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REVIEW

Remarks on the Waste Framework Directive

Ludwig Krämer

Chinese e-waste legislation,
current status and future development

Martin Streicher-Porte/ Katharina Kummer/ Xinwen Chi et al.

The EU Waste Shipment Regulation
and the need for better enforcement

Thomas Ormond

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

Chris Backes/ A.M.L. Jansen

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

Gerhard Roller

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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.

Chinese e-waste legislation, current status and future development

Martin Streicher-Porte, Katharina Kummer, Xinwen Chi, Stefan Denzler, Xuejun Wang

1 Introduction

Recently, several environmental laws and regulations concerning both waste of electrical and electronic equipment (WEEE) as well as the production of electrical and electronic equipment (EEE) have been enacted. Some of them have been implemented, whilst others are in the process of implementation or revision - both in Europe and China. As the production of EEE and the treatment of WEEE are globalised, legislation of both has moved away from being an isolated 'European phenomena'¹.

This paper² gives a short introduction to relevant legislative processes in China and Europe and establishes differences between their current characteristics in terms of EEE and WEEE (chapter 2). It analyses in detail the Chinese EEE and WEEE related laws and regulations (chapter 3) and compares the most prominent texts and their impact on producers and consumers (chapter 4). To conclude the technical draft of a Chinese National E-waste Law developed under the Swiss e-waste programme 'Knowledge Partnerships in e-Waste Recycling' is presented (chapter 5).³

2 Chinese legislative system and process

China has a continental or civil law system, influenced by the legal system of the former Soviet Union⁴. This system is characterised by a collection of codes which are interrelated and, ideally, merge to a comprehensive whole. Such systems originally derived from Europe and can be found in large parts of Asia, Latin America and Africa.

In addition to this, China has national and provincial plans (generally lasting for a period of five years) which are an incremental part of the law system. The plans are required by the law and provide practical rules and targets for the implementing bodies. Guttman and Song have elaborated in detail on the differences between US and Chinese environ-

mental governing systems and the interaction of laws and plans in China⁵.

The process of elaboration and enactment of legislative acts in China consists of a multi-stage process of technical and political elements during which a relevant competent authority interacts with a relevant legislative authority. Which body is precisely involved depends on the subject and the level of the legislation (law, regulation or measure). The relevant competent authority (special committee, ministry, etc.) is generally in charge of preparing a technical and a formal draft of a law, measure or regulation. The relevant competent authority (National People's Congress [NPC], Standing Committee, etc.) is in charge of putting the draft (technical or formal) on the political agenda as well as in the current five year legislative plan.

2.1 Legislative system and process in the EU

The Treaty of Lisbon of the European Union came into force in December 2009. The basic mechanism of adopting directives and regulations remains untouched by this treaty. Both the Council of the European Union and the European Parliament have to agree upon a text which generally is a proposal by the European Commission. More than 40 Directorate-Generals are part of the Commission and are in charge of developing, formulating and revising legal texts. In the case of electronic products, the Directorate-General Environment is in charge of both, the RoHS directive and the WEEE directive.

2.2 EEE and WEEE in China

Despite similarities between the European Union (EU) and Chinese legislation on production of EEE and treatment of WEEE, significant differences remain - both in practical terms and in terms of the legislative processes which have to be taken into account. For example, in China, central government sees itself as the single legitimate power with the authority to legislate at a national level, but against this, a growing self-consciousness of economically strong provinces can be observed. In contrast, European national governments have traditionally enjoyed competence over national legal matters, but are now gradually handing these over to the European Commission and Parliament. Other important key characteristics of the Chinese situation - as distinct from the situation in Europe - that emerged from the cooperation and discussions with the Chinese experts and authorities under the Swiss e-waste programme are listed below.

¹ DaeYoung Park, 'Myths, Misunderstanding, Miscommunication and Mistakes: An In-Depth Analysis of Facts Concerning Product-Related Environmental Regulations on Electrical and Electronic Equipment in China, Japan and Korea', *SSRN eLibrary*, 2006 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=901763> [accessed 16 December 2009].

² The authors would like to thank the Chinese teams at the Environmental Protection and Resource Conservation Commission (EPRCC) and the National Development and Reform Commission (NDRC) for their constructive cooperation, the sustec-team@EMPA, www.in2english.ch for the editing service of this paper, and the anonymous reviewers for their helpful comments.

³ The Abbreviations are listed at the end of this article (chapter 7).

⁴ Chao Xi, 'Transforming Chinese Enterprises: Ideology, Efficiency and Instrumentalism in the Process of Reform', in *ASIAN SOCIALISM AND LEGAL CHANGE: THE DYNAMICS OF VIETNAMESE RENEWAL AND CHINESE REFORM*, John Gillespie, Pip Nicholson, eds. (Canberra: Asia Pacific Press, 2005) <<http://ssrn.com/abstract=844068>>.

⁵ Dan Guttman and Yaqin Song, 'Making central-local relations work: Comparing America and China environmental governance systems', *Frontiers of Environmental Science & Engineering in China*, 1 (2007), 418-433 <[doi:10.1007/s11783-007-0068-3](https://doi.org/10.1007/s11783-007-0068-3)>.

A comprehensive overview of e-waste legislation in several countries is given by Sinha-Khetriwal⁶.

Factual characteristics of WEEE recycling in China:

- Waste in general, and WEEE in particular, is viewed as a resource and income-generating opportunity. Thus people expect to be able to sell WEEE rather than having to pay for their disposal. In Europe, ordinary users generally accept that WEEE has no value and that in some cases advanced fees for the treatment of end-of-life products are collected.
- In China a vast market for second-hand EEE products and WEEE is largely organised informally and solely driven by economic incentives.
- The recovery of materials from WEEE is mostly conducted by informal, small scale enterprises. Negative side effects from unsafe second-hand appliances or crude recycling methods - such as damage to the environment and human health - are not taken into account.
- Environmental awareness and the concept of civic responsibility are not generally part of the current social and political culture in China. Environmental awareness is, however, growing.
- Collection of WEEE is one of the most difficult issues to address due to the size of the country, discrepancy in regional development, existence of informal collection and recycling structures
- Despite the hostile environment, formal recycling facilities are appearing. The biggest contrast to European recyclers is that Chinese formal recyclers do not receive subsidies for recycling and can not build on an existing formal collection system.

Legal and institutional characteristics:

- Pilot projects, which may be limited to certain regions, are used to gain experience and can then be used in the development of legal acts. In the area of WEEE management, Ministry of Information Industry and Technology (MIIT), National Development and Reform Commission (NDRC) and Ministry of Environmental Protection (MEP) have projects of this kind.
- In China legal acts, such as ordinances, regulations, administrative measures, are commonly enacted at a level lower than that of a law. Later, with the experiences gained, a higher ranking law is issued. Such step-by-step bottom-up approach to elaborating legislation is not a typical procedure in Europe.
- Laws are often worded in a very general way. This can also be seen in the wording of legal acts at a lower level than laws (ordinances etc.), in which the text of the relevant law is sometimes merely copied. The general approach is that laws provide a framework for the elaboration of lower-level acts and legal acts, which - at the provincial level - then contain the detailed regulations. This approach is intended to be flexible, taking into account the

size and diversity of the country in order to address issues in accordance with the different local situations and needs.

- Implementation is generally very weak, which poses a problem for any legislative effort. Two institutional weaknesses contribute to this situation:
 - Local governments do not play their role (implementation);
 - Many institutions are responsible for the same issue, leading to overlaps and conflicts.

The following chart shows the relevant levels of the National Government in China, with a focus on those entities that are relevant for WEEE and EEE legislation (Figure 1). These four main levels of National Government also correspond to the legislative instruments which can be issued and enacted (Table 1). In the case of law elaboration, nine types of entities are invested with the authority to submit proposals to the NPC and the Standing Committee. Among these are ministries and special committees such as the Environmental Protection and Resource Conservation Committee (EPRCC).

China is administrated in 22 provinces, five autonomous regions, four municipalities and two special administrative regions. The provinces have the same ministerial structure as that of the state. They are so called 'in-line' organisations, e.g. the Central Ministry of Environmental Protection (MEP) has local MEPs which are responsible for the implementation of national laws. The five autonomous regions (Xinjiang, Inner Mongolia, Tibet, Ningxia and Guangxi) have a higher population of a particular ethnic minority and enjoy (theoretically) a higher legislative freedom than other provinces. The governor of the autonomous regions belongs to the ethnic minority. The municipalities (Beijing, Tianjin, Chongqing, and Shanghai) are higher level cities which rank, within the system, directly beneath that of the central government. In terms of economics and population, these cities are important metropolitan areas in China. The two special administrative regions Hong Kong and Macao enjoy considerable autonomy from the central government, foreign policy and military defence being the only two domains in which central government retains its authority.

⁶ Deepali Sinha-Khetriwal and others, 'Legislating e-waste management: progress from various countries', *Environmental Law Network International, elni Review*, 1 2/06 (2006), 27-36.

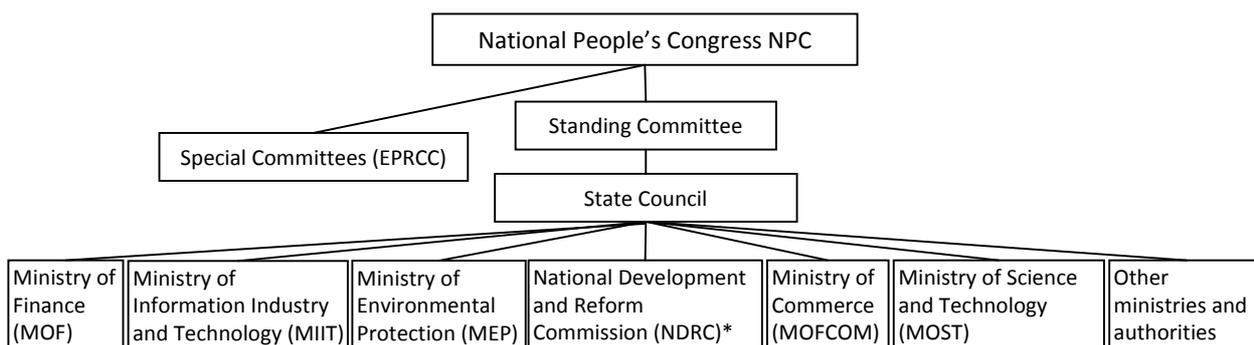


Figure 1 Levels of Chinese national government relevant for e-waste legislation (*the NDRC has ministry status but enjoys a higher level of authority) (based on information of Ms. Cao Xia, associated with the project team of the Swiss e-waste programme)

Table 1 Levels of national Government and legislation in China

Level of legislative authority	Level of legislation
1. National People's Congress (NPC)	Constitution, International conventions (ratification), Fundamental laws
2. Standing Committee of NPC	Other laws
3. State Council	Administrative regulations
4. Ministries	Ministerial measures/ Ordinances/ Regulations ⁷ (sectoral, administrative)

3 Status of current e-waste legislation in China

3.1 E-waste related laws

In the current Chinese law framework, four laws are of particular relevance to e-waste management (see Table 2 for Chinese name, effective date and major content). The 'Environmental Protection Law of the People's Republic of China' is a basic law on environment protection and pollution control. The 'Clean Production Promotion Law' intends to reduce pollution through technical improvement of production and usage of recyclable resources. The 'Solid Waste Pollution Prevention and Control Law', though not exclusively designed for e-waste, has been applied as an important guideline in local e-waste management. The newly released 'Circular Economy Promotion Law of the People's Republic of China' indicates that China is now promoting energy saving and recycling on a national level. It also highlights the prohibition of certain hazardous substances in EEE and underlines the need for safety in dismantling, reuse and recycling of WEEE. Currently, no specific Chinese national e-waste law exists.

Table 2 E-waste related laws in China

Laws (issuing body) Chinese Name	Effective date (entry into force)	Major content
Circular Economy Promotion Law of the People's Republic of China, (NPC) 中华人民共和国循环经济促进法	01/01/2009	Basic law on lifecycle management of products and wastes with a basic principle of 'Reduce, Reuse and Recycle'. E-products and e-wastes are part of its targeted items. Stipulations are hold very general.
Solid Waste Pollution Prevention and Control Law, (NPC) 中华人民共和国固体废物污染环境防治法	01/04/2005	Stipulations on the management of solid waste pollution, not limited to e-waste. Disposal of municipal and industrial solid waste, reuse and recycle of solid waste. Special provisions on the collection, storage, transport and treatment of hazardous waste. Defines responsibilities of producers, retailers, importers and users in managing their solid waste.
Clean Production Promotion Law, (NPC) 中华人民共和国清洁生产促进法	01/01/2003	Encourages eco-design, pollution prevention and reduction in the whole life cycle of products. Not designed specifically for e-waste.
Environmental Protection Law of the People's Republic of China (NPC) 中华人民共和国环境保护法	26/12/1989 (no revision so far)	Introduction of two important principles for pollution control- 'pollution prevention' and 'polluter-pays'. Not designed specifically for e-waste.

3.2 E-waste related regulations

In the past few years, the Chinese government has released a series of regulations and measures to strengthen legal con-

⁷ Different English terms are used to translate the relevant Chinese term; the texts in fact have the same legal status.

trols on e-waste management. These measures were taken in response to the growing domestic e-waste generation, the large amounts of illegal imports of obsolete EEE and the serious pollutions caused by improper e-waste treatment. Each regulation intends to guide or regulate particular aspects of EEE production and WEEE management (see Table 3 for Chinese name, effective date and major content). In the light of China's large EEE production industry and the current level of public environmental awareness, the government has begun to gradually and tentatively develop the regulatory framework of e-waste management. This can

be seen by the fact that a 'step-by-step' strategy has been adopted with the aim of steadily developing domestic e-waste recycling standards and capacities without bringing about too many radical changes and impacts. However, this approach sometimes limits the legal force of current e-waste regulations and in turn weakens their local implementations. Indeed, the fast implementation of stringent environmental laws might not always be in the interest of local governments, hindering them in their ability to compete with neighbouring provinces or municipalities for developing industrial estates or free-trade zones.

Table 3 E-waste related regulations in China

Regulations or measures (issuing body) Chinese Name	Effective date	Major content
Regulation on the Administration of the Recovery and Disposal of Waste Electrical and Electronic Products, 'China WEEE' (State Council of the People's Republic of China) 废弃电器电子产品回收处理管理条例	adopted and published 25/02/2009, to be implemented by 01/01/2011	The three most important points in this Regulation are: (i) producers and importers are made responsible for their products, (ii) a fund for subsidising formal e-waste collection and treatment is established, and (iii) rules for the certification and quality control of recycling facilities are defined. NDRC, MEP and MIIT have been appointed to jointly draft a 'Catalogue of the Recycling and Treatment of the WEEE' which will list the products covered by this Regulation.
Measures for Administration of Renewable Resources, (MOC, NDRC, MPS, MOHURD, SAIC, MEP) 再生资源回收管理办法	01/03/2007	In a brief list 'discarded electronic products' are explicitly mentioned as renewable resources covered by these Measures. These Measures specify the operational regulation and the monitoring management of enterprises engaging in recovery and processing of renewable resources. Such enterprises must register their activities and document their material flows.
Administrative Measures for the Prevention and Control of Environmental Pollution by Waste Electrical and Electronic Equipment (WEEE), (MEP) 电子废物污染环境防治管理办法	27/09/2007 (enacted), 01/02/2008	Rules are set for building, rebuilding or extending e-waste recycling facilities. A compulsory registration for businesses engaging in e-waste recycling is mandated by these Measures. The first point mentioned is a compulsory environmental impact assessment for new facilities, whereas the second requirement equals an operative license. Licensed e-waste recycling facilities must report continuously and are controlled at least once a year. Local Environmental Protection Bureau (EPB) will publish and update regularly the official lists of certified e-waste dismantling and treatment enterprises. The Measures explicitly prohibits open burning and land filling, and also forbid 'backward technologies' and crude recycling methods (such as cupolas, simple reverberatory furnaces and chemical leaching).
Measures for the Administration of Prevention and Treatment of Pollution by Electronic Information Products 'China RoHS', (MIIT, NDRC, MOC, GAC, SAIC, GAQSIQ, MEP) 电子信息产品污染控制管理办法	28/02/2006 (enacted), 01/03/2007	These Measures, often also called "Chinese RoHS", ban the use of lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated diphenyl ethers (PBDE) in all electronic information products on the Chinese market, including imports. More substances might be added to this list. The step-by-step implementation of this measure and the label requirements are discussed in section 4.6.2.
Technical Policy on Pollution Prevention of Waste Home Electronic Appliance and Electrical Product, (SEPA) 废弃家用电器与电子产品污染防治技术政策	27/04/2006	This Policy promotes eco-design of EEE and encourages reuse. It stipulates polluters-pay principle and defines requirements on the collection, transport, storage, reuse and treatment of e-waste, especially the parts and components containing hazardous substances.
Notice on Strengthening the Environmental Management of WEEE, (SEPA) 关于加强废弃电子电气设备环境管理的公告	26/08/2003 (issued)	EEE producers, repairers and corporate EEE users report information of e-waste generation, flow, storage and treatment to local EPB. The Notice bans primitive and polluting e-waste treatment methods.

4 E-waste legislation in Europe and China

4.1 The EU WEEE Directive

The Directive 2002/96/EC of the European Parliament and of the State Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) entered into force on 13 February 2003. EU Member States were obliged to transpose the Directive into national law beyond the deadline of 13 August 2004.

The Directive caused considerable controversy amongst the Member States, particularly as many countries hadn't taken sufficient preparatory steps to be ready on the date of implementation. Nevertheless, all EU member states had implemented national WEEE legislations by 1 January 2008. Unfortunately, the Directive leaves considerable space for interpretation within the scope of national laws -particularly in the fields of producer registration and responsibilities, and financing mechanism. Manufacturers and importers experienced a tedious period trying to comply with similar but not identical requirements between the member states. Hence, the Directive has been amended several times with seeing an extensive review in 2006²⁹. This review prepared a recast of the Directive, that is, the original text was revised, which was published on 3 December 2008 for comments. In this text, we refer to the original text of the Directive as 'EU WEEE' as well as to the text of the recast as 'EU WEEE recast'.

The product scope of the EU WEEE is laid down in ten categories (Annex IA) and more than 100 EE products (Annex IB) listed in the EU WEEE. The recast suggests transferring both Annexes to the revised EU RoHS recast (also see Table 4).

4.2 Chinese WEEE Regulation

On 27 February 2009 the long-awaited 'Regulations on the administration of the recovery and disposal of waste electrical and electronic products' were adopted and promulgated (in the following referred as 'China WEEE'). The three most important points in this regulation are: (i) producers and importers are made responsible for their products, (ii) a fund for subsidising formal e-waste collection and treatment is established, and (iii) rules for the certification and quality control of recycling facilities are defined.

Even though the Regulations apply Extended Producer Responsibility (EPR) and outline a financing mechanism, they are formulated in very general terms and leave some crucial points – such as product coverage, financing mechanisms and ministerial responsibilities – to be specified in a period of 22 month. NDRC, MEP and MIIT have been appointed to jointly draft a 'Catalogue of the Recycling and

Treatment of the WEEE' which will list the products covered by this Regulation.

The exact mechanisms of collecting fees from producers and subsidising particular services such as collection, dismantling and recycling have also to be established during this period. The guiding responsibility for the e-waste fund was given to the MOF. Other ministries involved are: MEP, MOC, SAIC, GAQSIQ, GAC, SAT.

4.3 European RoHS Directive

The Directive 2002/95/EC of the European Parliament and of the State Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment is widely known as RoHS Directive (in the following referred to as 'EU RoHS'). This law was enforced on 1 July 2006 and had, in contrast to the EU WEEE, large impacts on the EEE production throughout the world. Producers in and outside Europe had to adjust their production if they wanted to import and sell goods in the EU. On the same date the EU WEEE recast was published, also a draft to recast the EU RoHS Directive was published and has remained open for public comment until today (in this text 'EU RoHS recast').

The EU RoHS recast suggests including Annex 1A of EE categories and 1B of EE products of the EU WEEE. Specifications are planned for category 8, medical devices, for which the two other EU Directives on medical devices³⁰ and in vitro diagnostic³¹ will be relevant. In addition to the above, it also sets new timelines for medical devices and monitoring and control instruments in compliance with the New RoHS Directive. In Annex V (all categories) and VI (categories 8 and 9) of the EU RoHS recast, applications are listed which are exempted from the ban of substances.

4.4 Chinese RoHS Measures

On 1 March 2007 the 'Measures for the Administration of Prevention and Treatment of Pollution by Electronic Information Products'³² (in the following referred as 'China RoHS') entered into force. From this date onwards all products produced in China, put on the market in China and are imported to China should comply with the China RoHS. Products which are imported to China for re-export of re-manufacturing and/or direct re-export are excluded.

This measure is similar to the EU RoHS, in that it restricts six hazardous substances in electronic products and in packaging materials. EU RoHS in Europe restricts the use of these substances for all imports, exports and production in EU member states. Exceptions in which the use of such substances is permitted are listed in specific annexes of the

²⁹ UNU, 2008 Review of Directive 2002/96 on Waste Electrical and Electronic Equipment (WEEE) (Authors: Huisman, Jaco, Delgado, Clara, Magalini, Federico, Kuehr, Ruediger, Maurer, Claudia, Artim, Eniko, Szelezak, Josef, Ogilvie, Steve, Poll, Jim, Stevels, Ab. Participating organisations: United Nations University [UNU], Gaiker, Regional Environmental Centre for Central and Eastern Europe, AEA Technology (AEA), Delft University of Technology [TUD], 2007).

³⁰ Council Directive 93/42/EEC of 14 June 1993 concerning medical devices.

³¹ Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices.

³² Measures for Administration of the Pollution Control of Electronic Information Products, 9 May 2006

<http://english.MOC.gov.cn/aarticle/policyrelease/domesticpolicy/200605/20060502132549.html>, accessed on 10 December 2009.

EU RoHS. As the European RoHS was enforced more than one year earlier, the prohibition of the same substances can be interpreted as a legislative reaction in order to harmonise production patterns in China with those in the EU.

However, the China RoHS differs from its European counterpart in certain substantial aspects. One major difference is the product scope. The China RoHS focuses specifically on information and communication products (ICT) but contains a more comprehensive list than the EU RoHS does.³³ The legislator also plans to expand the list of forbidden substances in EEE and demands a comprehensive labelling system.

4.5 Comparison of the two approaches

Table 4 contrasts the China WEEE and China RoHS with EU WEEE, EU RoHS, as well as with the recast of both EU Directives, focusing on the specific aspects listed on the left hand side. Even though the regulations, measures and directives have similar intentions, they differ in substantial aspects, one of which being the labelling of EEE products – an aspect which will be discussed in the following chapter 4.6.

4.6 Differences in labelling

4.6.1 EEE product labels requirements

A specific EU regulation sets the rules for the CE marking.³⁴ Generally this CE sign (Figure 2 (1)), indicates that a product complies with the applicable requirements set out in the European Community. In the case of EEE products, this means that a labelled product complies with all EU regulations applicable to EE products, one such regulation being the EU RoHS. Other applicable regulations apply to technical requirements as well as safety or design standards. In addition to the CE sign, the identification number of the notified body involved in the production control phase must be printed on the product. The CE-regulation stipulates that existing mechanisms in the EU Member States shall be used to ensure the correct application of the label. Member States are also responsible for inflicting penalties for improper use of the label.

EEE products must additionally be labelled: visibly, legibly and indelibly with the symbol shown in Figure 2 (2), which should remind users that it is forbidden to dispose of EEE products with the ordinary municipal waste but to collect and deliver it for separate treatment.

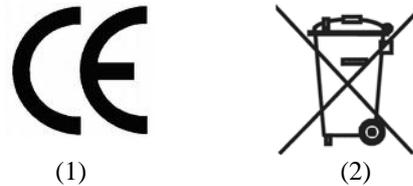


Figure 2 CE marking for EU RoHS conformity declaration (1); Symbol for the marking of electrical and electronic equipment defined in the EU WEEE (2)

4.6.2 EEE product labels required by China RoHS

Several phases have been anticipated by the legislator for the enforcement of the China RoHS that will influence the labelling.

Since 27 April 2006, Chinese producers as well as producers who import products to China have to label their products with several labels. Details of the labelling are illustrated in the next paragraph. On 9 October 2009, the first issue of the ‘Key Administrative Catalogue for Pollution Prevention of Electronic Information Products’ was released by MIIT. The catalogue lists products which contain toxic or hazardous substances. The list differentiates between products which can be improved by replacement of components which contain toxic or hazardous substances, and products for which no replacement of the substances is possible due to technical performance issues. It also lists products which contain toxic or hazardous substances and pose a severe danger to the environment and should therefore be restricted. Furthermore the catalogue lists all substance restrictions, defines products which are exempted from the restrictions and sets a date by which each category has to comply with the regulation. To be not listed in the catalogue, products have to be tested by an authorized Chinese laboratory and accredited with a China Compulsory Certificate (CCC) according to the standard SJ/T 11365-2006³⁵. The first batch covers mobile phones (of following standards: GSM, TDMA, CDMA, TD-SCDMA, WCDMA, CDMA2000), stationary telephones (fixed telephone terminal, cordless telephone terminal) and all computer printers. The catalogue will be continually expanded and annually reviewed.

³³ AeA, ‘Electronic Information Products Classification and Explanations’, accessed on 18 January 2010 <<http://www.aeanet.org/GovernmentAffairs/xmMHecmyYKYPIsNQhsbDqczoiU.pdf>>

³⁴ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93.

³⁵ SJ/T 11365-2006: Testing methods for hazardous substances in electronic information products 电子信息产品中有毒有害物质的检测方法. Effective date: 6 November 2006.

Table 4 Comparison of both legislative prescriptions with EU law

	China	European Union
Production of electric / electronic equipment	<p>(China WEEE) Producers must not use or must lower the level of toxic substances in the production of new products.</p> <p>(China RoHS) Prohibits the use of the following substances in new products or imports: lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), or polybrominated diphenyl ethers (PBDE) and other toxic and harmful substances or elements provided by the State.</p>	<p>(EU WEEE) member states shall encourage designs for re-use, dismantling and recovery. (EU WEEE recast) A hierarchy should be established, to (1) prevent WEEE by sustainable production and consumption and (2) reduce the environmental impact by reuse, recycling or other forms of recovery. References to the Energy using Products Directive, EuP³⁶ and to the EU RoHS are mentioned.</p> <p>(EU RoHS) As of July 2006, E-appliances put on the market may not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, or polybrominated diphenyl ethers.</p> <p>(EU RoHS recast) Manufactures are obliged to document, control and carry out production control according to the common framework for the marketing of products³⁷. List of prohibited substances is given in Annex IV. Hexabromocyclododecane (HBCDD), Bis (2-ethylhexyl) phthalate (DEHP), Butyl benzyl phthalate (BBP), Dibutylphthalate (DBP) are also listed as substances in Annex III. These substances may be added to the list of prohibited substances should their risk to human health or the environment be evaluated as unacceptable.</p>
WEEE collection	<p>(China WEEE) The Regulations stipulate a multi channel collection of WEEE. The state encourages cooperation between EE producers, retailers and e-waste recyclers in collection and treatment of WEEE.</p> <p>(China RoHS) Not addressed</p>	<p>(EU WEEE) Retailers and distributors are obliged to take back WEEE on a one-to-one basis. Producers are encouraged to develop individual or collective take back systems.</p> <p>(EU WEEE recast) The separate collection of cooling and freezing equipment is stressed.</p> <p>(RoHS and RoHS-recast) Not addressed</p>
Proper treatment / disposal of WEEE	<p>(China WEEE) Contents and treatment information of contained hazardous substances shall be provided on EE products or on specifications. Collected e-waste shall be treated by centralized recycling facilities with WEEE treatment certification.</p> <p>(China RoHS) Not addressed</p>	<p>(EU WEEE) Producers are obliged to provide reuse, treatment and dangerous substance information of their products for treatment facilities.</p> <p>(EU WEEE recast) Definitions of prevention, re-use, recycling, recovery, disposal and treatment have been removed but can be found in the EU Directive on Waste³⁸.</p> <p>(EU RoHS and EU RoHS recast) Not addressed</p>
Target quota for collection, recovery, re-use and recycling	<p>(China WEEE) Not addressed</p> <p>(China RoHS) Not addressed</p>	<p>(EU WEEE) Collection: 4 kg per person/year from private households. Recovery rates for different WEEE categories range between 70 %-80 %. Rates for reuse and recycling between 50 %-80 % (weight).</p> <p>(EU WEEE recast) Collected WEEE should be 65 % (weight) of the amount of EEE sold to the market in the previous two years. The recovery targets for different WEEE categories are increased by 5 % each (recovery between 75 %-85 %, reuse and recycling between 55 %-85 %).</p> <p>(EU RoHS and EU RoHS recast) Not addressed</p>
Specific obligations to the importer / distributor	<p>(China WEEE) Importers are obliged to pay into a national fund for WEEE disposal according to their obligations.</p> <p>(China RoHS) Imports must comply with the Measures and have to undergo testing and certification procedure.</p>	<p>(EU WEEE) Nothing mentioned about importers. Retailer must ensure that obsolete appliances can be returned at a minimum free of charge.</p> <p>(EU WEEE recast) Producers are distinguished into: manufacturer, reseller, and natural or legal person who place EEE on the market from a third country outside of the EU.</p> <p>(EU RoHS) Producers are distinguished into: manufacturer, reseller, importers and exporters who place EEE on the market outside of the EU.</p> <p>(EU RoHS recast) The word producer is avoided; instead manufactures, distributors and importers are defined. The last two are considered as manufacturers if they place or modify an EEE on the market under their name or trademark. They have to comply with Article 4 (restriction of substances) and all other rules given for manufactures.</p>

³⁶ Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products.

³⁷ Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products.

³⁸ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

Table 4 Comparison of both legislative prescriptions with EU law

	China	European Union
Obligations to the consumer	(China WEEE) Not addressed (China RoHS) Not addressed	(EU WEEE) Not to dispose of WEEE as unsorted municipal wastes (EU WEEE recast) No changes (EU RoHS and EU RoHS recast) Not addressed
Prescribed methods of treatment / disposal	(China WEEE) WEEE recycler must have proper recycling machinery, plans for safe and environmentally sound disposal of hazardous materials, sorting and packaging equipment and professional personnel. (China RoHS) Not addressed	(EU WEEE) In accordance with the state-of-the-art technology as defined by applicable EU legislation. (WEEE-recast) No changes (EU RoHS and EU RoHS recast) Not addressed
Re-use of functioning devices	(China WEEE) Sales of repaired EEE shall comply with related national technical and safety standards, and repaired EEE shall be marked distinctively as second-hand) (China RoHS) Not addressed	(EU WEEE) Re-use must be given preference over recycling or disposal, no further specifications (EU WEEE recast) No changes (EU RoHS and EU RoHS recast) Merely mentions that reuse is beneficial. The same rules apply to reused EEE and spare parts as to new EEE.
Financing	(China WEEE) A national fund for WEEE disposal shall be established, fed by contributions from manufacturers and importers. The Ministry of Finance, MEP, NDRC and MIIT shall formulate rules for collection, use and administration of the fund. (China RoHS) Not addressed	(EU WEEE) Producers provide financing for collection, treatment, recovery and environmentally sound disposal of EEE from private households. Other financing methods are permitted provided they comply with this Directive. (EU WEEE recast) No changes (EU RoHS and EU RoHS recast) Not addressed
Licensing and Monitoring	(China WEEE) Corresponding provincial bodies of MEP, NDRC, MOC and MIIT are in charge of developing local programs for WEEE disposal. Recycling facilities have to apply for licenses at the local bodies of MEP. These bodies are also in charge of the supervision and inspection of recycling facilities. (China RoHS) The following bodies administer and supervise the implementation of the measures: MIIT, NDRC, MEP, MOC, GAC, SAIC and GAOSIQ.	(EU WEEE) Member States must maintain a register of producers of WEEE and collect relevant information on WEEE production. Producers must be required to report on a number of issues. In turn Member States must report to the EU Commission every 3 years on the implementation of the Directive. (EU WEEE recast) The register serves to monitor compliance with financial obligations. Minimum monitoring requirements for WEEE waste shipments are added in an Annex. (EU RoHS) Not addressed (EU RoHS recast) The Member States of the EU shall carry out market surveillance for market conformity. Annex VII provides a template for the conformity declaration. The entire CE marking procedure is added to the RoHS recast.
Competent authority	(China WEEE) Many issues of these regulations are not yet defined. Until implementation (1 January 2011), the MEP, NDRC, MIIT and MOC bodies of the State Council are in charge.	(EU WEEE and EU WEEE recast) To be determined by each member state. (EU RoHS and EU RoHS recast) To be determined by each member state.

The label shown in Figure 3, verifies the absence of the six substances - lead, mercury, cadmium, hexavalent chromium, PBB, or PBDE- in the product. In the case of any of the substances being present, the ‘Environment-Friendly Use Period’ (EFUP) shown in Figure 4 must be put on the product. This label indicates the minimum number of years during which the hazardous substances will not leak or cause environmental pollution. In addition to both labels (Figure 3 and 4) the date of production must be marked on the product. Furthermore, the EFUP-label requires a table in paper form or any other form on the product manual which lists the content of hazardous substances in all materials of the component below the

standard in SJ/T11363-2006³⁹. An “o” indicates that the content of hazardous substances in all materials of the component is below the above-mentioned standard; an “x” indicates that the content of hazardous substances in at least one of the materials of the component exceeds it. Labels must be based on a product analysis, or if necessary, a component analysis by a Chinese laboratory.

³⁹ SJ/T 11363-2006: Requirements for concentration limits for certain hazardous substances in electronic information products 电子信息产品中有毒有害物质的限量要求. Effective date: 6 November 2006.



Figure 3 China RoHS label (original colour is green): Free of toxic substances (content of SJ/T11364—2006)⁴⁰



Figure 4 China RoHS label (original colour is orange-red): EFUP label (content of SJ/T11364—2006)

Table 5 China RoHS label: Table of hazardous substances contained in product. (content of SJ/T11364—2006)

Component name	Hazardous substances or elements					
	Pb	Hg	Cd	Cr(VI)	PBB	PBDE
<i>e.g. Cables</i>	0	X	X	X	X	0
<i>Casing etc.</i>	X	X	0	X	0	0

Lastly, a code for the main materials (in weight) which the product is made of (e.g. ABS⁴¹, HIPS⁴² etc.), together with labels indicating the Reusability (1), the Recyclability (2) or the Presence of recyclable materials (3) must also be present (Figure 5).



Figure 5 Reusability (1), Recyclability (2) or presence of recyclable materials (3)

The strict requirements of the China RoHS, particularly the ones for testing and accreditation, have caused considerable unrest amongst producers. But as Chinese environmental laws have generally not been strictly enforced and the Catalogue is far behind the originally proposed schedule, the implementation of the China RoHS will not take place easily.

5 Drafting a national e-waste law

5.1 Swiss e-Waste Programme: China

The main services of a comprehensive e-waste management system are (a) efficient collection of WEEE, (b) maximum recovery of valuable substances to be used as secondary raw materials in production processes and (c) evacuation, appropriate treatment and safe disposal of hazardous substances contained in EEE. Costs for unprofitable processes such as mentioned as well as logistics, monitoring and controlling are ideally covered by an independent financing system which allocates the cost of processes to the specific cost created by EEE put on the market.

The State Secretariat of Economic Affairs (SECO) has been running the 'Swiss e-Waste Programme' since 2003, commonly known under the name of, 'Knowledge Partnerships in e-Waste Recycling'. SECO's trade promotion activities generally aim to integrate partner countries into the global economy through sustainable trade. In particular for the e-waste programme, this means that EE producers are encouraged to apply extended producer responsibility (EPR) in order to mitigate negative externalities of WEEE recycling in fast developing countries. The goal is to support participating countries and stakeholders to set up WEEE recycling systems in order to mitigate negative impacts on the environment and health, whilst creating income opportunities and reducing poverty. The programme is implemented by the Federal Laboratories of Materials Testing and Research (EMPA).

Initially the programme focused on three countries each with a specific focus: India, South Africa and China. Today many other activities and countries are also part of the programme, the most prominent being Colombia and Peru. Under the 'Policy & Legislation' focus in China, the programme cooperated with the Environmental Protection and Resource Conservation Commission (EPRCC) of the National People's Congress and the National Development and Reform Commission (NDRC). Both bodies were advised and assisted in the preparation of a technical draft of a national e-waste law. Elements of the draft are discussed in the following section. Furthermore the China Electronics Engineering Design Institute (CEEDI) was assisted in defining *National Technical Standards and Codes of WEEE treatment* on behalf of the Ministry of Environmental Protection (MEP).

5.2 Elements of the 'Law on Pollution Control of Electronic and Electrical Equipment (EEE), and Recycling and Reuse for Waste Electronic and Electrical Equipment (WEEE)'

The technical draft 'Law on Pollution Control of Electronic and Electrical Equipment (EEE), and Recycling and Reuse for Waste Electronic and Electrical Equipment (WEEE)' is the second step in the legislative process as described in section 2.

In line with the step by step, bottom-up approach to the legislative process predominant in China, the draft shows all the typical characteristics of a framework law. This means

⁴⁰ SJ/T11364—2006: Marking for control of pollution caused by electronic information products 电子信息产品污染控制标识要求. Effective date: 6 November 2006. It defines marking requirements for the names, contents, environment-friendly use period and recyclability of hazardous materials or substances and packing materials used in electronic information products.

⁴¹ ABS - Acrylonitrile Butadiene Styrene.

⁴² HIPS - High-Impact Polystyrene.

that there are many open-ended provisions where the draft delegates to one or more government authorities the competence to develop the relevant field. This approach is adaptable in order to ensure consistency with regulation at the national level while still taking into account the need for provincial adaptation for specific provinces or regions. E.g. the region around Shanghai produces approximately 90 % of the world's laptops (without batteries). Such industry clusters cannot fail to result in specific needs for substance restriction, be it in the production process or in the products themselves. Such detailed regulation will be crucial to the functioning of the future WEEE management system as most provisions of the draft are too general to provide guidance on detailed operations. EPRCC envisages the China WEEE and China RoHS serving as implementing acts. In accordance with the step by step bottom-up approach described above, the intention is to gain experience through the implementation of these acts, and from this, to further elaborate the provisions of the draft at a later stage where necessary.

The draft adopts a life-cycle approach, addressing the management of EEE 'from cradle to grave'. It encompasses every aspect of EEE and WEEE management, with a separate chapter on: pollution control (chapter 2); repair and second-hand market management (chapter 3); recycling management (chapter 4); reuse management (chapter 5); and legal liability (chapter 6). The draft provides for the establishment of a financing system and incorporates the concepts of EPR, "green design" of EEE, and phasing-out of hazardous constituents of EEE.⁴³

In line with the intended framework function of a future law vis-à-vis the lower-level legal acts, some of the principles underlying the China WEEE and the China RoHS have been incorporated into the draft, such as the approach of the China WEEE to the provisions for the second-hand market (chapter 3), the provisions for the production of EEE (Art. 10); and the standardisation and certification procedures for selling of second-hand equipment and treatment / disposal of WEEE (Art. 22, 24-25, 29-31).

The draft provides for imposition of technical standards and/or certification requirements on the processes it addresses (production and repair of EEE, second-hand markets, recycling and treatment of WEEE), and the obligation of operators to adhere to these. Considering the monetary value accorded in Chinese society to any appliances or materials that are still useable or can be repaired, it places a strong focus on repair, second-hand markets and reuse of WEEE (chapters 3 and 5).

The intention underlying the draft is to upgrade the existing informal systems of collection and recycling of used EEE and WEEE, and to render them compatible with the principles of environmentally sound management. The draft does not yet reflect this, as it was not clear at the beginning of the drafting process how to address this issue. The intention is

to include provisions that clearly separate the functions of collection, and recycling or treatment. Hence collectors may no longer engage in recycling or treatment activities, as is currently the case, but will be obliged to hand in the WEEE to a certified recycling and treatment facility.

The draft has been submitted to EPRCC in 2007, but since then, no further steps have been taken. Reasons are: (1) the above discussed 'China WEEE' was adopted by the State Council on 25 February 2009, and will be implemented until 1 January 2011. This regulation covers large part of the draft law and is one of the central legislative texts on e-waste. (2) Due to the long implementation phase, the current attention of EPRCC is on the question how the China WEEE regulation will be implemented. The e-waste draft law is, hence, not one of the most urgent laws to be promoted.

6 Conclusions

Despite upheavals in the world's economy, the EEE producing industry enjoys high growth levels, particularly in fast developing economies where consumption is increasing. In addition, commodity prices of many metals essential for the production of EEE are reflecting - in certain cases - the natural scarcity of specific elements. Inevitably, such tendencies have an effect on the management of WEEE, which can only be handled appropriately if both market forces and legal rules pull together.

China and the European Union have advanced over the last years in establishing legal frameworks which intend to improve the production of EEE and the organisation of the management of WEEE. Europe has issued two main directives which Member States have transposed into national law. China has issued a Circular Economy Law, serving as a paramount law for several regulations and measures that tackle EEE design and WEEE management. A national Chinese e-waste law has yet to be released.

This review of the regulation shows that sufficient rules and guidelines are already in place which should enable member countries, of the EU, or the central government and their provinces to set up a WEEE management system capable of being continually improved.

In China, the scope of products and rules for financing WEEE recycling is due to be formulated in 2010. Once these have been set, focus will be put on the enforcement of the effective laws, regulations and measures - a process which, until now, remains the weakest point of the entire system. Several regional initiatives show progress, though the volumes treated are low. It might be favourable to refrain from installing a 'one-fits-all' system for e-waste management in China in preference for allowing the development of regionally adjusted WEEE collection and management systems. A national e-waste law might enhance the momentum of the implementation of regional solutions or systems. Yet this might not be so urgent, as many, if not all essential legal elements are already in place or are currently being developed.

Implementation in the EU also shows weaknesses. The UNU review of the WEEE Directive states that more than

⁴³ A Chinese and English copy of the draft can be downloaded from www.ewasteguide.info, section: download, filter: legislation and China.

60 % of EU WEEE volumes are still not collected and treated within the EU Members States, with less than 30 % of the volumes of many products that appear on the market (such as large and small household appliances, cooling and freezing appliances, and toys and tools) actually being collected⁹. Like China, then, the EU should focus on an effective enforcement of EU WEEE. The current revision of the two relevant EU Directives might improve the recycling rates and other goals set in the Directives.

Although China is currently making considerable progress in preparing national regulations for e-waste management, it still lags behind in its ability to introduce a stringent implementation of those laws which are already in place or about to be issued. Here, careful supervision and cooperation with supra-national organisations of e-waste management in Europe could provide China with valuable insights on how to set up and run large scale WEEE management systems.

Many EEE producers are active throughout the world, and global EEE trade has increased substantially in the last years. The establishment and harmonization of technical standards for EEE production as well as regulations regarding WEEE recycling will help to keep this industry sustainable and will also make it less dependent on scarce raw materials. At the same time, the recycling sector as a "green industry" – and assuming the presence of an efficient regulatory framework - may contribute to income generation and poverty reduction.

7 Abbreviation used

ABS	Acrylonitrile Butadiene Styrene
CEEDI	China Electronics Engineering Design Institute
EEE	Electrical and Electronic Equipment
EPB	Environmental Protection Bureau
EPR	Extended Producer Responsibility
EPRCC	Environmental Protection and Resource Conservation Commission
EMPA	Federal Laboratories of Materials Testing and Research
EU	European Union
GAC	General Administration of Customs
GAQSIQ	General Administration of Quality Supervision, Inspection and Quarantine
HIPS	High-Impact Polystyrene
MEP	Ministry of Environmental Protection
MIIT	Ministry of Information Industry and Technology
MOF	Ministry of Finance
MOC	Ministry of Commerce
MOHURD	Ministry of Housing and Urban-Rural Development
MOST	Ministry of Science and Technology
MPS	Ministry of Public Security
NDRC	National Development and Reform Commission
NPC	National People's Congress
PBB	Polybrominated Biphenyls
PBDE	Polybrominated Diphenyl Ethers
SAIC	State Administration of Industry and Commerce
SAT	State Administration of Taxation
SEPA	former State Environmental Pollution Control Board, today MEP
SECO	State Secretariat of Economic Affairs
WEEE	Waste from Electrical and Electronic Equipment

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 acts² 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 IMPEL⁵ 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 Feb-

ruary 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 legislation⁸ 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 then 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.

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) Directive², 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



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



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 Schalbla**, *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 Pallemmaerts, *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 Misonno**, *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 Intemacional 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	Lunch & ELNI-Party
Filmplateau	Facultaire Raadzaal
Paddenhoek 3	Voldersstraat 3
9000 Gent	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

ELNI - *Environmental Law Network International*
Website www.elni.org

vzw V.V.O.R. - *Vlaamse Vereniging voor Omgevingsrecht*
Kortrijksesteenweg 1007 - 9000 Gent
E-mail info@omgevingsrecht.be
Website www.omgevingsrecht.be

VMR - *Vereniging voor Milieurecht*
Tel. 030 231 22 21
Email info@milieurecht.nl
Website www.milieurecht.nl



Registration: <http://www.omgevingsrecht.be>

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

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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.

Imprint

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Editors in charge of the current issue:

Gerhard Roller and Nicola Below

Editor in charge of the forthcoming issue:

Martin Führ (fuehr@sofia-darmstadt.de)

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

Focus of the forthcoming issue

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

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elni membership

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

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

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Environmental Law and Policy at the Turn to the 21st Century

Umweltrecht und -politik an der Wende zum 21. Jahrhundert



Gedenkschrift / Liber amicorum Betty Gebers

*Thomas Ormond/Martin Führ/
Regine Barth (eds.)*

The present environmental law in Europe has been essentially produced in the last 20 years, and current environmental policy is still based on the courses set in this time. One of the actors in this process was the environmental lawyer Betty Gebers, until her premature death in September 2004. Her life achievements but also the current status in the many fields where she was active are examined in this book. The combination of retrospective and present-day analysis forms also the basis of an outlook how environmental law and policy in Europe could further develop in the next decades of this century.

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

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

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

The Environmental Law Division of the Öko-Institut:

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

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www.oeko.de

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

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

The Institute fulfils its assignments particularly by:

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

Main areas of research

- **European environmental policy**
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 - Effectiveness of legal and economic instruments
 - European governance
- **Environmental advice in developing countries**
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The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

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

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

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
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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 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, focusing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

elni Conferences and Fora

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

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

the 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 Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilimowsky/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.