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elni REVIEW

CONTENTS

Editorial

The present issue of *elni Review* (1/2011) covers a variety of recent international environmental law issues alongside two country-specific contributions on EEE-waste regulation in Zanzibar, Tanzania and chemical substances legislation in China respectively. The key focus of the current edition of the journal, is *chemical substances regulation*.

Three articles approach this topic from different points of view:

First off, *Gareth Callegy* provides an overview of the legal impacts of the "Chinese REACH" legislation; an amendment to Chinese law which recently entered into force. By comparing the legal obligations arising from Regulation (EC) No. 1907/2006 (REACH) and the Chinese pendant, he points out inter alia the legal issues which European registrants will face when marketing chemical substances to the "Middle Kingdom."

Subsequently, *Julian Schenten* analyses the state of affairs as regards the regulation of Nanomaterials in the food sector. Focusing on Regulation (EC) No. 258/97 on Novel Food, he identifies the weaknesses in terms of health protection and points out necessary key features which reasonable regulation of such chemical substances should have.

The third article concentrating on chemicals is by *Vito Buonsante*; it creates a bridge between the REACH Regulation and access to documents claims. In this context the author examines the interaction and gaps in the REACH and Aarhus Convention systems as well as the role of the European Chemicals Agency (ECHA).

The other contributions cover a variety of up-to-date legal issues:

Head of Legal at Friends of the Earth England, Wales and Northern Ireland, *Gita Parihar*, shows the legal impacts of the Cancun UN climate negotiations which took place in December 2010. In doing so, she develops a line of reasoning which remains relevant beyond the Bangkok Climate talks in April 2011.

Asking in his title 'A human right to a clean and healthy environment in Europe: Dream or reality?', *Jan Van de Venis* provides an introduction to the development of a human right to a healthy environment on a global scale. He analyses the ways in which this human rights-based approach to environmental issues evolved, what tangible benefits such a right could bring, along with where it currently stands globally and, more specifically, in Europe under the European Convention on Human Rights.

The contribution that follows, *Tania Van Laer* examines whether EU law allows Member States to justify, on the basis of animal welfare, unilateral measures that impose trade restrictions. At the same time she considers the main principles of the free movement of goods as well as the established view of the Court of Justice.

The final article outlines the electronic waste situation in Zanzibar, Tanzania. In the absence of consumer protection provisions and specific environmental guidelines to regulate the import of these products or manage their safe disposal, the small island state is failing to implement the principles of the Basel Convention. Against this background *Aboud S. Jumbe* presents the current activities of the Department of Environment, Zanzibar, which is now in the advanced stages of preparing a legal document which contains a set of regulations on the import, handling, and disposal of used and waste electrical and electronics equipment.

Finally, the issue covers recent developments regarding the situation of access to justice in Ireland – the only EU country in which the parliament has not ratified the 1998 UNECE Aarhus Convention.

Contributions for the next issue of the elni Review are very welcome. Please send them to the editors by September 2011.

Julian Schenten/Gerhard Roller

May 2011

elni Forum 2011

24th May 2011
in Brussels, Belgium

"Access to Documents at European Level – Key issues and practical experiences"

Bondine Kloostra presents key issues on access to documents regarding environmental information, including a recent decision of the ECJ (Stichting Natuur en Milieu). Vito Buonsante and Ludwig Krämer will present their practical experiences in access to documents, including the access to documents held by the European Chemicals Agency (ECHA). Eva Kruzikova will provide the point of view of the EU Commission.

This event will be held at the EU Liaison Office of the German Research Organisations (KoWi), Rue du Trône 98, 1050 Brussels, 8th Floor.

For more information about participation, including registration forms, please visit http://www.elni.org/elni-events.0.html.

Access to documents: Interaction and gaps in the REACH and Aarhus Convention systems

Vito Buonsante

1 Introduction

Regulation (EC) 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) was published in the Official Journal on 30 December 2006 and came into force on 1 June 2007. REACH is based on the 'no data, no market' principle (Article 5) whereby, in order to place a substance on the market, it has to be registered through the submission of a dossier to the European Chemicals Agency (ECHA). The process of registering substances means that a great amount of data is being submitted to ECHA, the body set up by REACH to manage the regulation. Regulation (EC) 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies entered into force on 28 September 2006 and became applicable on 28 June 2007. This regulation aims at guaranteeing the right of public access to environmental information received or produced by EU institutions or bodies and held by them and at ensuring that environmental information is progressively made available and disseminated to the public. The provisions of this regulation prevail over those in REACH. According to Article 77 of REACH ECHA has the obligation to take a proactive role to disseminate information through an online portal and to provide access to documents that it holds, and are not disseminated, upon request

This article discusses the gaps in REACH in relation to the Aarhus Regulation, and the obligations for ECHA that derive from the application of REACH and from the fact that the EU is a party to the Aarhus Convention. The article also carries out a partial assessment of the work conducted by ECHA on access to and dissemination of environmental information.

2 Regulatory background of access to information

REACH provides rules for sharing information on chemicals. Article 5 of REACH prohibits a manufacturer or importer to place on the market a chemical substance in quantities over one tonne per year if it has not been registered with ECHA. The information to be submitted in order to register substances is foreseen by Article 10 and includes the identity of the manufacturer or importer, the identity of the substance, information on uses and guidance on safe use of the substance. The aim of sharing information is to ensure that only substances for which the properties are known are placed on the market and to ensure public authorities have the necessary tools for taking risk reduction measures for the marketing and use of these substances.

The recitals of REACH provide for underlying principles regarding access to information on chemicals (117, 118, and 119). In particular recital 117 reads: "The Agency and Member States should allow access to information in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information,[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[2] and with the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, to which the European Community is a party"[3] (the Aarhus Convention).

The Aarhus Convention was implemented by Regulation 1367/2006, which has applied since 28 June 2007, soon after the entry into force of REACH. However the management board of ECHA acknowledged the relationship between the Aarhus Convention and REACH in document MB/14/2008 on 14 February 2008.

3 REACH and dissemination

Article 77 of REACH sets out the tasks of ECHA in relation to the registration of chemicals. Amongst its tasks is to establish and maintain "*database(s) with information on all registered substances, the classification and labelling inventory and the harmonised classification and labelling list.*" The Article states that ECHA "*shall make the information identified in Article 119(1) and (2) in the database (s) publicly available, free of charge, over the Internet, except where a request made under Article 10(a)(xi) is con-*

1 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003.

2 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OL L 145/43, 31.5.2001.

3 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark, on 25 June 1998.

sidered justified"(known as confidentiality claim request).

Regulation 1367/2006 sets out the obligations upon EU institutions to:

"[O]rganise the environmental information which is relevant to their functions and which is held by them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology in accordance with Articles 11(1) and (2), and 12 of Regulation (EC) No 1049/2001. They shall make this environmental information progressively available in electronic databases that are easily accessible to the public through public telecommunication networks. To that end, they shall place the environmental information that they hold on databases and equip these with search aids and other forms of software designed to assist the public in locating the information they require."[4]

In view of the obligations for ECHA stemming from the Regulation 1367/2006, it follows that the obligations under REACH (Article 119 and others) are the minimum requirements for the dissemination of data on chemical substances, which is environmental information according to Regulation 1367/2006. Thus, ECHA must give the widest publicity to the environmental information it holds. While – according to Article 119 – ECHA only needs to disseminate the information listed, Regulation 1367/2006 provides for the widest dissemination of environmental information. Thus, the least obligation ECHA has is to interpret restrictively the grounds for confidentiality requests.

The limits to the obligation to widely disseminate environmental information are detailed in Article 4(3) and 4(4) of the Aarhus Convention; which concern, among others, the privacy and the integrity of the individual and the commercial interests of a natural or legal person, including intellectual property. It must be underlined that Regulation 1049/2001 provides for a wider range of exception than does the Aarhus Convention. However, environmental information cannot be subject to other exceptions mentioned in EU regulations as the Aarhus Convention prevails over secondary EU legislation.

Despite these exceptions, according to REACH, certain information cannot ever be claimed to be confidential. Article 119 states that certain information on chemicals must always be public:

a) the IUPAC name of dangerous phase-in substances that are on the market;
b) the name of the substance as given in EINECS (if applicable);
c) the classification and labelling of the substance;
d) physicochemical data concerning the substance and on pathways and environmental fate;
e) the result of each toxicological and ecotoxicological study;
f) any derived no-effect level (DNEL) or predicted no-effect concentration (PNEC) established in accordance with Annex I;
g) the guidance on safe use provided in accordance with Sections 4 and 5 of Annex VI;
h) analytical methods if requested in accordance with Annexes IX or X which make it possible to detect a dangerous substance when discharged into the environment as well as to determine the direct exposure of humans.

Article 16 of the repealed Regulation 793/93/EEC on the evaluation and control of the risks of existing substances also provided a list of information that cannot be claimed to be confidential. This provision included, together with the information listed in Article 119(1), the names of manufacturers and importers. In REACH information on manufacturer/importer is included in a list of information that must be disseminated unless a confidentiality claim is accepted by ECHA together with other information in the Safety Data Sheet (Article 119(2)(d)). Article 119 has enlarged the scope of the information that has to be published by including in paragraph 2, the information that must be published unless ECHA has accepted a "confidentiality claim request". This includes also the information listed in the Safety Data Sheets (which is the information that the supplier of a substance or a preparation shall provide the recipient of the substance or preparation).

When claiming the confidentiality of specific information, ECHA will check that the following conditions are fulfilled:[5]

- The information must be known only to a limited number of persons, i.e. it must not be in the public domain or general knowledge of the industry. Typically the registrant or third party would have undertaken specific measures to keep the information secret;
- Claims must be properly reasoned rather than being simple statements;
- The existence of a commercial interest must be demonstrated (the information must have some commercial value or a legitimate commercial interest needs to be at stake);
- Disclosure of the information must potentially harm a registrant's or a third party's commercial interest and there must be a causal link between publication of the information and the potential harm.

4 Regulation 1367/2006, Art. 4(1).

5 REACH-IT Data Submission Manual, Part 16 - Confidentiality Claims (ECHA-10-B-31-EN).

Jurisprudence of the European Court of Justice has demonstrated that the existence of a commercial interest justifies a claim for confidentiality only when there is a risk for 'undermining' the commercial interests. Undermining is much stronger than 'affecting' commercial interests. This means commercial interests must be put at risk by the disclosure, in the sense that disclosure would lead to an economical disadvantage for the economic operator.[6]

It follows that ECHA should fulfil its obligations to disseminate information on chemicals in the widest possible way. On the one hand ECHA should interpret extensively its obligation to publish certain information (i.e. information contained in Article 119). On the other hand it should interpret restrictively the grounds that would lead to the non-disclosure of the information.

4 REACH and access to documents

Article 77 of REACH provides for all the documents held by the Agency that are not disseminated, to be made available under Article 118 (which implements Regulation 1049/2001 into REACH). The obligation to provide access to documents applies to those documents held by ECHA that are not disseminated. All documents held by the Agency may be accessed in theory with the limitations provided by the Aarhus Convention. However Article 118(2) identifies information that is normally deemed to undermine the protection of the commercial interest of persons and companies registering a substance:

(a) details of the full composition of a mixture;
(b) without prejudice to Article 7(6) and Article 64(2), the precise use, function or application of a substance or mixture, including information about its precise use as an intermediate;
(c) the precise tonnage of the substance or mixture manufactured or placed on the market;
(d) links between a manufacturer or importer and his distributors or downstream users.

Similar lists of information that, if disclosed, can cause a business risk of a company are provided in other EU acts. In particular, Article 63 of Regulation 1107/2009 concerning the placing of plant protection products on the market.[7] The Regulation lists information whose disclosure is deemed to undermine the protection of the commercial interests or of privacy and the integrity of the individual concerned. These lists are probably the results of industry pressure on the legislator in order to get a protective shield that defends the commercial interest linked to the information which is particularly relevant in the field of chemicals. However, the institutions concerned are not exempted from the obligation of examining whether in the concrete case the disclosure of information would undermine the commercial interests in question and, whether there is an overriding public interest in the disclosure.

This obligation was reaffirmed by the ECJ in Case C-266/09:[8] *"Article 4 of Directive 2003/4* [which provides for the exceptions in access to environmental information] *must be interpreted as meaning that the balancing exercise it prescribes between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to the competent authorities, even if the national legislature were by a general provision to determine criteria to facilitate that comparative assessment of the interests involved."*[9]

Article 118(2) of REACH interprets the existence of an overriding public interest in disclosure *"[w]here urgent action is essential to protect human health, safety or the environment, such as emergency situations, the Agency may disclose the information referred to in this paragraph."* This interpretation of the overriding public interest in disclosure is too restrictive as it limits the existence of an overriding public interest in disclosure to emergency situations (e.g. a health problem related to a chemical in consumer products). Moreover, Article 118 doesn't take into account that information related to emissions into the environment must be disclosed. Thus, Article 118 of REACH has to be read in conjunction with Article 6 of Regulation 1367/2006, which provides for the obligation to interpret in a restrictive way the grounds for refusal of access to documents foreseen by Article 4 of Regulation 1049/2001. The public interest served by disclosure and whether the information requested relates to emissions into the environment have to be taken into account by the public authority.

Moreover, the provisions of the Aarhus Convention prevail over secondary EU legislation. The Court of Justice expressed this in the following terms: *"Article 300(7) EC* [now Article 216(2) TFEU] *provides that 'agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States'. In accordance with the Court's case law, those agreements prevail over secondary Community law."*[10] This

6 See General Court, case T-211/00, Kuijer v. Council, ECR 2002, pp.II-485.

7 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, OJ L 309/1, 24.11.2009.

8 ECJ, case C-266/09, Stichting Natuur en Milieu v. College voor de toelating van gewasbeschermingsmiddelen en biociden, paragraphs 55-59.

9 Article 4 of Directive 2003/4 foresees that *"Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment."*

10 Court of Justice, case C-344/04, IATA and ELFAA, ECR 2006, pp.I-403, paragraph 35; see also cases C-61/96, Commission v. Germany, ECR

means that REACH cannot restrict the right to access documents containing environmental information on grounds that are not foreseen by the Aarhus Convention.

5 Emissions into the environment and environmental information

As mentioned above, according to the Aarhus Convention and to Regulation 1367/2006, information on emissions into the environment has to be disclosed without exceptions. However, neither the Aarhus Convention nor Regulation 1367/2006 define the term "emissions into the environment". Article 2 of Regulation 1367/2006 mentions in defining environmental information "*emissions, discharges and other releases into the environment*". Although it does not define 'emission' it clarifies that it must be information that relates to the state of the environment affected by anything that can harm the environment. Article 2(8) of the Environmental Liability Directive (Directive 2004/35/EC) defines emission as "*the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms.*" The Directive applies to damages to all environmental media and refers to a wide range of human activities.. Due to the wide scope of Directive 2004/35/EC, it can be concluded that this definition is best suited to apply to the environmental information.

Derived from the definition of the Environmental Liability Directive 'emissions' includes all releases which enter the environment, whether they are substances, products, gases, radiation, heat, pollutants or other materials. The placing of substances on the market is a human activity. Under REACH, placing on the market means supplying or making available, whether in return for payment or free of charge, to a third party. Once a substance is supplied or made available to a third party, the substance leaves the premises of the company that has manufactured it and is available for use: it can be used in a consumer product, mixed with other chemical or handled by workers. In all these cases the substance gets in contact with the outside world and has the potential to influence it. Thus, information on substances placed on the market can be identified as an emission and therefore information related to such an emission must benefit from a wider openness that other environmental information held by ECHA.

An example of information on emissions into the environment held by ECHA is the 'exposure scenarios' of a substance. An exposure scenario has to be provided by a manufacturer or importer of a chemical in its registration dossier. The exposure scenario is "*the set of conditions, including operational conditions and risk management measures, that describe how the substance is manufactured or used during its life-cycle and how the manufacturer or importer controls, or recommends downstream users to control, exposures of humans and the environment.*"[11] The exposure scenario is also a part of the Safety Data Sheet. The information contained in this document has to be disseminated according to Article 119(2) of REACH. Another example of information on emissions are the test results on human health and environmental hazards and must be made available to those natural or legal persons who use them and to the public which is potentially exposed to them.[12] However the copyright issues related to test results make the dissemination of this data a very controversial point of discussion.

Exposure scenarios and test results demonstrate the consequences of the emissions of chemicals into the environment. Such consequences are the reason why information on emissions into the environment has to be disclosed to interested citizens without exceptions. As the Advocate General states in Case C-266/09 (para 95), "*[t]he public has an increased interest in finding out how they may be affected by an emission. Before the emission, effects on humans and the environment were rather unlikely or at least restricted to the sphere of the possessor of the commercial secrets. Released substances, on the other hand, necessarily interact with the environment and perhaps also with humans.*"

It follows that access to documents containing information on how a substance interacts with the environment cannot be kept confidential and must be disclosed to the public. In the example above, since the Exposure Scenarios are available to ECHA in the registration dossiers and are also part of the Safety Data Sheets, are information to be disseminated to the public.

6 ECHA's compliance with REACH obligations and with Aarhus

From the analysis of the provisions of REACH, it follows that, although the scope of the information dissemination is narrower than that provided by Regulation 1367/2006 and the Aarhus Convention, ECHA has nevertheless the tools to balance the interests of protecting the confidentiality of data with the prevailing interest of making available data on chemicals. It is thus worth assessing how ECHA has been implementing its tasks foreseen by Article 77 of REACH.

Information on chemicals is vital in order to give the possibility to the public to make an informed decision about their use of chemicals. Active members of the civil society can understand what substances are on

1996, p.I-3989, paragraph 52; C-286/02 Bellio Fratelli, ECR 2004, pp.I-3465, paragraph 33.

11 Regulation 1907/2006 (REACH), Art. 3(37).

12 Ibid. Recital 50.

the market and how human health and the environment may be affected by these substances. Furthermore, individuals and organisations concerned for the implementation of REACH will be provided with more tools to be watchdogs of the REACH implementation.

6.1 ECHA and dissemination

When evaluating ECHA's dissemination of information it is important to consider both the speed at which information is published and the quality of the information published. On both of these counts the response of the ECHA has been poor to date.

ECHA started to upload information on registered chemicals only in March 2011 for substances registered by 30 November 2011. REACH does not foresee a deadline for the implementation if the dissemination obligations, but ECHA has the obligation to make the information available as soon as possible.

The quality of data is also very poor and excludes important information such as registrant names, whether the substance is a Persistent Bioaccumulative and Toxic (PBT) substance and the relevant legislation under which each substance is regulated. Considering that ECHA will check the compliance with REACH only for 5% of substances registered, name of the registrant of the substance is crucial in giving the possibility to the public to identify the companies responsible for submitting poor quality data who could otherwise hide behind the shield of anonymity.

In particular, ECHA has so far decided not to publish registrants' names and registration numbers, which are included in the Safety Data Sheets, which, as mentioned above have to be disseminated pursuant to Article 119(2). (SDS).[13] According to ECHA, *"the decision on which information is to be made available in the dissemination portal from the dissemination dossiers was based on the legislation available at that time (2009) and in particular on Article 119 of the REACH Regulation. Since ECHA does not receive the safety data sheets of the substances registered, a workable approach was needed to implement Article 119(2)(d). [...] The information on 'other information in the safety data sheet' was agreed at that time to refer to the 'uses' and uses advised against, and this information is consequently available in the dissemination portal unless claimed confidential by the registrant".*[14] In the same letter ECHA declared that the information to be made available was under review and that no decision had been made on whether the registrants' names and registration numbers should be made available on the ECHA website.

6.2 ECHA and access to documents

As regards requests for access to information, ECHA has a set deadline to reply to requests from EU citizens. Regulation 1049/2001 states that an institution has 15 working days to reply to requests for documents, with the possibility to extend it to 30 working days in exceptional cases. However ECHA has so far demonstrated a failure to uphold its responsibilities under access to document regulations, which suggests that ECHA has an incorrect understanding or knowledge of the regulatory framework related to access to documents and of the jurisprudence of the ECJ. Overwhelmed by its tasks to help companies in complying with the registration requirements, ECHA has probably overlooked the issue of how to provide the information to the public.

Moreover, due to the shortcomings of ECHA in publishing the names of the registrants of substances, several access requests have been submitted by environmental organisations in order to access the documents that contain the names of the manufacturers and importers of specific chemical substances, particularly hazardous substances. However, ECHA believes that this information is confidential business information (CBI) despite the fact that it is public for several chemicals in the European chemical substances information system (ESIS), which was set up by the former European Chemicals Bureau (now Institute for Health and Consumer Protection). The executive Director of ECHA thus replied to ClientEarth's appeal to the refusal to access the name of the registrants of 181 chemicals as follows:

"Disclosure of information on manufacturer/importer and registration number would reveal information on the links between manufacturer/importer and downstream user and thus undermine the protection of commercial interest. In addition, the fact that a manufacturer or importer has registered is valuable market information. This information may result in making the market more transparent and allow operators to adapt their behaviour according to the status of their competitors. There is therefore a general interest not to disclose individual operators' information."[15] Thus ECHA argues that there is a general interest in protecting the identity of the registrants, partial access was not even considered (e.g. for substances for which the manufacturers names are already published in ESIS). According to Article 4(6) of Regulation 1049/2001 *"[i]f only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released."*

In another response to a request to documents ECHA replies that *"the legislator has considered that the*

13 Information in Safety Data Sheets has to be disseminated unless a confidentiality claim has been accepted by ECHA.

14 Letter from ECHA to ClientEarth 15-11-2010 (CSM/cm D(2010)4224).

15 Letter to ClientEarth of 4 January 2011 (GD/ipl D(2011)5384).

publication of the CSR[16] may potentially cause harmful effects which may be considered as a legal presumption that the CSR contains confidential information and its disclosure, either on the ECHA website or to a particular applicant, may in any case potentially cause commercial harmful effects to the registrant. At the same time, the CSR is built from the IUCLID file and contains general information such as the name of the company submitting the dossier, the composition including impurities, the description of manufacture, production sites, the tonnages, etc. According to Article 118(2) of Regulation 1907/2006, all these items of information have been considered to undermine the protection of the commercial interests of the concerned person and disclosure of such information may only be possible where urgent action is essential to protect human health, safety or the environment, such as emergency situations. For all these reasons the exceptions according to Article 4(2) of Regulation 1049/2001 apply."

Since ECHA has a legal obligation to disseminate parts of the information included in the CSR (e.g. identity of the substance, physical and chemical properties, exposure scenarios) it is incorrect to say that the legislator wanted to restrict the access to the CSR. Thus, ECHA has failed to comply with Regulation 1049/2001 that provides for the obligation to grant partial access to documents in case some of the information is deemed to harm the commercial interest of a company.[17]

7 Conclusions

The access and dissemination of information on chemicals can be a key to the success of the REACH Regulation. There is a risk that if the most relevant information on chemicals remains secret, many chemicals will remain on the market without risk reduction measures and the efforts to gather the information from registration will be useless. However, the shield of the Aarhus Convention and of Regulations 1049/2001 and 1367/2006 can effectively prevent the system to be locked in the interest of chemical companies. In this regard, the Aarhus Convention states that "*public authorities hold environmental information in the public interest."*[18] REACH has created ECHA in order to manage and in some cases carry out the technical, scientific and administrative aspects of REACH and to ensure consistency at EU level in relation to these aspects. It is the duty of ECHA to apply EU law and to weigh the public interest in disclosure of the information on chemicals with the commercial interest of companies that their business is not put at risk by the public disclosure of information. So far there has been almost a total shield in favour of companies registering chemicals and very little information has been disseminated or access to it granted.

However, ECHA only began operating in 2007 and may have underestimated the importance of its role in the dissemination of environmental information. It is desirable that the decisions on the information to be disseminated are taken with a strict reference to the provisions of Regulation 1367/2006 and of the Aarhus Convention and that the exceptions to access of information are interpreted with reference to Article 4 of Regulation 1049/2001. Moreover, although REACH provides for a list of information that normally should not be disclosed, the list should be interpreted strictly and a case-by-case examination must be carried out, i.e. the balancing exercise prescribed between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to ECHA. Furthermore, ECHA could identify the information that it holds which may be considered as information on emission into the environment in order to facilitate the access to environmental information that is not published on its website. In this respect, the environmental information that is disseminated must be easily accessible, up-to-date, accurate and comparable[19] and the information that it is obliged to disseminate must be made available automatically, as soon as received.

16 Chemical Safety Report. According to Art. 10 of REACH a CSR has to be submitted as part of the registration dossier when required by Article 14.

17 Regulation 1049/2001, Art. 4(6).

18 Aarhus Convention, Recital 18.

19 Regulation 1367/2006, Article 5.

Imprint

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elni membership

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

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

Please transfer the amount to our account at **Nassauische Sparkasse** – Account no.**: 146 060 611, BLZ 510 500 15,** IBAN: DE50 5105 0015 0146 0606 11; SWIFT NASSDE55.

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

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Öko-Institut e.V.
Institut für angewandte Ökologie
Institute for Applied Ecology

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.
The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.
The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

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

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

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

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

The Institute fulfils its assignments particularly by:
- Undertaking projects in develop-ing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research

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

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sofia

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.
The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.
The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of homo oeconomicus institutionalis, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover
- Product policy/REACh
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conversation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

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- Federal Ministry of Consumer Protection, Food and Agriculture

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elni

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

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. 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

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. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review 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).

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

elni publishes a series of books entitled "Publications of the Environmental Law Network International". Each volume contains papers by various authors on a particular theme in environmental law and in some cases is based on the proceedings of the annual conference.

elni Website: elni.org

The elni website www.elni.org contains news about the network. The members have the opportunity to submit information on interesting events and recent studies on environmental law issues. An index of articles provides an overview of the elni Review publications. Past issues are downloadable online free of charge.

elni Board of Directors

- Martin Führ - Society for Institutional Analysis (sofia), Darmstadt, Germany;
- Jerzy Jendroska - Centrum Prawa Ekologicznego (CPE), Wroclaw, Poland;
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- Gerhard Roller - Institute for Environmental Studies and Applied Research (I.E.S.A.R.), Bingen, Germany.

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