

No2/2011

ENVIRONMENTAL
LAW NETWORK
INTERNATIONAL

RÉSEAU
INTERNATIONAL
DE DROIT DE
L'ENVIRONNEMENT

INTERNATIONALES
NETZWERK
UMWELTRECHT

elni

REVIEW

Patents on melon, broccoli and ham?

Ruth Tippe/ Christoph Then

Biopatents in Brazil

Edson Paula de Souza

Rights to Animal Genetic Ressources -
basic facts and debates

Susette Biber-Klemm / Michelangelo Temmerman

Access to environmental information in Brazil

Sandra Aline Nascimento da Nóbrega

Unrestricted access to justice for environmental NGOs?

Eva Julia Lohse

Temporary nature: Is European nature conservation law
ready for it?

Hendrik Schoukens

The Commission proposal for legislative review of the Euro-
pean Standardisation Policy - What's in it for civil society?

Ralf Lottes

Recent developments

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's contribution on temporary nature 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 Dufield* 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>

The Commission proposal for a legislative review of the European Standardisation Policy – What's in it for civil society?

Ralf Lottes

1 Introduction

On 1st June 2011 the European Commission has published its legislative package for the review of the EU-framework for standardisation consisting of a proposal for a regulation COM(2011) 315/2¹ and a Commission communication COM(2011) 311/2².

While dealing with issues such as enhancing standards for ICT and services and making the standardisation process quicker the proposed European Commission (EC) Regulation also tackles the issue of transparency and stakeholder participation (specifically of representatives of SMEs and “societal stakeholders” including environmental NGOs³) explicitly calling on the “European standardisation bodies [to] ensure an appropriate representation” of those representatives. The EC Communication promotes the increased use of standards to “address key societal challenges” including climate change and resource efficiency – something the environmental community sees with mixed feelings.

This article focuses on these two aspects. The communication published by the Commission is of immediate effect, although Parliament and Council will usually comment it in a resolution or conclusions, respectively. It does not have a legally binding⁴ value but includes political action points for the EC (or other actors). The proposal for a regulation is undergoing a co-decision procedure and will become directly applicable once it comes into force.

2 Background on standardisation

Standardisation is a system for the development of technical specifications and methods. These are to be used by industry for developing their products (and services), by certifiers to check performance against these specifications, by public authorities for meas-

urements, etc. In short, a standard is a universally agreed upon set of guidelines below the level of a legislative document. It is established by consensus and approved by a recognised body that provides rules, guidelines or characteristics of products and services.

From an environmental point of view, standards are crucial. Applied on an international and European scale, standards have a significant influence on the ecological footprint of the mainstream products and processes. Also, standards are increasingly used to implement (EU) environmental legislation, whereas the process of their elaboration takes place in expert committees with limited public scrutiny and participation. Civil society is underrepresented in the process due to scarce resources and a lack of interest, whereas corporate interests dominate and more often than not prevail.

On the other hand standards could be a powerful tool for furthering the environmental performance of the economy, since a small positive change to a parameter affects a whole market or sector because of the widespread use of standards. Measurement methods (e.g. for pollutants in air, water or soil) are crucial for the check against legal limit values and for uniform implementation of EU environmental and health legislation across Member States.

Despite their voluntary nature standards can have an almost de-facto mandatory effect, e.g. when referenced in legislation with which standards are supposed to prove compliance. In the European Economic Area a presumption of conformity with EU legislation is given by Harmonised European Standards (ENs) published in the EU's official journal. The concept of the “New Approach” means that a European directive usually provides for the framework – defining “essential requirements” a policy has to fulfil and leaving to standardisation the determination of technical details of implementation.

The bodies in which standards are elaborated are private organisations. There are three of those bodies at European level recognised by the respective EC Directive 98/34⁵ to elaborate standards for reference in

¹ Proposal for a Regulation of the European Parliament and of the Council on European Standardisation and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and of the Council - COM(2011) 315 final. The whole package can be found at: http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/index_en.htm.

² Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – A strategic vision for European standards: Moving forward to enhance and accelerate the sustainable growth of the European economy by 2020, *ibid*.

³ Non-governmental organisations.

⁴ In the sense of « enforceable ».

⁵ Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services; (OJ L 24, 21.7.1998, p. 37).

the EU's official journal: CEN⁶, CENELEC⁷ and ETSI⁸. The members of CEN and CENELEC are national standards bodies such as DIN (DE), BSI (UK), AFNOR (FR), etc. ETSI's⁹ members are mostly corporate, but also regulatory bodies.

ECOS the European Environmental Citizens' Organisation for Standardisation (asbl), was created in 2001 as a non-profit association in Belgium to enhance the voice of the environment within the (European and international) standardisation system. It currently has 24 member organisations and is an associate member of CEN, the European Committee for Standardization and a co-operating partner of CENELEC, the European Committee for Electrotechnical Standardization. ECOS has access to their technical committees and sends experts to participate in standards development work (to currently about 40 technical bodies in CEN, CENELEC and their international counterparts ISO and IEC). Organisations similar to ECOS exist to represent consumers¹⁰, trade unions¹¹ and SMEs¹² in the process. Although SMEs have a commercial, not a public interest in standardisation, their representatives face similar problems to those of environmental and consumer NGOs and have a hard time to make their interest prevail when they face bigger and more resourceful corporations.

3 EC policy review of standardisation and European Parliament (EP) contribution

Momentum for the EC-proposal has been building up over the last couple of years already. In the light of repeated claims by representatives of civil society organisations and SMEs regarding the problems they have been facing to make their voice heard, the European Commission¹³ launched a study about "Access to standardisation to determine to what extent the European standardisation system in its present form can guarantee appropriate access to all interested parties"¹⁴. Its final report was published in April 2009 and reported about access to the process and to stan-

dards. It concluded (among others) that environmental and consumer NGOs were the stakeholder groups experiencing the highest barriers for access. In reaction to this study CEN and CENELEC commissioned their own study about access to the process for SMEs¹⁵. It was later recognised that most of its 58 recommendations are applicable for enhancing the participation and understanding of societal stakeholders, too. Recommendations were made in areas such as "increased participation" or "enablers" such as making sure that technical committees' business plans include a stakeholder inventory for the issues at stake.

In parallel to that study the European Commission set up an "independent advisory Expert Panel for the Review of the European Standardisation System (EXPRESS)"¹⁶ to develop a strategic outlook of the system until 2020. The Panel consisted of 30 experts from European, national and international standards organisations, industry, SMEs, NGOs, trade unions, academia, fora and consortia and public authorities from EU and EFTA¹⁷ Member States. The author of this Article was a panel-member on behalf of environmental NGOs. The EXPRESS-report was published in February 2010 and contained interesting strategic goals and recommendations in areas such as "societal interests", "effective and efficient standards-setting", "access to standardisation", "the legal framework of standardisation in Europe" and "financing of standardisation in Europe". E.g. under strategic goal 10 "To ensure the easy access of all interested stakeholders to national, European and international standardization work and their effective participation" recommendation 10.5 to Member States and national Standards Bodies (NSBs) reads: "Enable free-of-charge online review of draft standards and existing standards at the Systematic Review Stage (usually after 5 years) to ensure public enquiries are effective in reaching all interested parties." For environmental NGOs this was an important goal. Whereas such free-of-charge online systems exist in a number of NSBs already, they are not yet implemented by all of them.

Standardisation became exposed to political limelight when the European Parliament's Committee for the Internal Market and Consumer Affairs (IMCO) decided to elaborate an own-initiative report¹⁸ "On the future of European standardisation", into which also the Committee on Industry, Research and Energy

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1998L0034:20070101:EN:PDF>.

⁶ European Committee For Standardization, <http://www.cen.eu>.

⁷ European Committee For Electrotechnical Standardization, <http://www.cenelec.eu/>.

⁸ The European Telecommunications Standards Institute, <http://www.etsi.org>.

⁹ In the following the argumentation in this article is focusing on the area of activity of CEN and CENELEC.

¹⁰ ANEC, The European Consumer voice in standardisation, <http://www.anec.org>.

¹¹ ETUI, The European Trade Union Institute, <http://www.etui.org/About-Etui>.

¹² NORMAPME, The European Office of Crafts, Trades and Small and Medium sized Enterprises for Standardisation, <http://www.normapme.eu/>.

¹³ Directorate General Enterprise and Industry is coordinating the EC's standardisation policy, see http://ec.europa.eu/enterprise/policies/european-standards/index_en.htm (accessed 23.09.2011).

¹⁴ http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/policy-review/access-to-standardisation/index_en.htm.

¹⁵ SME access to European standardization", see <http://www.cen.eu/cen/Services/SMEhelpdesk/Activities/SMEWG/Pages/default.aspx>.

¹⁶ http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/policy-review/express/index_en.htm.

¹⁷ The European Free Trade Association consisting of Iceland, Liechtenstein, Norway and Switzerland, see <http://www.efta.int/>.

¹⁸ In areas of its competence the EP may decide to elaborate a report in absence of a legislative proposal by the Commission under certain conditions. See rule 48 of EP rules of procedure <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=//EP//NONSGML+RULES-EP+20091201+0+DOC+PDF+V0/EN&language=EN>.

(ITRE) fed its opinion. The Parliament's plenary approved a resolution in October 2010 in which it heeded many of the positions expressed by ECOS during a public hearing held by the IMCO-committee. Among others, the report "...stresses, however, that these principles [transparency, openness, impartiality, consensus, effectiveness, relevance and coherence - note of the author] are not in themselves sufficient to ensure that all stakeholders – in particular those representing health and safety, consumer and environmental interests – are adequately represented in the standard-setting process within the European standardisation system; considers, therefore, that a vital element is the addition of the principle of 'appropriate representation', given that it is of the utmost importance, whenever the public interest is concerned, to incorporate all stakeholder positions in an appropriate manner, especially in the development of standards intended to support EU legislation and policies, while acknowledging the need to engage the most relevant technical experts for a given standardisation project..." as well as "...maintains that it is of the utmost importance to draw a clear line between legislation and standardisation in order to avoid any misinterpretation with regard to the objectives of the law and the desired level of protection; stresses that the European legislator must be highly vigilant and precise when defining the essential requirements in regulation, while the Commission must clearly and accurately define the objectives of the standardisation work in the mandates; stresses that the role of standardisers should be limited to defining the technical means of reaching the goals set by the legislator as well as ensuring a high level of protection..." and most importantly "holds the view that these European organisations representing societal interests must obtain a stronger role within the ESOs¹⁹; calls therefore on the Commission and the ESOs to promote different measures to achieve this purpose, including, without prejudice to the national delegation principle, providing those organisations with an effective membership, but without voting rights, within the ESOs, on condition that they are associate members or cooperating partners; considers also that the NSBs must play a key role in promoting and reinforcing the participation of societal stakeholders in the standardisation process, given the primacy of the national delegation principle..."

Several groups in the European Parliament were in favour of promoting a vote for societal stakeholders, but it was taken out on the initiative of the biggest group in the EP right before the final vote when a couple of cross-group compromise amendments to the resolution were agreed. These compromises are a standard practice in the EP.

The progressive proposals mentioned above are just examples and in general both the EXPRESS-report and the European Parliament's resolution gave big room to calls issued by ECOS and other societal stakeholders for more balance and better access. Thus the tone was set for the European Commission to come out with a legislative proposal incorporating these issues.

4 The EC-proposal for a regulation

The proposal by the European Commission has the potential to substantially foster the public interest by improving the role and impact by societal stakeholder organisations such as ECOS. It targets standardisation as and when it is being used to implement and specify provisions in European legislation. However, the reform proposals would be applicable to the entire standardisation system at European level with some impact also on the national standards bodies.

4.1 Transparency and stakeholder participation and the "national delegation principle"

Starting from the acknowledgement that "*the opinion of relevant societal stakeholders is not sufficiently integrated in the standardisation process in the EU*"²⁰ the Commission proposes as central disposition for societal stakeholders Art. 5(1) enshrining the principle of "*appropriate representation*" in the procedures for EU-driven standardisation activities in the "*Chapter II – Transparency and stakeholder participation*".

Whether "*appropriate*", "*balanced*" or any other is the most appropriate adjective can be discussed, but is secondary compared to the addition of such a principle as such. It is clearly spelt out that environmental NGOs and other societal stakeholders have to be enabled to make a meaningful contribution at (almost) all stages of the standards development process. This starts with policy development and ranges to the dissemination of adopted European standards passing by the crucial technical development stages. This is a very good starting point in terms of a principle, but it requires further refinement in order to be operational. So far neither "*appropriate representation*" is defined in Art. 2, nor is there a more specific idea what such representation will mean at the various stages of procedure. It should be further specified, maybe in an additional annex to the regulation.

The only – however crucial – stages missing are the formal votes on draft standards meaning the decisions processing a standard from one stage to the next including the latest stage, publication, i.e. the vote on the final draft. Although this has been under serious internal discussion during the development of the EC-proposal, these formal votes would remain reserved to

¹⁹ European Standardisation Organisations, i.e. CEN, CENELEC and ETSI.

²⁰ Regulation-proposal, p.2 of the explanatory memorandum.

the full members of the European Standards Bodies under the current EC-proposal.

However, in the impact assessment of the proposal²¹ this option was analysed and no inconvenience of principle with granting such rights was observed. Only its feasibility was questioned, because NSBs would have to agree to such a principle. First of all an argument that is not taken up is always lost from the start. The Member States which in their majority support their National Standards Bodies (politically and often financially) could very well advocate or press for the voting right with their respective NSBs in return for their general political support to them.

One of the main arguments put forward against such a vote is that it is against the national delegation principle. This principle means that European Standards are developed and agreed in consensus by the full members of CEN and CENELEC, the NSB²². The latter are supposed to incorporate all relevant national stakeholders in their decision-making process on a given standard. Therefore at the EU level, i.e. CEN and CENELEC are somehow “blind” on that stakeholder-eye in their decisions (despite the fact the societal stakeholder organisations can contribute to the technical work in CEN and CENELEC). However, ECOS and its sister organisations reckon that the very existence of the European level stakeholder organisations is due to and necessary because of a failure of the national delegation principle for certain stakeholders. ECOS as representation at European level is needed, because environmental NGOs do not have the means to get involved at the national level (except in one or two Member States) as this principle suggests. Hence, if an entire stakeholder group is absent from the decision-making process in almost all NSBs, the principle is not being complied with.

Parenthesis: Environmental NGO participation at national level

During the earlier stages of the review process, e.g. in the Commission’s “Access to standardisation”-study, it was clearly shown that societal stakeholders and especially environmental NGOs are almost absent from the process at national level. Systematic participation is the very exception. Until recently only in Germany a specific standardisation focal point has been existing for years federating three environmental organisations. Thanks to a successful project by ECOS the UK is now following suit. In earlier years Sweden and Denmark were participating for some time. It is also thanks to ECOS’ work with its network of national environmental NGOs (be they member organisations of ECOS or not), that occasional participation

such as forwarding of comments or occasional meeting attendance (or even regular attendance of a specific technical body) is getting more and more frequent, including in smaller countries such as Portugal, Belgium or Cyprus. That is a positive trend, which is however far from a real impact on the process (except from very rare specific work items of high interest to most environmental NGOs). The situation is only slightly better in the case of consumer NGOs.

Therefore, such a vote on standards should be restricted in several ways:

1. Content-wise: To the work items to which a representative societal stakeholder organisation has been contributing at technical (drafting) level. It would neither be required nor appropriate for organisations like ECOS to vote on any final draft standard whether of specific interest to it or not. ECOS does not have the means and is not mandated by its members to have an opinion on all ENs that are being produced.
2. Time-wise: Only as long as the respective stakeholder group (e.g. environmental NGOs) is not systematically and “appropriately” represented in the work of a threshold (e.g. 2/3 or 3/4) of NSBs. Once such a threshold is reached, there would be no need any more for a European level corrective. Once the national delegation principle really works for a given stakeholder group, the currently necessary twist to the principle (which is the vote) could be given up.

4.2 Support for European Standardisation Organisations and societal stakeholder organisations

The EU and EFTA use the ESOs, i.e. CEN, CENELEC and ETSI, to elaborate standards specifically requested for the implementation of EU policies. In return, the EU also provides funding to them. This is tackled in Chapter V of the EC-proposal.

Since participation in a sophisticated technical process of considerable duration requires resources and expertise, it is a logical step from the analysis of a participation gap (as demonstrated above in this Article) to tackling the resources question also for the stakeholder organisations. ANEC, ECOS, ETUI and NORMAPME have been receiving funding from different EC-departments (although with a considerable spread in the volume of funding among those organisations) for years. Otherwise those organisations would not have been able to perform the tasks they have been founded for (despite the fact that some of them, mostly ETUI and ECOS, dispose of relevant other funding sources, be they membership fees or funding from foundations or Member States). Therefore the EC-proposal foresees the continuation of this funding. That was already explicitly recommended by

²¹ http://ec.europa.eu/enterprise/policies/european-standards/files/standardization/sec-2011-671_en.pdf.

²² See the full lists at: <http://www.cen.eu/cen/Members/Pages/default.aspx> and <http://www.cenelec.eu/dyn/www/f?p=104:5:1728244132014085>.

the EXPRESS-report²³ and also the EP resolution²⁴. Furthermore the EC-proposal foresees the streamlining of the funding provisions.

Via the first aspect, its funding for the ESOs, the Commission detains a lever to press for progress on transparency and stakeholder participation.

4.3 Increased use of standards to “address key societal challenges”?

Last but not least at all for environmental NGOs the EC-communication includes an important reference to environmental issues. It promotes the increased use of standards to “address key societal challenges”²⁵, including climate change and resource efficiency. The environmental community sees such a provision with mixed feelings. It sees the improvements made during the last couple of years and the increasing impact it has on standardisation thanks to ECOS’ increasing standing and successes and also acknowledges the potential of the EC-proposal (provided its key provisions are not watered down) to bring more balance to the process. Nevertheless the decision for the optimal regulatory tool for a given policy and its implementation shall remain a case-by-case one. For environmental NGOs the key question remains what shall and can be defined at legislative level. Only dispositions of a technical and implementing nature which do not require a fundamental decision by the legislator can be delegated to technical, expert-driven processes such as standardisation. Environmental NGOs would not accept to delegate an entire policy area, e.g. resource efficiency, to standardisation.

In that context, the call of the Commission on the Standards Bodies at EU and national level to make the “mainstreaming of environmental aspects”²⁶ high priority is very positive. It is also most welcome that the EC’s JRC (Joint Research Center) shall henceforth act as scientific support to standardisation and that the texts of the package make frequent reference to the public interest.

Discussions in the institutions have started around the summer break. The Council working group in charge first debated the issue in July 2011, the first exchange of views in the EP’s leading IMCO (Internal Market and Consumer Protection Committee) has taken place in early October with a vote in plenary tentatively foreseen for May 2012. The Commission hopes for agreement between the institutions before the end of 2012. This would most probably mean one single reading in EP and Council only. It remains to be seen

whether this will materialise given the conflict potential of other aspects of the proposal (such as services or ICT including the issue of “fora and consortia”).

5 Conclusions

The Commission’s legislative package is a positive continuation of a process which has been going on for years now with a view of tackling some of the problems within standardisation observed from a public interest point of view. Increased balance among actors, stronger participation and more effective influence of societal stakeholders via their representative organisations are fundamental when an increased use of standards for the implementation of EU policies is already being observed and even more so envisaged in the future. However, it is crucial that the proposal will be further refined and strengthened instead of being weakened. Without real influence and appropriate procedural guarantees environmental NGOs will not agree to an increased use of standardisation in areas such as climate change and resource efficiency.

The CEN/CENELEC SME access study and its ongoing implementation show that the Commission’s policy review has been a strong driver for CEN and CENELEC to be more ambitious and proactive with internal reform. Such work will continue in parallel while the co-decision procedure goes its way and may provide important complementary results, provided that pressure in that sense from the EU-legislator continues.

In conclusion, instead of the motto chosen for the package by the European Commission “More Standards for Europe and faster”²⁷, I would plead for “Better standards for Europe and more balanced”, which would also capture the spirit of the proposal. Societal stakeholders are hoping that its essential elements will survive the codecision procedure and be even further strengthened.

Disclaimer: This article does only engage the author and not ECOS concerning its position on all aspects of the legislative review, since at the time of writing a final ECOS position remained to be determined.

²³ Recommendation 11.4 thereof.

²⁴ Point 33. thereof.

²⁵ P. 9ff. of the communication.

²⁶ I.e. the integration of environmental aspects into all areas of standardisation beyond the area of purely “environmental standards” considering that every product and thereby every product standard has an environmental impact.

²⁷ http://ec.europa.eu/enterprise/policies/european-standards/standardisation-policy/index_en.htm.

Imprint

Editors: Regine Barth, Nicola Below, Claudia Fricke, Martin Führ, Gerhard Roller, Julian Schenten, Silvia Schütte

Editors in charge of the current issue:

Martin Führ and Claudia Fricke

Editor in charge of the forthcoming issue:

Gerhard Roller (gerhroller@aol.com)

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

We invite authors to submit manuscripts to the Editors as files by email using an IBM-compatible word processing system.

The *elni Review* is the double-blind peer reviewed journal of the Environmental Law Network International. It is distributed twice a year at the following prices: commercial users (consultants, law firms, government administrations): €52; private users, students, libraries: €30. Non-members can order single issues at a fee of €20 incl. packaging. The Environmental Law Network International also welcomes an exchange of articles as a way of payment.

The *elni Review* is published with financial and organisational support from Öko-Institut e.V., and the Universities of Applied Sciences in Darmstadt and Bingen.

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

Authors of this issue

Susette Biber-Klemm is a senior research fellow at the World Trade Institut, University of Bern. Her research interests include the international and national legal framework for the utilisation of natural resources.

susette.biber-klemm@wti.org

Graham Dutfield is Professor of International Governance at the University of Leeds. His books include Intellectual Property, Biogenetic Resources and Traditional Knowledge, and Intellectual Property Rights and the Life Science Industries; G.M.Dutfield@leeds.ac.uk

Claudia Fricke, Lawyer specialising in IP, IT and information law; Research assistant at the Society for Institutional Analysis (sofia), University of Applied Sciences in Darmstadt, Germany; fricke@sofia-darmstadt.de.

Eva Julia Lohse, research and teaching assistant at the Institute of Constitutional and Administrative Law, University of Erlangen, Germany. She is about to finish a doctorate on methods and instruments of harmonisation in the EU, and specialises on the constitutional aspects of risk regulation (Nanomaterials). eva.lohse@jura.uni-erlangen.de

Ralf Lottes, Ass. iur., MPA (ENA), Secretary General of ECOS, the European Environmental Citizens' Organisation for Standardisation. ECOS is the European umbrella representing environmental NGOs in standardisation and the ecodesign process. More info: <http://www.ecostandard.org/>

Lisa Minkmar Ass. iur., is research associate at the Institute of Public International Law and European Law, Department of International Economic Law and Environmental Law, Georg-August-University Göttingen (Germany) and candidate in the PhD Program "Biodiversity and Society"; lisa.minkmar@jura.uni-goettingen.de.

Sandra Aline Nascimento da Nóbrega Brazilian lawyer with LLM in Comparative Law from Maastricht University, The Netherlands. She is currently preparing a PhD focusing on environmental issues at the same institution sandra.nobrega@globo.com

Edson Paula de Souza is a senior attorney at Momen, Leonardos & Cia. and concentrates his practice on intellectual property. He represents and advises clients in technology areas including biotechnology, pharmaceuticals, medical devices and foodstuffs; EPSouza@leonardos.com.br

Hendrik Schoukens is practising lawyer at LDR lawyers and researcher at the Centre for Environmental & Energy Law at the University of Ghent;

hendrik.schoukens@ldr.be.

Michelangelo Temmerman works as a post-doc research fellow to the National Centre for Competence in Research on Trade Regulation ('NCCR Trade Regulation'), and as a lecturer in intellectual property at the University of Bern;

michelangelo.temmerman@wti.org

Christoph Then is executive director of Testbiotech (www.testbiotech.org). He also acts as a Coordinator for the Coalition "No Patents on Seeds" (www.no-patents-on-seeds.org). Then studied veterinary and has been working for about 20 years on issues in the field of biotechnology;

info@testbiotech.org

Ruth Tippe is a biologist and member of the Scientific Advisory Board in the network of gene ethics (Gen-ethisches Netzwerk). Ruth Tippe is coordinator of "No Patents on Life" and regularly conducts patent searches at the European Patent Office;

rtippe@keinpatent.de

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.

Contact

Freiburg Head Office:

P.O. Box 17 71
D-79017 Freiburg
Phone +49 (0)761-4 52 95-0
Fax +49 (0)761-4 52 95 88

Darmstadt Office:

Rheinstrasse 95
D-64295 Darmstadt
Phone +49 (0)6151-81 91-0
Fax +49 (0)6151-81 91 33

Berlin Office:

Schicklerstraße 5-7
D-10179 Berlin
Phone +49(0)30-40 50 85-0
Fax +49(0)30-40 50 85-388

www.oeko.de

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

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

The Institute fulfils its assignments particularly by:

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

Main areas of research

- **European environmental policy**
 - 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

Contact

Prof. Dr. jur. Gerhard Roller
University of Applied Sciences
Berlinstrasse 109
D-55411 Bingen/Germany
Phone +49(0)6721-409-363
Fax +49(0)6721-409-110
roller@fh-bingen.de

www.fh-bingen.de

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

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

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

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- 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 Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

Contact

Darmstadt Office:

Prof. Dr. Martin Führ - sofia
University of Applied Sciences
Haardtring 100
D-64295 Darmstadt/Germany
Phone +49(0)6151-16-8734/35/31
Fax +49(0)6151-16-8925
fuehr@sofia-darmstadt.de

www.h-da.de

Göttingen Office:

Prof. Dr. Kilian Bizer - sofia
University of Göttingen
Platz der Göttinger Sieben 3
D-37073 Göttingen/Germany
Phone +49(0)551-39-4602
Fax +49(0)551-39-19558
bizer@sofia-darmstadt.de

www.sofia-research.com



sofia



NATUUR
& MILIEU



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, focusing 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), Wrocław, Poland;
- Isabelle Larmuseau - Vlaamse Vereniging voor Omgevingsrecht (VVOR), Ghent, Belgium;
- Marga Robesin - Stichting Natuur en Milieu, Utrecht, The Netherlands;
- Gerhard Roller - Institute for Environmental Studies and Applied Research (I.E.S.A.R.), Bingen, Germany.

elni, c/o Institute for Environmental Studies and Applied Research
FH Bingen, Berliner Straße 109, 55411 Bingen/Germany

www.elni.org