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Editorial

The current issue of elni Review (2/2011) covers a variety of topics on international environmental law, including standardisation of environmental NGOs, conservation law and two country specific contributions from Brazil regarding access to environmental information and biotechnological inventions.

Special focus in this issue is placed on two different topics: Firstly on intellectual property rights on genetic resources. The second subject is devoted to access to environmental information and access to justice within the framework of the Aarhus Convention.

First of all, *Christoph Then and Ruth Tippe* examine the impact of biopatents on animal and plant breeding in their article "Patents on melon, broccoli and ham?". After shedding light on current German and European patent legislation they discuss the consequences of patents on conventional breeding regarding genetic resources and food production.

The second article "Biopatents in Brazil" by *Edson Paula de Souza* provides insights into current legislation on biotechnological inventions in Brazil. He explores the impact of limitation on patent protection for R&D.

Susette Biber-Klemm and *Michelangelo Temmerman* then provide us with an overview of Rights to Animal Genetic Resources by comparing the different legal frameworks for plant and animal breeding/genetic resources on national and international levels.

The two subsequent articles address different aspects of the Aarhus Convention:

Sandra Aline Nascimento da Nóbrega gives an overview of access to environmental information in Brazil (access to environmental information is one of the three pillars of the Aarhus Convention). She compares the Aarhus Convention with Brazilian legislation and discusses which regulations have been implemented in Brazilian law.

In her contribution *Eva Julia Lohse* asks whether there is unrestricted access to justice for environmental NGOs. She examines the judgement of the European Court of Justice (Case C-115/09) on the non-conformity of the German Environment Appeals Act with Directive 2003/35 and the Aarhus Convention.

Ralf Lottes's article analyses what civic society can expect from the Commission's proposal for a legislative review of the European standardisation policy. He concentrates on the standardisation of NGOs through the review of the EU framework for standardisation regarding environmental NGO participation on a national level.

Hendrik Schoukens' contribution on temporary na-ture and conservation law examines the adaptability of European nature conservation law for temporary nature, focusing on the situation in Belgium.

Finally, we cover recent developments in environmental law with three different contributions concentrating on intellectual property rights in terms of genetic resources.

The article by *Lisa Minkmar* provides insights from a biopatent case: the "Teff-Patent" (EP 1646287).

Subsequently; *Claudia Fricke* reviews the current debate on the revision of Directive 98/44/EC on the legal protection of biotechnological inventions.

Lastly, *Graham Dutfield* comments on the United Nations Special Rapporteur on the Right to Food and the interplay between traditional knowledge, intellectual property rights and the right to food.

Contributions for the next issue of the elni Review are very welcome. Please send contributions to the editors by mid-February 2012.

Claudia Fricke/Martin Führ
November 2011

Rule of Law for Nature

9-11th May 2012
in Oslo, Norway

The year 2012 marks a number of watershed points in international environmental affairs: The 40th anniversary of the adoption of the Stockholm Declaration, the 30th anniversary of the UN World Charter for Nature and the UN Convention on the Law of the Sea, the 25th anniversary of the Brundtland Report, and the 20th anniversary of both the Rio Declaration, Agenda 21, and the UNCED Conventions: the Framework Convention on Climate Change and the Convention on Biological Diversity.

This is an appropriate point in time for reflection on the legal status of nature, how environmental goods and services are valued and taken into account in decision-making, and the implications of the rule of law in this respect.

While the rule of law generally is used with regard to citizens' rights, this conference aims to explore the application of the rule of law to environmental protection, and its implications. How can the legal protection of the natural environment be strengthened? This also opens for reflections on the temporal and geographical extension of the rule of law.

The conference aims at analysing these basic issues of international and national environmental law and looking at new trends in this area of law.

For more information about participation, including registration forms, please visit:

http://www.jus.uio.no/forskning/omrader/naturressurs/arrangementer/2012/05-09-rule-of-law

Unrestricted access to justice for environmental NGOs? - The decision of the ECJ on the non-conformity of § 2(1) Umweltrechtsbehelfsgesetz with Directive 2003/35 on access to justice in environmental law and the Aarhus Convention (Case C-115/09)

Eva Julia Lohse

1 Introduction

In Case C-115/09, the ECJ has decided that – despite their wording – Art. 10a of the Directive on Environmental Impact Assessment[1] (henceforth: Directive), which implements Art. 9(2) of the Aarhus Convention (henceforth: Convention), requires the Member States to provide unrestricted access to justice for environmental NGOs. This looks like a victory for environmental lawyers who have long advocated the introduction of an 'altruistic group action'[2] ('altruistische Verbandsklage') in environmental matters,[3] as Germany will have to modify its current transposition of the Directive in some way.

Germany transposed the relevant Articles of the Directive in § 2(1) German Environment Appeals Act (Umweltrechtsbehelfsgesetz, henceforth: UmwRG) and upheld the fundamental decision of German administrative procedure in § 42(2) German Administrative Procedure Code (Verwaltungsgerichtsordnung, henceforth: VwGO) to only guarantee judicial protection against infringements of individual rights.[4] Thus, according to § 2(1) UmwRG NGOs promoting environmental protection[5] can file an action against the state, claiming that it has infringed laws for the protection of the environment, but they can only do so if the provision at stake is (also) meant to protect the individual. Environmental NGOs have standing without having to allege an impairment of their own individual rights – which they would under § 42(2) VwGO. Yet, there are no situations where exclusively environmental NGOs can file an action. This means that if there is no individual to be protected, no one can demand judicial review of an administrative decision.[6] NGOs can therefore never act as *'lawyers for the environment'*, despite their actual impetus and their role in society.

Although one might wonder to what avail a legislator 'doubles' standing by giving standing to NGOs exclusively in the same cases as to individuals,[7] the actual problem of § 2(1) UmwRG in combination with the existing German administrative law, raising doubts about its conformity with the Directive, lies elsewhere, as illustrated by the case at stake:

A new power plant was to be built in the proximity of an area designed *"a special area of conservation"* under the Habitats Directive.[8] The public authority

1 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ L 156/17, 25.6.2003.

2 A note on terminology: N. de Sadeleer, G. Roller and M. Dross, Access to Justice in Environmental Matters and the Role of NGOs - Empirical Findings and Legal Appraisals (2005), 167, note 10 translate the same term by "public interest action", which means the same.

3 See, for example, M. Kloepfer, E. Rehbinder, E. Schmidt-Aßmann and Ph. Kunig, Umweltgesetzbuch – Allgemeiner Teil, (Berichte des Umweltbundesamtes 7/90), 23 and 448-451; W. Hoppe, M. Beckmann and P. Kauch, Umweltrecht (2nd ed., 2000), 266-267; de Sadeleer, Roller and Dross, supra note 2, 65-66 and 81-82.

4 Cf. Gesetzesentwurf der Bundesregierung, BT-Drs. 16/2495, 4.9.2006, 11-12. For an overview in comparison with the French system see T. von Danwitz, Verwaltungsrechtliches System und Europäische Integration (1996) and A. Schwerdtfeger, Der deutsche Verwaltungsrechtsschutz unter dem Einfluss der Aarhus-Konvention (2010).

5 And, according to § 3 UmwRG, are further accredited by the Federal Environment Agency *(Umweltbundesamt)* and have thus the ability to gain access to justice under the UmwRG. The UmwRG requires that they are set up permanently in order to pursue objectives of environmental protection, have existed at least for three years, are a non-profit organization, open to everyone and have the organizational means to guarantee the effective pursuance of their goals.

6 This is also stated by Opinion of AG Sharpston delivered on 16.12.2010, Case C-115/09 *Kohlekraftwerk Lünen,* para. 77. Cf. also M. Appel, *Subjektivierung von UVP-Fehlern durch das Umwelt-Rechtsbehelfsgesetz*?, NVwZ (2010), 473(474-475).

7 For critique see, for example, E. Gassner, *Umweltrechtliche Treuhandklage*, NuR (2007), 143 (147); S. Schlacke, *Das Umwelt-Rechtsbehelfsgesetz*, NuR (2007), 8, (15-16); F. Ekardt and K. Pöhlmann, *Europäische Klagebefugnis: Öffentlichkeitsrichtlinie, Klagerechtsrichtlinie und ihre Folgen*, NVwZ (2005), 532, (533) and Beschlussempfehlung und Bericht des Ausschusses für Umwelt, Naturschutz und Reaktorsicherheit zu dem Gesetzesentwurf der Bundesregierung – Drs. 16/2495, 16/2931 – Entwurf eines Gesetzes über ergänzende Vorschriften zu Rechtsbehelfen in Umweltangelegenheiten nach der EG-Richtlinie 2003/35/EG (Umwelt-Rechtsbehelfsgesetz), BT-Drs. 16/3312, 8.11.2006, 6 (DIE LINKE). On the other hand, a NGO might be better informed, better motivated or better organized and will therefore be more inclined to file an action than the individual neighbour of a polluting project, and empirical research has even shown that the mere existence of standing for NGOs leads to better adherence, better reasoning and more transparency in decisions by the public authorities, see W. Schrödter, *Aktuelle Entscheidungen zum Umwelt-Rechtsbehelfsgesetz*, NVwZ (2009), 157, (159-160), referring to experiences in German law with the group action under § 61 *Bundesnaturschutzgesetz*. See also de Sadeleer, Roller and Dross, supra note 2, 175, who compare models in Belgium, Denmark, France, Germany, Italy, The Netherlands, Portugal and the United Kingdom and reach the conclusion that "litigation rights for environmental associations foster better environmental law enforcement".

8 Directive 92/43/EEC of the Council of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ L 206/7, 22.7.1992.

had not collected the pertinent data in the course of the environmental impact assessment. Due to this it could not be determined whether the power plant would adversely affect the conservation area.[9] The BUND, an environmental NGO, challenged the building permission, but was denied access to justice by the lower courts as a result of § 2(1) UmwRG and § 42(2) VwGO because neither the German provisions transposing Art. 6(3) Habitats Directive[10] nor the precautionary principle (§ 5(1) Nr.2 Federal Immission Control Act (Bundesimmissionsschutzgesetz[11]) were designed to protect individual rights. Hence, no one – neither individuals, nor a NGO – could gain access to justice. The Administrative Appeals Tribunal (Oberverwaltungsgericht, OVG) doubted that this exclusion of environmental NGOs from access to justice was in conformity with Art. 10a of the Directive and therefore referred two questions to the Court, namely whether environmental NGOs must be enabled to claim the infringement of exclusively objective provisions for the protection of the environment and whether Art. 10a(3) of the Directive is directly applicable and therefore grants standing to environmental NGOs even if the national law could not be interpreted accordingly. The ECJ has answered both questions in the affirmative.[12]

The problem with § 2(1) UmwRG is that in German environmental law many provisions are designed to put into effect the precautionary principle, but are not supposed to protect the individual from hazards.[13] Thus, their application by the public authorities cannot be controlled by an independent judiciary. The ECJ has now found a solution at least for EU environmental law, which in its view must be subject to scrutiny by the national courts irrespective of whether it is meant to protect the individual or not.[14] By following the Opinion of AG Sharpston that NGOs have *"an automatic right of access to justice"*[15] the ECJ guaran-teed *"wide access to justice"* for the *"public con-cerned"* in environmental matters.[16] As a result, envi-ronmental NGOs must have standing in order to safe-guard the effective implementation of EU environ-mental law.[17] At first glance and from the perspective of environmental law, this is a quite satisfying deci-sion.

On a larger scale, the ECJ has ruled on the extent of margins of implementation for Member States when transposing Union law. Art. 10a of the Directive refers to an implementation *"in accordance with the relevant national legal system"* and the competence of the Member States to determine what constitutes a *"sufficient impairment of a right"*.[18] This opens a margin of implementation for the Member States. If the provisions are interpreted as the ECJ interprets them, this margin is largely limited: Member States may not determine the *"type"* of rights to be impaired[19] (at least) as far as environmental NGOs are concerned.[20]

Considering the tension between desirable effective implementation of environmental law through judicial review and an – unrequested – overly restrictive interpretation of the margin of implementation, the decision demands us to analyse closely why *"wide access of justice" (*Art. 10a (3) of the Directive) could mean 'unrestricted access' for NGOs (see section 2 below) and why it does and should not (see section 3 below). Finally, we will take a closer look at the consequences for (German) procedural law (see section 4 below).

2 Why "wide access to justice" may equal "unrestricted access"...

The conclusion the ECJ reaches is that

"Article 10a of Directive 85/337 precludes legislation which does not permit non-governmental organisations promoting environmental protection, […], to rely before the courts, […], on the infringement of a rule flowing from EU environment law and intended to protect the environment, on the ground that that

9 Cf. Beschluss des OVG für das Land Nordrhein-Westfalen, 5.3.2009, 8 D 58/08.AK, para. 39 and Case C-115/09, paras. 24-28.

10 Art. 6(3) reads: Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public." In this context see BVerwG, NVwZ (2007), 1074, (1076) (*Mühlenberger Loch).*

11 Federal Immission Protection Act.

12 This is still the prevailing opinion in German scholarship and legal pratice, see only Hoppe, Beckmann and Kauch, *supra* note 3, 274; M. Kloepfer, Umweltrecht (3rd ed., 2004), 581 and 586-587; Wahl/Schütz in:, Verwaltungsgerichtsordnung (F. Schoch, E. Schmidt-Aßmann and R. Pietzner eds., 20. EL, 2010), § 42 Abs. 2, paras. 160-166.

13 This is still the prevailing opinion in German scholarship and legal pratice, see only Hoppe, Beckmann and Kauch, supra note 3, 274; M. Kloepfer, Umweltrecht (3rd ed., 2004), 581 and 586-587; Wahl/Schütz in:, Verwaltungsgerichtsordnung (F. Schoch, E. Schmidt-Aßmann and R. Pietzner eds., 20. EL, 2010), § 42 Abs. 2, paras. 160-166.

14 C-115/09, paras. 42 and 45.

15 Opinion of AG Sharpston, Case C-115/09, paras. 51 and 53, referring back to her Opinion in Case C-263/08 Djurgården delivered on 2/7/2009, [2009] ECR I-9967, para. 43. Cf. also B. Wegener, Anmerkung zu den Schlussanträgen der Generalanwältin Sharpston - "*Ein Ferrari mit verschlossenen Türen" Die Generanwältin hält das deutsche Umwelt-Rechtsbehelfsgesetz für unionsrechtswidrig*, ZUR (2011), 84 (84).

16 C-115/09, para. 46.

17 C-115/09, paras. 41-48.

18 Art. 9(2) of the Convention speaks of an implementation „within the framework of its national legislation" and a determination of what constitutes an impairment of a right "in accordance with the requirements of national law" – however, those are only terminological, but not substantial differences.

19 Opinion of AG Sharpston, paras. 45-49 and paras. 66-72.

20 Case C-115/09, para. 45.

rule protects only the interests of the general public and not the interests of individuals."[21]

This implies that Member States may not restrict access to justice for environmental NGOs by determining the rights to be relied on in the action. This is not very surprising, considering the legislative and judicial history of both § 2(1) UmwRG and Art. 10a of the Directive. There is also evidence for this interpretation in the wording and the purpose of the Directive and the Convention.

2.1 "Automatic standing for NGOs" – not a surprise?!

The decision might be a landmark decision, but it is not surprising:

Even before the UmwRG entered into force in 2006, the German Committee for the Environment, Nature Conservation and Nuclear Safety claimed that the transposition by the German government did not correspond to the requirements of Union law.[22] It was held that the restriction of access to justice for environmental NGOs to the alleged impairment of an individual right contravened the obligation to guarantee wide access to justice and misrepresented their role in society, which was to monitor the correct application of provisions of environmental law. They should be able to do so by means of judicial review.[23]

Also, the majority in legal scholarship deems § 2(1) UmwRG to contravene EU law,[24] to show "*a built-in obsolence*".[25] The arguments are very similar to those of the ECJ, namely the wording of Art. 10a(3)3 of the Directive, which establishes a fiction in favour of environmental NGOs, and Art. 10a(3)1, which restricts the margin of implementation by the objective of "*wide access to justice*". Environmental NGOs must be able to demand review of substantive or procedural legality of a measure in as many cases as possible under the requirements of national law.[26] According to a strong opinion in legal scholarship, this can only be fulfilled if Member States introduce some form of 'altruistic group action',[27] which would allow environmental NGOs to demand judicial review, without being impaired in their own rights and without this right being accessory to the existence of a right directed towards the protection of an individual. The AG[28] and the ECJ[29] do not, of course, use this national terminology, but seem to think along the same lines:

"If […] those organisations must be able to rely on the same rights as individuals, it would be contrary to the objective of giving the public concerned wide access to justice […] if such organisations were not also allowed to rely on the impairment of rules of EU environment law solely on the ground that those rules protect the public interest. As the dispute in the main proceedings shows, that very largely deprives those organisations of the possibility of verifying compliance with the rules of that branch of law […]."[30]

Finally, the ECJ had already decided on the transposition of Directive 2003/35 as regards the restriction of access to justice once before. In Djurgården[31], the ECJ abolished a Swedish provision that prevented small NGOs from filing claims in environmental matters and recurred to the guarantee of a "*wide access to justice*" for NGOs under the Directive and the Convention as a limit to the national margin of implementation.[32] In both cases the same Advocate General, Eleanor Sharpston, delivered the opinion, and both times she argued for a narrow scope of implementation for the Member States and a very wide access to justice for NGOs, due to the wording and purpose of Art. 9(2) of the Convention and Art. 10a(3) of the Directive.[33]

In the end, the decision might only have been surprising for the German courts which have so far deemed the UmwRG to be within the limits of Union law – pointing to the margin of implementation and the possible harmonious interpretation of "*individual rights*", as far as the effective implementation of Union environmental law is concerned.[34] As will be

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21 Case C-115/09, para. 50.

22 BT-Drs. 16/3312, supra note 7, 5 (SPD) and 6 (BÜNDNIS 90/DIE GRÜNEN).

23 BT-Drs. 16/3312, supra note 7, 9. This assumption is confirmed by de Sadeleer, Roller and Dross, *supra* note 2, 174.

24 As a selection of the broad literature on this topic see Schwerdtfeger, *supra* note 4, 111 et sequ.; Ekardt and Pöhlmann, *supra* note 7; Schlacke, *supra* note 7, 13-14; A. Schmidt and P. Kremer, *Das Umwelt-Rechtsbehelfsgesetz und der "weite Zugang zu Gerichten"*, ZUR (2007), 57 (60-62); Wegener, *supra* note 15, 84 all with further references. *In favour of the EU conformity of § 2(1) UmwR*G, see however F. Bauer, *Die Durchsetzung des europäischen Umweltrechts in Deutschland* (2010), 95-98; T. von Danwitz, *Aarhus-Konvention: Umweltinformation, Öffentlichkeitsbeteiligung, Zugang zu den Gerichten*, NVwZ (2004), 272 (279).

25 Gassner, supra note 7, 147: "trägt das Verfallszeichen auf der Stirn".

26 See also (even more broadly), T. Bunge, Rechtsschutz bei der UVP nach der Richtlinie 2003/35/EG - am Beispiel der Anfechtungsklage, ZUR (2004), 141 (145).

27 See Rat von Sachverständigen für Umweltfragen (SRU), *Rechtsschutz für die Umwelt – die altruistische Verbandsklage ist unverzichtbar*, Stellungnahme February 2005, 11; Wegener, *supra* note 15, 84; Schmidt and Kremer, *supra* note 24, 60-62; Ekardt and Pöhlmann, supra note 7, 532; slightly different Schlacke, supra note 7, 15, who sees it as a form of representative action *(„Prozessstandschaft")*. On the other hand, von Danwitz, Aarhus-Konvention: Umweltinformation, *Öffentlichkeitsbeteiligung, Zugang zu den Gerichten*, supra note 24, 279 doubts that the Convention sets this as as minimum standard.

28 Opinion of AG Sharpston, paras. 69-72.

29 Case C-115/09, paras. 45-48.

30 Case C-115/09, para. 46.

31 Case C-263/08 Djugården-Lilla Värtans Miljöskyddsförening vs Stockholms kommun genom dess marknämnd [2009] ECR I-9967.

32 Case C-263/08, paras. 43-52, esp. para. 45.

33 Opinion of AG Sharpston, Case C-115/09, paras. 54 -72 with explicit reference to her conclusions in Opinion in Case C-263/08, paras. 42-58.

34 Cf. OVG Lüneburg, NVwZ (2008), 1144, at 1145 and Schrödter, supra note 7, 159.

shown below, such a wide, harmonious interpretation cannot, however, meet the requirements now established by the ECJ, namely that NGOs must be enabled to monitor the proper implementation of all provisions emanating from EU environmental law.

2.2 Wording of the provisions – the literal argument

As the Member States are obliged by Art. 288 TFEU and Art. 4(3) TEU *"[…] not [to] make it in practice impossible or excessively difficult to exercise rights conferred by EU law [principle of effectiveness]"*[35], they must grant NGOs wide access to justice. To judge whether a Member State has properly transposed the Directive, it is therefore important to determine what is meant by *"wide access"*.

According to Art. 10a of the Directive NGOs must be enabled to claim the impairment of rights and be granted a wide access to justice. Both is not the case if in a system as under § 42(2) VwGO claimants need to state an impairment in their own individual rights, i.e. as neighbours, owners of land or addressees of an administrative decision.[36] Environmental NGOs are usually not owners of neighbouring land[37] and would therefore already be denied access to justice, because they cannot claim an impairment of their own rights. At first sight, the fiction of Art. 10a(3)3 demands only that NGOs must be granted standing even if they do not hold the rights they claim themselves.[38] A system like the German one is therefore required to take one step away from the traditional 'Verletztenklage' by widening the provisions for standing for NGOs that cannot claim their own rights.

But, can one deduce from the wording that once NGOs are enabled to seek judicial review they must be able to do so in all environmental matters? Even read in context with the guarantee of *"wide access to justice"* Art. 10a(3) does not state that Member States are not allowed to limit this access to justice. If AG Sharpston concludes *"automatic standing"*[39] for NGOs inter alia from a comparison with systems that only require a sufficient interest,[40] this is an appealing argument from the point of view of the harmonisation of procedural law.[41] The 'interest-model'[42] naturally gives broader access to justice, as it does not specifically require a 'right' and can therefore be interpreted broadly as including 'general public interest' at least in situations where the claim cannot be made by anyone else.[43] The German model,[44] in contrast, differentiates between the addressee of an administrative decision – who always has standing, due to a possible infringement of the general freedom to act in Art 2(1) Basic Law for the Federal Republic of Germany (Grundgesetz[45]) – and other persons (who exceptionally have standing, if a provision for their protection has been impaired). Obviously, this model is problematic in environmental matters, as it gives the addressee of the permission wider access to justice than the public concerned.[46] This is true, even though, as its promoters claim, the intensity of scrutiny is higher. This is of no use when a potential claim cannot be filed because the claimant has no standing.[47] In the light of the objectives of the Convention it might therefore seem right to conclude that environmental NGOs must not only be granted standing, but that they must be used in order to uncover impairments of non-individual provisions for the protection of the environment.[48]

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35 C-115/09, para. 43.

36 Cf. § 42(2) VwGO or § 47(2) VwGO: „Verletzung in seinen Rechten" – "impairment in one's own rights".

37 For the practise in Germany to buy neighbouring land in order to gain standing *("Sperrgrundstücke")*, see Hoppe, Beckmann and Kauch, supra note 3, 265 with further references to the case law of the Federal Administrative Court (BVerwG) and the Administrative Courts of the Lander (OVG/VGH); Kloepfer, *supra* note 13, 590; Bauer, *supra* note 24, 38-40.

38 See the statements of the German government and the European Commission in the Opinion of the AG, paras. 47 and 48 and the decision C-115/09, para. 42.

39 Opinion of the AG, paras. 50 and 93.

40 Opinion of the AG, paras. 65-67.

41 Wegener, supra note 15, 84.

42 For the difference between "right" and "interest" in British law, see T. Endicott, Administrative Law (2009), 397 and J. Alder (ed.), Constitutional and Administrative Law (7th ed., 2009), 358, who refer to the case "Fleet Street Casuals" (*IRC v National Federation of Self-Employed and Small Businesses Ltd*. [1982] AC 617); for the "open door policy" in granting standing to everyone but "busybodies" see Endicott, ibid. 403-412; Alder (ed.), ibid. 358 and H. Barnett, Constitutional and Administrative Law (8th ed., 2011), 739 and 741-743.

43 This is the case in internal British law, see for example *R v Secretary of State for Foreign and Commonwealth Affaires ex parte World Development Movement* 1 [1996] WLR 386 and R v Inspectorate of Pollution, ex parte Greenpeace (No. 2) 2 [1994] CMLR 548, but it has been a long way to get there, as traditionally only those would have "sufficient interest", who were impaired in their own interest. Cf. Endicott, supra note 42, 401; Alder (ed.), supra note 42, 357-358 and Barnett, supra note 42, 742.

44 The German model is supposed to be the strictest model, with most Member States requiring only an interest (for example France, Belgium, Greece, Italy Luxembourg, the Netherlands, Portugal and to some extent Spain) or sufficient interest (mostly Ireland and the United Kingdom), see Ebbeson, Access to Justice in Environmental Matters in the EU (2002), 24 et sequ.

45 Art. 2(1) of the *Grundgesetz* reads: "Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law." This "general freedom to act" (*Allgemeine Handlungsfreiheit*) is already touched upon whenever a public authority restricts any action an individual wants to undertake, i.e. by not granting a building permission and is not restricted to important decisions for the development of one's personality. For this so-called *'Adressatentheorie*' see Achterberg, *Die Klagebefugnis - eine entbehrliche Sachurteilsvoraussetzung*, DVBl. (1981), 278 (278-279); Sodan in: Verwaltungsgerichtsordnung, Großkommentar (Sodan/Ziekow eds., 3rd edn., 2010), § 42, para. 383 and Kloepfer, supra note 13, 582.

46 See for example Hoppe, Beckmann and Kauch, *supra* note 3, 264; Schwerdtfeger, supra note 4, 131-135; however, the same is true about the British model, as "sufficient interest" does not exist where the claimant only alleges unlawful behaviour of the public authority, see Endicott, *supra* note 42, 395 and 398.

47 Cf. Opinion of the AG, para. 77 et sequ. and Wegener, supra note 15.

48 Cf. C-115/09, para. 46.

2.3 The purpose of the Convention: Judicial review as a mechanism of law enforcement

This shows that the wording of the Directive does not answer whether "*wide*" must mean 'unrestricted' in the case of environmental NGOs. The Court rather quickly turns to a purposive interpretation.[49] But what is the purpose of the Convention (and therefore of the transposing Directive)? The ECJ confuses two purposes: The first is the unique purpose of the Convention[50] to introduce comprehensive judicial review in environmental matters in order to guarantee a better and more transparent decision-making.[51] The second seems to be to enhance the effective and consistent implementation of EU law by the introduction of harmonised means of judicial review.[52] I will return later to the question of why the principle of effectiveness cannot be used in order to restrict the margin of implementation, and why this renders the decision partly unconvincing.

In order to establish the purpose of the Directive, the ECJ refers to the role granted to NGOs by the Convention.[53] The role of NGOs is not stated clearly in the Convention, though. It could be an active role in judi-cial review as a mean of control of law enforcement and transparent decision-making.[54] It could also be the use of their better knowledge, financial and organisa-tional means in order to assist individuals in exercis-ing their rights in relation to a sound environment.[55] Finally, comprehensive standing for NGOs could be a viable compromise between the exclusion of an actio popularis and a lack of judicial review for non-individual environmental provisions.[56] It is therefore a way to mend the often claimed 'enforcement deficit' in environmental matters in general and in 'rights-based' systems in particular.[57] This seems to be the purpose that the ECJ has in mind, and it is the only purpose that could not effectively be fulfilled by a provision like § 2(1) UmwRG.[58] The interpretation of the ECJ might be supported by Recital (18) of the Convention. It clarifies that access to justice serves the dual purpose of protection of the individual and guar-antee of law enforcement. As *"law enforcement"* also means "enforcement of non-individual provisions" *"guarantee of wide access to justice"* may also mean *"access to justice when non-individual environmental provisions are concerned"*.[59] [60] Thus, even if the purposive interpretation of the Convention by the ECJ might not be the only conceivable one, there are strong arguments in favour of this interpretation and the reasoning is convincing to an extent.

3 ... and why it does not equal "unrestricted access"

Yet, as appealing as it seems, *"wide access to justice"* must not necessarily mean unrestricted standing for environmental NGOs. First, there are still ways to restrict standing, so it is only a small victory for environmentally minded lawyers (1.). But secondly (and more problematically), the solution of the ECJ is not the only solution and – considering procedural autonomy of the Member States – it is only one option for effectively implementing the Directive (2.).

3.1 The decision is not all-embracing

The decision opens the way for judicial review and therefore hopefully to a better adherence to environmental provisions by public authorities. But, it is only a small victory for environmental lawyers on their way to introducing an 'altruistic group action' in environmental matters.

First, the interpretation of the ECJ is inevitably restricted to the scope of the Directive, i.e. to cases where an environmental impact assessment (EIA) becomes obligatory. This is not bad, considering that most big projects which *"are likely to have significant effects on the environment are subject to assessment"*[61]. Still, not all projects are subject to an

49 C-115/09, para. 46.

50 See Recitals (5)-(9) and (18) of the Convention. See also Recitals (3)-(4) and (9) of the Directive. The connection between the Convention and the Directive is also emphasized by the ECJ, see C-115/09, para. 41.

51 Cf. Recitals (6), (8) and (18) of the Convention.

52 It dates back to the decision in Case 33/76 REWE, [1976] ECR 1989. Other well-known decisions are Case C-213/89 *Factortame* I, [1990] ECR I-2433 and Case C-24/95 Alcan, [1997] ECR I-1591. See inter alia C. Lewis, Judicial Remedies in Public Law (2004), para. 15-075; T. Heukels and J. Tib, *Towards Homogeneity in the Field of Legal Remedies: Convergence and Divergence, in Convergence and Divergence in European Public Law* (P. Beaumont, C. Lyons and N. Walker, eds., 2002), 111(115); J. Schwarze, *Das Verwaltungsrecht unter europäischem Einfluß – zur Konvergenz der mitgliedstaatlichen Verwaltungsrechtsordnungen in der Europäischen Union* (1996), 18 et sequ.

53 C-115/09, para. 44 and 45. It is thereby in line with the German Committee for Conservation and Nuclear Safety, BT-Drs. 16/3312, *supra* note 7, 9.

54 See namely Recital (18) of the Convention and Recitals (4) and (9) of the Directive. This is also seen as one of the main aspects of the Convention by Schwerdtfeger, *supra* note 4, 118-122.

55 See Recitals (6) and (8) of the Convention.

56 See the different models throughout Europe as analysed by de Sadeleer, Roller and Dross, supra note 2, 183-187.

57 See, for example, Bauer, supra note 24, 43; Schmidt and Kremer, supra note 24, 61; P. G. G. Davies, European Environmental Law - An Introduction to Key Selected Issues (2004), 93-96; SRU-Stellungnahme, supra note 24, 2-3 (referring to infringement procedures which, as such, are likely to concern the mal-transformation of directives by the national legislature and not the wrong application by the national public authorities). For the role of NGOs in solving this problem cf. de Sadeleer, Roller and Dross, supra note 2, 198-199.

58 See Bauer, supra note 24, 97 and the references to the prevailing opinion in German scholarships in her note 404.

59 C-115/09, paras. 46-48.

60 See also the interpretation by Schwerdtfeger, supra note 4, 114 et sequ. and Gassner, supra note 7, 147, to whom the only possible restriction of rights would be a restriction to rights which form part of the goal of the organization.

61 Art. 2(1) of Directive 85/337/EEC.

EIA: Member States have, according to Art. 4(2) of Directive 85/337/EEC, considerable leeway in determining which projects fulfil the requirements of Annex 2 and have often interpreted Art. 4(2) narrowly.[62] This means that – as long as the follow-up Directive transposing Art. 9(3) of the Convention has not been issued[63] – access to justice will not be granted in all environmental matters.

Secondly, as the EIA only establishes procedural requirements, even if a NGO can demand review of its proper implementation, it cannot require that an illegal permission for the project is always withdrawn. This is especially true in Germany, where according to § 46 of the German Administrative Procedures Act, (Verwaltungsverfahrensgesetz)[64] and § 214 of the German Building Code (Baugesetzbuch)[65] procedural mistakes will not necessarily lead to an annulment of the decision.[66] Even if access to justice is widened, only the future will show if this does not result in a limitation of the intensity of judicial scrutiny and of those grounds suited to quashing an administrative decision. The case law of the German but also of the French and the English courts shows that there are many ways unrelated to access to justice to deny scrutiny.[67] It is therefore not certain that the environmentally friendly decision of the ECJ will lead to more environmentally friendly decisions of the national courts and therefore whether the logic of the Convention will pay out.

Further, the German implementation only contravenes Union law where provisions originating in EU environmental law are at stake.[68] Although environmental law is an area highly regulated by Union law, there remain many provisions for the protection of the environment that have a purely domestic background and need therefore not to be included in a revised UmwRG.[69] This is especially true, if Germany decides not to change the wording of the UmwRG, but interprets § 2(1) UmwRG in a way that facilitates the implementation of EU environmental law and therefore does not introduce the altruistic action but for EU environmental law.[70] A spill-over leading to the establishment of an altruistic group action for NGOs in all environmental matters seems highly unlikely. The long-held tradition of a judicial review only for those impaired in their individual rights ('Verletztenklage') will not be easily abandoned. Already § 2(1) UmwRG was said to have *"substantially changed the prevailing legal culture"*[71] by abandoning the requirement of an impairment of one's own rights. Also, reform plans for a code for environmental law, which would have introduced an altruistic action for all environmental matters,[72] have been discarded.

Even if Germany introduces an altruistic action, it will still not offer access to judicial review for all environmental groups. Member States remain free to establish which NGOs can be accredited as a *"non-governmental organisation promoting environmental protection and meeting any requirement under national law"* (Art. 1(2) of the Directive). The ECJ has clarified in Djurgården[73] that due to the principle of effectiveness Member States may not establish restrictive requirements that prevent nearly any group from bringing action before the courts, but smaller, ephemere or local groups may nevertheless be excluded.

62 Cf. only Case C-435/09 *Commission/Belgium*, OJ C 24/25, 30.1.2010; Case C-255/08 *Commission/The Netherlands*, OJ C 297/11, 5.12.2009; Case C-66/06 *Commission/Republic of Ireland*, [2008] ECR I-158; Case C-215/06 *Commission/Republik of Ireland*, not yet published, paras. 94 et sequ.; Case C-508/03 *Commission/United Kingdom*, [2006] ECR I-3969 () paras. 77 et sequ.; Case C-2/07 *Abraham*, [2008] ECR I-1197, para. 37; Case C-121/03 *Commission/Spain*, [2005] ECR I-7569; Case C-83/07 *Commission/Italy*, [2005] ECR I-4747; Case C-87/02 *Commission/Italy*, [2004] ECR I -5975, *and Commission of the European Community*, COM(2009) 378fin., 15.

63 Directive on Access to Justice in Environmental Matters, Proposal by the European Commission, COM(2003) 624fin. So far, no further discussion on the proposal could be detected after the European Parliament legislative resolution on the proposal for a European Parliament and Council directive on access to justice in environmental matters (COM(2003) 624 — C5-0513/2003 — 2003/0246(COD)), OJ C 103E/626, 29.4.2004. See also Schwerdtfeger, supra note 4, 39-40 for further explanations.

64 This Act states: "The claimant may not demand that an administrative decision (…) is abolished, only because the public authority has misregarded provisions on procedure, form or competence, if it is evident that this has had no influence on the outcome of the decision."

65 This Act states: "A violation of the procedural and formal requirements contained in this Act shall be regarded as seriously affecting the validity of the preparatory land-use plan or of local statutes only where (…).Flaws of procedure in the course of consideration are only significant where these have had an obvious influence on the outcome of consideration."

66 See for example U. Meyerholt, Umweltverträglichkeitsprüfung und nationales Zulassungsrecht (1999), 67; K.-H. Ladeur and R. Prelle, *Judicial Control of Administrative Procedural Mistakes in Germany: A Comparative View of Environmental Impact Assessments, in The Europeanisation of Administrative Law - Transforming national decision-making processes* (K.-H. Ladeur, ed., 2002), 93(108); R. Wahl, *Das deutsche Genehmigungs- und Umweltrecht unter Anpassungsdruck, in Umweltrecht im Wandel* (K.-P. Dolde, ed., 2001), 237 (256). For case-law of German administrative courts see for example BVerwGE 100, 283, 247; VG Aachen, 14/9/2005, Az.: 6 K 372/03, paras. 141 et sequ.; OVG NRW, DVBl. (2010), 719 and BVerwG, 20/8/2008, Az.: 4 C 11/07; whereas the English Supreme Court now allows a review of the merits of the decision, see Berkeley vs Secretary of State for the Environment and others 2 [2001] AC 603. The German interpretation might change with §4 UmwRG, see however Ziekow, *„Das Umwelt-Rechtsbehelfsgesetz im System des deutschen Rechtsschutzes*, NVwZ (2007), 259(264 et sequ.); Bunge, supra note 26 and OVG NRW, DVBl. (2010), 719(720).

67 This is from a comparative perspective mainly the case where especially where procedural mistakes of the public authority are at stake or courts are not held competent to review the merits of a decision. See the comparisons by Ladeur and Prelle, supra note 66 and G. de Búrca and Á. Ryall, *The ECJ and Judicial Review of National Administrative Procedure in the field of EIA, in The Europeanisation of Administrative Law* - Transforming national decision-making procedures (K.-H. Ladeur, ed., 2002), 145.

68 Case C-115/09, paras. 43, 46 and 48.

69 See also Schrödter, supra note 7, 159.

70 See OVG Lüneburg, NVwZ (2008), 1144 (1145).

71 BT-Drs. 16/3312, supra note 7, 5.

72 § 42 Umweltgesetzbuch I, Gesetzesentwurf der Bundesregierung, 4/12/2008.

73 Case C-263/08, para. 35 et sequ.

3.2 Procedural autonomy vs. effective implementation of environmental law

The result of the decision might be right, but the way the ECJ reaches it, is questionable. It can first be questioned because the ECJ does not mainly rely on convincing literal, systematic and purposive arguments within the Directive and the Convention, but turns to an unfamiliar understanding of the principle of effectiveness.[74] Secondly, it does not ask whether its interpretation is the only conceivable interpretation. However, as the margin of implementation is only restricted if the Directive itself does not allow any other interpretation, the ECJ cannot oblige Member States to implement the most effective instrument as long as the objectives of the Directive can be otherwise guaranteed. The central question is not whether there are better ways to guarantee adherence to environmental provisions. There most probably are. Both the Convention and the Directive accept that there are different national systems of judicial review and there is a presupposition that all these systems are able to effectively control the legality of administrative measures.

In order to answer the referred questions the ECJ had to decide whether the Member States can limit those 'rights' conferred to NGOs under Art. 10a(2) of the Directive to a certain type of rights. This is not the case if the margin of implementation is itself limited by the combination of the objective to give the public concerned wide access to justice and the fiction that environmental NGOs have *"a sufficient interest"* or respectively *"rights capable of being impaired"*.[75] The ECJ, however, mixes up different lines of argument by invoking 'effet utile' instead of clarifying the purpose of the Convention.[76] As the ECJ uses the argument in order to determine the purpose of the guarantee of *"wide access to justice"* within the Directive, one wonders what kind of rights the Member States are then still able to exclude, apart from obviously non-environmental provisions. Control of enforcement of law by individual claimants is surely the prevailing conception in Union law[77] and seems to underlie the Convention in some parts,[78] but it is not the only viable conception of the enforceability of rights and not the prevailing opinion in the internal law of the Member States. It is questionable whether this alteration was intended by the Member States when signing the Convention.

Contrary to the reasoning in C-115/09,[79] this can also not be concluded from the wording of Art. 10a of the Directive, which allows the public concerned to challenge the substantive and procedural legality of decisions. The German model neither excludes the challenge of procedural rights[80] under all circumstances nor do non-individual provisions constitute such a large part of environmental provisions that a wide access to justice seems to be necessarily excluded.[81] Most provisions in national and European environmental law are designed to (also) protect the life and health of the individual – only some directives like the Habitats Directive do not have any individual connotation.[82] Even the ECJ admits that neither Convention nor Directive prohibit a restriction to individual rights by the national legislators – except for environmental NGOs.[83] So, the question why environmental NGOs are special[84] and therefore require *"automatic, unrestricted standing"* remains unanswered – and the decision leaves the critical observer with the following question: Does the Convention require the introduction of an 'altruistic group action' as a minimum standard[85] and if not, could the EU at least oblige its Member States to do so by means of the Directive?

4 Consequences for procedural environmental law in Germany

Regardless of the quality of its arguments, the interpretation of the Directive by the ECJ is binding, not only for the referring court, but in the limits of CILFIT[86] for all Member States. The ECJ – in its own perception – has given *"the most useful answer*

74 See in more detail E. Lohse, Surprise? Surprise!, forthcoming EPL (March 2012).

75 See Opinion of the AG, paras. 41, 46 and 77.

76 Cf. C-115/09, paras. 43 and 46-47.

77 See for example D.-U. Galetta, Procedural Autonomy of EU Member States: Paradise Lost? (2010), 19-21; P. Craig, EU Administrative Law (2006), 813-816.

78 See, for example, Schwerdtfeger, supra note 4, 119-120.

79 C-115/09, paras. 37-45.

80 They can also have an individual component, at least according to German doctrine and jurisprudence, cf. W. Kahl, *Grundrechtsschutz durch Verfahren in Deutschland und in der EU*, VerwArch (2004), 1; Wahl/Schütz, supra note 13, § 42 Abs. 2 VwGO, paras. 157-158 and para. 214; M. Karge, *Das Umwelt-Rechtsbehelfsgesetz im System des deutschen Verwaltungsprozessrechts* (2010), 105-124 although it would probably be necessary to widen the understanding in order to respect the requirements of the Convention.

81 See however C-115/09, para. 48.

82 None of the recitals of the Habitats Directive mentions the individual or human health as one of the beneficiaries of the protection of habitats for fauna and flora. Different from the Directives 80/68/EEC (Quality of Water), 80/779/EEC (Quality of Air), 75/440/EEC (Drinking Water), the ECJ has never seen the protection of the individual as one of the purposes of the Habitats Directive, see only Opinion of AG Kokott delivered on 29.01.2004, C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee*, [2004] ECR I-7405, para. 143 and BVerwG, NVwZ (2007), 1074 (1075).

83 Cf. C-115/09, para. 45.

84 Cf. Opinion of the AG, para. 54: "uniquely privileged position.

85 von Danwitz, Aarhus-Konvention: *Umweltinformation, Öffentlichkeitsbeteiligung, Zugang zu den Gerichten*, supra note 24, 279 sees this very critically.

86 Case 283/81 CILFIT, [1982] ECR 3415, paras. 13 et sequ. See also A. Arnull, Interpretation and Precedent in European Community Law, in European Community Law in the English Courts (M. Andenas and F. Jacobs, eds., 1998), 115 (134); C. F. Germelmann, Die Rechtskraft von Gerichtsentscheidungen in der Europäischen Union (2009), 396.

possible"[87] by stating that by which means whatsoever NGOs must be enabled to claim the infringement of the non-individual Art. 6 Habitats Directive. How this can be done, must of course be decided by the referring court. For the German court, this leaves two options:

First, a harmonious interpretation of § 2(1) UmwRG by not applying the limitation to 'individual rights' for NGOs[88] or by extremely widening the understanding of 'individual rights' in a way that includes Art. 6 Habitats Directive.[89] As harmonious interpretation must take account of the requirements of national law,[90] at least the latter option seems problematic considering the prohibition of an interpretation contra legem. It is unclear how provisions like Art. 6, which are clearly only designed to protect the environment, can be interpreted accordingly. If it is constructed using Recital (6) of the Convention, hence arguing that the protection of the environment is essential to human well-being, and therefore any provision for the protection of the environment has also an individual character, a restriction of access to justice to NGOs becomes difficult to realise. An 'individual right' is an individual right – no matter if the claimant is a NGO or an individual.

Secondly, the German Administrative Appeals Tribunal (OVG) could grant standing to the BUND by using the directly applicable Art. 10a(3)3 of the Directive.[91] This is the way that is seemingly intended by the tribunal[92] and it is also the easier way as it thereby becomes clear that NGOs are somehow privileged compared to individual claimants. In the long run a modification of § 2(1) UmwRG by the legislator will be necessary. The tribunal seems very inclined to 'mend' the improper transposition by the national legislator, and furthermore to introduce via Europe legislative ideas that did not meet a political majority in national law.

Another question is whether the decision will have any repercussions on the discussion on standing for individual claimants in environmental law. Art. 9 (2) of the Convention and Art. 10a(3) of the Directive do not require Member States to introduce unlimited standing for individual claimants – this becomes sufficiently clear both from the ECJ's and the AG's argumentation.[93] Although this might be questioned by some when it comes to the argument of effective control of environmental provisions,[94] by virtue of Art. 10a(3) NGOs can be privileged as compared to individual claimants. Given the resistance by the German government to introducing an altruistic group action for NGOs it seems highly unlikely that there will be a voluntary spill-over into national law. An altruistic action for NGOs might therefore be a good compromise between maintaining the rights-based German model of judicial review and an even more effective control of environmental law.

Finally, the double obligation of Germany by the Directive and the Convention draws the attention to another interesting question:

As Art. 10a is virtually a word-to-word copy of Art. 9(2) of the Convention, a decision of the ECJ on the interpretation of the Directive is indirectly an interpretation of the Convention. Therefore, a Member State deemed to have mistransformed the Directive, has most probably not fulfilled its obligations under the Convention. This was the reason for the Aarhus Convention Compliance Committee[95] to suspend its proceedings against Germany until the case before the ECJ had been decided.[96] Considering that the interpretation of the Directive by the ECJ is by no means the only conceivable interpretation, it will be interesting to see if the Compliance Committee will 'follow' the ECJ's interpretation. It will also be interesting to see whether a spill-over to legal orders of non-Member States that are signatories to the Convention takes place. This would be an even bigger victory for environmental law – however, it seems unlikely as the ECJ argues mainly with the very specific principle of effectiveness in Union law,[97] and not with convincing literal and purposive arguments from the Convention.

87 C-115/09, para. 49.

88 This is the way proposed in the recent case-law by the ECJ, see Joint Cases C-397/01 to C-403/01 *Pfeiffer et al. vs Deutsches Rotes Kreuz*, [2004] ECR I-8835; Case C-555/07, *Kücükdeveci*, EuGRZ (2010), 62.

89 This seems to be the way the OVG Lüneburg wants to take; see NVwZ (2008), 1144 (1145). Also, the AG argues in that direction, see para. 84.

90 Kahl in: EUV/EGV (Ch. Calliess and M. Ruffert, eds., 3rd. ed. 2007), Art. 10 EGV, para. 59 referring to Case C-63/97 BMW [1999] ECR I-905, para. 23.

91 C-115/09, paras. 51-59.

92 As it is its third question, cf. C-115/09, paras. 51 and 52.

93 C-115/09, paras. 44-48 and Opinion of the AG, paras. 50 et sequ.

94 See, for example, Ekardt and Pöhlmann, supra note 7, 533-534.

95 Established under Art. 15 of the Convention.

96 The matter had been brought before the Committee as a Communication from the Public in 2008 (ACCC/C/2008/31), but has not been decided yet. Germany had been asked to submit its response by July 13, 2011. The matter was discussed at the meeting of the Committee in Geneva on September 23, 2011, but the decision has not been published yet. (Germany has reclined to submit its response earlier than June 20, 2011, which would have meant a speedy discussion at the meeting at the end of June in Chisi-nau).

97 C-115/09, paras. 46 and 48.

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

sofia is working on behalf of the
- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Na-ture Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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elni

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

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

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