsvorschriften, die als subjektiv-öffentliche Rechte anerkannt sind.'

30 See Ormond 1991, *supra* note 1, pp. 81-82.

the courts as far as possible – in this legislative masterpiece: If individual protection of the environment already exists, it is hardly necessary to reinforce this protection by further public lawsuits.[31] On the other hand, the wide field of environment that is not protected by norms giving individual rights will continue to drop out of judicial control. Obviously, this 'alibi' approach is neither in line with the rationale of the Aarhus Convention nor is it in compliance with Directive 2003/35/EC as shown above.[32]

In order to assess the extent to which access to the courts is in fact limited and almost marginalised by this clause, it is useful to examine in more detail those norms which do and do not provide in fact individual rights. We will do this on the basis of the example of pollution control law.[33] Art. 5 of the Federal Emission Control Act (FECA '*Bundesimmissionsschutzgesetz*') lays down mandatory conditions a plant operator has to comply with in order to be granted an operating licence.[34] The article provides that an installation which is subject to licensing shall be built and operated in such a way that:

1. no detrimental environmental effects or other hazards (technically 'dangers' in the above-mentioned sense), noticeable adverse effects and nuisance to the public and the neighbourhood are caused (prevention principle), and
2. precaution is taken to prevent detrimental environmental effects, in particular through emission control measures corresponding to state of the art technology (precautionary principle).

Furthermore, the operator has (3) to fulfil his obligation to prevent, valorise or eliminate waste and (4) energy has to be used efficiently. Art. 5(3) obliges the operator finally to take precautionary measures so as to avoid that after closure of the plant any nuisance to the public or impairment of public welfare is brought about. These principles are complemented by more than two dozen regulations as well as a number of qualified administrative guidelines ('*Verwaltungsvorschriften*') which intend a coherent interpretation of general clauses and terms (such as 'state of the art technology').

These regulations and technical instructions provide for both emission control standards and ambient air quality standards that have to be respected. In their jurisprudence, the courts have, without exception, construed only ambient air quality standards ('*Immissionswerte*') as interpreting Art. 5(1) (1) of the act, hence the prevention principle while emission control standards, on the other hand, have been interpreted as rules emanating from Art. 5(1) (2) of the act. This difference in interpretation – attributing ambient air quality to prevention while viewing emission control as an element of precaution – has far-reaching consequences in practice: In doctrine and jurisprudence, only the prevention principle and rules to implement it are doubtless viewed as conferring individual rights in the aforementioned sense. Thus, Art. 5(1) (1) of the *Federal Emissions Control Act* and all subordinate legislation interpreting this clause have been held to confer individual rights and, consequently, *locus standi*. Hence, a violation of ambient air quality standards can be actionable before the administrative courts.

Contrary to this, the precautionary principle as laid down in Art. 5(1) (2) of FECA is not considered to grant individual rights. Already in 1982 the Federal Administrative Court reversed decisions in the lower courts granting standing to sue under the precautionary principle and held that, irrespective of the function and the scope of the principle in detail, under no circumstances could it give rise to individual rights.[35] As a consequence, no standing is granted if the statement of claim is based on a violation of emission limit values which are regarded as emanations of the precautionary principle under the *Federal Emission Control Act*. An exception is made for violations of standards that concern carcinogenic or highly toxic substances. In these cases, the standards are deemed to be emanations of the prevention principle because of the high level of risk inherent to use and emission of these substances.[36]

The same holds true for the obligations related to the management of waste and the use of energy, Art. 5(1), (3) and (4). These obligations, although undoubtedly important for environmental protection, do not, pursuant to the standing jurisprudence of the administrative courts, confer individual rights and thus cannot be claimed before the courts. The same holds true for the measures to be taken in order to prevent harm after closure of the plant. If we take into account finally, that in the relevant technical instructions ambient air quality standards are set up for only 7 substances[37] and much more than hundred of substances

31 In practice, individual claimants are often financially supported by NGOs. See also Ormond 1991, *supra* note 1, p. 82; Koch 2007, *supra* note 1, p. 379.

32 Doubts concerning the community conformity of the German Act have recently been raised by the Association of European Administrative Judges (AEAJ),see http://ec.europa.eu/environment/aarhus/pdf/aeaj_comments.pdf. Also the author cited in *supra* note 21 and further Gellermann, M., Europäisierte Klagerechte anerkannter Umweltverbände, Neue Zeitschrift für Verwaltungsrecht, Vol. 1 (2006), p. 7; Schmidt, A. & Kremer, P., Das Umweltrechtsbehelfsgesetz und der `weite Zugang zu Gerichten´, Zeitschrift für Umweltrecht vol. 2 (2007), pp. 60-62.

33 See on the following: Roller 2002, supra note 6, pp. 162-165.

34 See also Jahns-Böhm, J., From Combating Air Pollution to an Integrated Pollution Prevention, in: Gebers/Robesin, Licensing Procedures for Industrial Plants an the Influence of EC-Directives, ELNI-Studies No. 3, Frankfurt a. M. 1993, p. 81 et seq.

35 See BVerwGE 69, 37 – Heidelberger Heizkraftwerk = NVwZ 1983, p. 34.

36 VGH (Verwaltungsgerichtshof) Mannheim, Neue Zeitschrift für Verwaltungsrecht - Rechtsprechungsreport 1995, p. 639f (on p. 644).

37 Considered to be the most important substances to protect human health, see K. Hansmann, TA Luft, (2004) 65.

are limited by emissions standards (which do not confer individual rights) and that the most important standard, the 'state of the art' principle is also considered as a interpretation of the precautionary principle and thus not suitable to be put forward in a court suit, and finally a number of further environmental laws such as the whole field of nature protection law with the Natura 2000 rules – do not provide any individual rights we may conclude that up to 90 % of the legal obligations that a plant operator has to respect in practice will not give legal standing to NGOs. It will be interesting to learn how the German government will defend this law in an infringement procedure before the Court of Justice.[38]

6 The German implementation of the associations' rights under the Liability Directive

Directive 2004/35/EC on environmental liability[39] strengthens the rights of associations by giving them a right to request public authorities to take action against environmental damage or imminent threat of damage (Art. 12). If the authority does not make a decision on this request or does not take the requested action, the association shall have access to a review procedure before a court under Art. 13. Although one might think on first view that these supplementary procedural rights of associations are somewhat consumed by the more far-reaching access to justice rules of the Aarhus Convention and the implementing directives. But the scope of application of these directives differs. Thus, the Liability Directive includes the deliberate release of genetically modified organisms under its scope of application whereas Aarhus and the relevant EC directives do not encompass this type of activity.

On the other hand Art. 13 of the Liability Directive leaves more discretionary power to the Member States when stating that the directive shall be without prejudice to any provisions of national law which regulate access to justice. Nevertheless, it is doubtful whether a national implementation which sets up standing requirements that in any case preclude access of associations to the courts would be in compliance with the directive.

The relevant German Act which implements the Liability Directive is the '*Umweltschadensgesetz*'. As far as access to the courts is concerned, the law is following the same restrictive approach as with the Aarhus Convention. Sec. 11(2) of the German Environmental Damage Act refers to Sec. 2 of the Environmental Appeal Act and thus also restricts *locus standi* for associations to such provisions that are suited to constitute subjective rights of individuals. This is all the more inconsistent as in fact the whole rules concerning biodiversity damage are considered to be set up in the common interest and not in an interest to protect individual rights. In fact the law thus gives only a formal litigation right to NGOs that in practical terms does almost not exist.

7 Conclusion

The German Advisory Council on the Environment, an official body advising the German Ministry of Environment, stated in 2005 that Germany 'lags behind' as regards the legal standing of public interest in matters of environment protection.[40] It seems that the German government likes to keep the 'red lantern' in this matter. It should not be said that the serious doubts concerning the conformity with EC law of the German implementing Act has not been pointed out. The issue was even brought up by the chairman of the board of the Advisory Council to the president of the Environment Committee of the German Parliament.[41] We have to realise that aversion to NGO actions still play a prominent role in German politics, even though in numerous studies the narrow-minded arguments against association lawsuits have been disproved. In fact, distrusting association lawsuits is also not justified from the perspective of the administration: The large majority of decisions in environmental matters in Germany are of a high quality and in conformity with the law.[42] Of course, further improvements to reduce remaining enforcement deficits might lead to inconvenient conclusions with respect to a necessary improvement of resources in the environmental administrations in Germany that have seriously suffered from 'deregulation' and other political measures focussing on making administration more efficient.[43]

It is certainly the case that the current German rules on standing are not the end of the story. Complaints have already been brought before the Commission. One might take comfort from the fact that the standard of the European Court of Justice will be a legal one. By the way: One measure to reduce the courts' workload would be to implement European law in the appropriate legal way. Then, NGO actions would be completely unnecessary.

38 Meanwhile, a preliminary procedure is pending at the Court of Justice, see: Oberverwaltungsgericht Münster, 5.3.2009, Zeitschrift für Umweltrecht, (7-8) 2009, p. 380.

39 Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, (2004) OJ L 143, p. 56. See for a comprehensive analysis: Winter, G., J.H. Jans, R. Macrory & L. Krämer, Weithing up the EC Environmental Liability Directive, Journal of Environmental Law 20:2 (2008), p. 163; see also Roller, G., Environmental Liability, in: Macrory (ed.), Reflections on 30 years of EU Environmental Law, Europa Law Publishing, Groningen 2006, p. 127.

40 See SRU 2005, *supra* note 2, p. 17 (note 34).

41 See http://www.umweltrat.de/04presse/downlo04/hintgru/brief_bt_drs_16_2495.pdf.

42 This too is an outcome of the empirical study; see the success rate cited in *supra* note 9.

43 See the unsettling analysis of the German Advisory Council, SRU in 2007: Sachverständigenrat für Umweltfragen (SRU), Umweltverwaltungen unter Reformdruck, Sondergutachten, Erich Schmidt Verlag, Berlin 2007, pp. 200-201.

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

elni
Environmental Law Network International

Vlaamse Vereniging voor Omgevingsrecht
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!

elni
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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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.

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

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

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  - Effectiveness of legal and economic instruments
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- **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.
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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.

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- Role of standardization bodies
- Biodiversity and nature conversation
- Water and energy management
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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 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.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/Roller (eds.), P. Lang, 1991.

Elni Website: elni.org

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

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