elni REVIEW

ISSN 1618-2502

No2/2012

ENVIRONMENTAL
LAW NETWORK
INTERNATIONAL

RÉSEAU
INTERNATIONAL
DE DROIT DE
L'ENVIRONNEMENT

INTERNATIONALES
NETZWERK
UMWELTRECHT

elni REVIEW

CONTENTS

Editorial

Water is a precondition for human, animal and plant life as well as an indispensable resource for the economy. Thus, according to the *European Commission* the protection of water resources, of fresh and salt water ecosystems and of the water we drink and bathe in is therefore one of the cornerstones of environmental protection in Europe. Against this background the present issue of *elni Review* focuses on the legal framework for (the protection of) water in Europe and explains, among other things, how far it can cope with possible threats from emerging technologies and to what extent some of the legislation has been implemented in specific member States of the EU. Moreover, insights are provided into some new political or scientific initiatives to further develop the legal framework for protecting water.

First off, *Catherine Ganzleben* and *Steffen Foss Hansen* examine whether Directive 2000/60/EC ('Water Framework Directive', WFD), which aims to reduce and minimise the concentrations of dangerous chemicals in European waters, and related legal requirements include the right instruments to capture nanomaterials. They also consider whether techniques are available to allow for monitoring nanomaterials in surface waters and review data from modelling exercises that estimate concentrations of nanomaterials in EU waters.

Subsequently, *Ana Barreira* provides an overview of the main elements of the Union's Marine Strategy Framework Directive (MSFD) and analyses how Spain, as an EU country with 8000 km of coastal fringe, is complying with the directive and will review its marine governance framework.

The third article is by *Thomas Ormond* and takes another perspective, evaluating how far international and European legal instruments for the regulation of ship dismantling (potentially) ensure the safe and environmentally sound recycling of European ships in regions like South Asia.

Sarolta Tripolszky explains the concept of the term 'water services' in her contribution and outlines the economic and legal consequences of a narrow and broad definition. In this context and with specific reference to a collective complaint started by the NGOs EEB and WWF in 2006 against 11 EU member states to enforce the correct implementation of the WFD, she also describes the development of this legal instrument.

The final article with a focus on water is by *Marga Robesin* and describes current discussions on the question of how to achieve substantial water footprint reduction, focusing in particular on certification and labelling.

A second series of contributions to this issue of the *elni Review* covers a variety of other up-to-date legal issues, including the advancement and legal implementation of the concept of 'sustainable development'. To this end, *Eckard Rehbinder*, who attended the United Nations Conference on Sustainable Development (Rio+20) in Rio de Janeiro in June 2012, shares some critical comments on the summit outcome.

The following contribution by *Peter de Smedt, Hendrik Schoukens* and *Tania Van Laer* examines the anchoring of sustainable development in the Belgian Constitution, discusses the concept's juridical enforceability and subsequently analyses the consequences of this qualification for the application in the jurisprudence.

In a further article *Julian Schenten* and *Martin Führ* present empirical data obtained by several survey methods focusing on companies which manufacture and/or use nanomaterials. They analyse the findings under the perspective of the degree to which REACH (Regulation EC 1907/2006) promotes innovations for sustainability in the field of nanomaterials.

In June 2012 the EU General Court adopted long awaited decisions in two cases in which it interprets for the first time Regulation 1367/2006 ('Aarhus Regulation') – *Anaïs Berthier* examines what real added value these two decisions have with regards to access to justice.

Finally, in a statement by *Almut Gaude* from BUND, the German branch of Friends of the Earth (FoE), the NGO expresses its perspective on the Rio+20 conference outcome.

We hope you enjoy reading the current journal. Contributions for the next issue of the *elni Review* are very welcome and may be sent to the editors by mid-February 2013.

Julian Schenten/Martin Führ

Greening the Constitution. The principle of sustainable development anchored in the Belgian Constitution

Peter de Smedt, Hendrik Schoukens, Tania Van Laer

1 Introduction: The legal anchoring of sustainable development

The concept of sustainable development is getting settled well within the framework of environmental law. The current meaning of this concept was defined by the report Our Common Future (1987)[1] of the World Commission on Environment and Development (WCED): *"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."* Since the publication of the Brundtlandreport in 1987, the concept of sustainable development can no longer be thought away from the political scene. Especially since the Conference of Rio in 1992[2] the concept has been used more often in juridical texts, at international as well as at European level.[3]

Also in the Belgian legal order, the concept of sustainable development has found its way into legislation at federal as well as at regional level step-by-step. As in international documents and treaties, the concept is mostly formulated as a policy goal.

To the contrary, Article 4 of the Federal Law Marine Environment (LWE) defines sustainable development as a juridical principle which stands on the same footing as some other environmental principles (principle of prevention, precautionary principle and the polluter pays principle). This stipulation has a very wide scope since, according to Article 4, §1 LWE, it has to be taken into account not only by the government but by all users of the sea areas. This is a very unusual approach. It also raises the question of whether sustainable development, as conceived by the Law Marine Environment, is merely a principle or rather a rule of law, also enforceable against private users of the sea areas such as fishermen and operators of wind farms or shipping companies.

Occasionally, sustainable development is also seized under an even unusual norm qualification. This raises even greater questions about the juridical consequences and the enforceability thereof. Article 2.1.3. of the Flemish Order concerning General and Sectoral Provisions relating to Environmental Safety (VLAREM II), for example, defines sustainable development as an environmental quality standard that, according to Article 2.1.2., is maintained by the authorities during the planning and the realisation of their policy, such as in terms of permitting policy (see Article 2.1.2., §2 VLAREM II as well).

Several other laws aim at a more practical or instrumental application of the concept of sustainable development. Within this framework, for instance, there is the Law of 5 May 1997 regarding the coordination of the federal policy concerning sustainable development which lays the foundations for the advisory body, the planning instrument and the organizational staffing of the federal sustainable development policy. More than 10 years later, at 18 July 2008, the Flemish Region enacted its own decree to promote sustainable development, which offers a juridical basis for the sustainable development policy in Flanders. Contrary to the goal and other legal provisions mentioned above, the Law of 5 May 1997 as well as the Decree of 18 July 2008 define sustainable development. This definition is, according to the parliamentary preparatory documents, inspired by the definition given by the Brundtland report.

The insertion of sustainable development in the Belgian Constitution is unmistakably the final part of this legal embedding process. Indeed, on 25 April 2007, an Article *7*bis was inserted in the Constitution[4], reading as follows: *"In the execution of their respective competences, the federal state, the communities and the regions will strive towards the*

1 www.un-documents.net/wced-ocf.htm.

2 www.un-documents.net/rio-dec.htm.

3 See K. BOSSELMANN, *The Principle of Sustainability. Transforming Law and Governance,* Aldershot (Hampshire), 2008, 25-41.; M-C., CORDONNIER SEGGER, 'Sustainable Development in International Law', in H. CHRISTIAN BUGGE en C. VOIGT (eds.), *Sustainable Development in International and National Law,* The Avosetta Series (8), Groningen, Europa Law Publishing, 2008, 91-113; M.C. CORDONIER SEGGER en A. KHALFAN, *Sustainable Development Law: Principles, Practice and Prospects*, Oxford, Oxford University Press, 2004, 350 pag.; D. FRENCH, 'International Law 'in the field' of Sustainable Development: The Elaboration of Legal Principles', *Environmental Law and Management* 2004, 296-300.

4 See C.H. BORN, D. JANS, CH. THIELBAUT, C.H. BORN, 'Le développement durable entre dans la Constitution', in En hommage à Francis Delpéree. Itinéraires d'un constitutionaliste, Brussel, Bruylant, - Parijs, LGFJ, 2007, 209-230; C.H. BORN 'Le développement durable: un objectif de politique générale à valeur constitutionelle', RBDC 2007, 193-246; P. DE SMEDT, 'Duurzame ontwikkeling als beleidsdoelstelling verankerd in de Grondwet. Op zoek naar de maakbare samenleving?' in X., Liber amicorum Hubert Bocken. Dare la luce, Brugge, die Keure, 2010, 301-332; F. DELPÉRÉE, 'À propos du développement durable. Dix questions de méthodologie constitutionelle', in G. DE LEVAL, M. PÂQUES en V. DUHART (eds.), Liber Americorum Paul Martens. L'humanisme dans la résolution des conflits. Utopie ou réalité ?, Brussel, Larcier, 2007, 223-233; J.-F., NEURAY en M. PALLEMAERTS, 'L'environnement et le développement durable dans la Constitution belge', Amén. 2008 (numéro special), 131-141; M. VIDAL, 'Duurzame ontwikkeling in de Grondwet', Juristenkrant 2007/149, 5.

objectives of sustainable development in their social, economic and environmental related aspects, taking into account the solidarity among the generations". As a result, Belgium is following the track of several other pioneering states, such as France, Switzerland, Greece and Luxembourg.[5] In the course of time, other policy goals may be inserted under this title which introduces a new category of constitutional stipulations, such as legal certainty or the public safety.[6]

Nevertheless, the question arises whether the constitutional anchoring of the concept of sustainable development has a meaningful influence on the juridical impact of the concept of sustainable development. Lots of jurists have difficulties with the vague character of the concept of 'sustainable development'. Is it a juridical binding norm or merely an ethical or political concept, an ideal? And, consequently, does it lend itself to affect permitting and the application in a juridical procedure?

Within the Belgian framework, there are not yet examples of jurisprudence granting a meaningful role to the concept. However, permitting practices refusing environmental permits or subjecting them to strict conditions seems to reflect the constitutional stipulation, even though the permit requirement otherwise satisfies all other environmental standards. In the spring of 2008, for example, several decisions of the deputation for the Antwerp Provincial County Council with regard to environmental permit requirements for the exploitation of palm oil power stations, *i.e*. BIOX, were in the news. Although all necessary legal environmental obligations were fulfilled, the Deputation of the Antwerp Provincial County Council refused the permit since the energy group could not sufficiently guarantee the sustainability of the installation. One pointed out the impact of palm oil imports on the preservation of the forest, the biodiversity and the food supply, in this particular case in South-East Asia, Malaysia and Indonesia. As juridical reason of refusal, the standard of sustainable development was referred to, which had recently been anchored as a general policy goal in Article 7bis of the Constitution. When making use of palm oil as an energy resource, the compliance with this objective could not be guaranteed. In the meantime, however, the Minister responsible for the environment has lifted this refusal of 20 March 2008 of the Deputation of the Antwerp Provincial County Council.[7] Though it was principally considered that *"the environmental permit regulation does not offer juridical grounds to refuse environmental permits 'merely' for ethical reasons"*, it was decided that an extensive report obligation should be imposed as a special condition in the permit. On the basis of this permit obligation, the operator is obliged to deliver to the government a yearly report with regard to, amongst other things, the compliance of the used fuels with the applicable European and/or national sustainable criteria in force, the confirmation that the operator only uses RSPO-certified oil that complies with these criteria, the availability in the power plant of sustainable alternatives for palm oil and the economic and technical feasibility of the use of these oils in the power plant.

The questions and cases mentioned above constitute the point of departure for this article. Now the juridical enforceability of the concept will be discussed and subsequently the consequences of this qualification for the application in the jurisprudence will be analysed. Finally, the contribution ends with some concluding remarks.

2 The legal enforceability of the constitutional policy goal of sustainable development

2.1 Sustainable development as a legally binding policy goal

Article 7bis of the Belgian Constitution formulates the concept of sustainable development as a general policy goal. Thus, the description of policy goal has a pronounced political connotation. This approach finds an even better expression in the French heading of the title concerned: "*Des objectifs de politique générale*". However, this indication does not say anything about the status of this stipulation within the legal framework.

The thorniest question is indeed whether sustainable development, constitutionally anchored as a general policy goal, has achieved the status of a legal standard to which legal consequences are attached.

Certain authors approach the concept of sustainable development as a political concept or a pursued ideal, even though it is inserted in a legal text.[8] In case the concept of sustainable development would indeed merely have an ethical meaning, it does not offer – according to current jurisprudence – an assessment basis for administrative decisions such as on the

5 Preparatory Report of the Senate, 2005-2006, nr .3-1178/2, 74 en 78-79, http://www.senate.be/.

6 Preparatory Report of the Chamber, 2005-2006, nr. 51-2647/004, 3, http://www.lachambre.be/.

7 Order of the Minister of Environment, December 23, 2008.

8 See L. KRÄMER, 'Sustainable Development in EC Law', in H. CHRISTIAN BUGGE, C. VOIGT (eds.), Sustainable Development in International and National Law, o.c., 393; F. DELPÉRÉE, 'À propos du développement durable. Dix questions de méthodologie constitutionelle', in G. DE LEVAL, M. PÂQUES, V. DUHART (eds.), Liber Americorum Paul Martens. L'humanisme dans la résolution des conflits. Utopie ou réalité ?, Brussel, Larcier, 2007, 227 en 231; J. VERVAET, C. VAN DE HEYNING, 'Hoe fundamentele rechten het leefmilieu beschermen', NjW 2010, 570; J.M. VERSCHUUREN, De laatste wilde hamster in Nederland en de grondslagen van het Europees en internationaal milieurecht, Deventer, W.E.J. Tjeenk Willink, 2000, 12-13.

licensing of permits.[9] In the BIOX case, as described above, the Minister of Environment also seems to be of this opinion.

The vision reducing the new constitutional stipulation concerning sustainable development to a merely ethical ideal or a merely political program statement, without any binding force, is too cautious. The mere fact that there is no unambiguous interpretation of the concept and that it particularly concerns a political policy concept by no means seems to be a sufficient argument to deny any legal effect. At the very most this is an argument which states that sustainable development has not (yet) achieved the status of 'principle' and is thus not in line with, for example, the precautionary or the polluter pays principle.

In our opinion, Article 7bis of the Constitution does contain a legally binding standard of conduct. Such a conclusion also suggests itself if the definition of 'law' is the starting point. According to the classical legal doctrine, the concept of law is defined as the entirety of standards of conduct and institutions a government has developed and imposes to protect vital interests of society. In this light, one can hardly doubt the regulatory nature of Article 7bis of the Constitution. It is apparent not only with the insertion of this concept in an official source of law, namely the Constitution, but also from the text of the constitutional provision itself which explicitly states that "*while exercising their respective competences*" the target government "*pursues*" objectives of sustainable development, which simply holds a rule of conduct. The weak formulation of this stipulation ('to pursue') does not preclude this. At the very most, it says something about the nature of the legal rule, namely its classification as an obligation of efforts or as an obligation of results, and consequently about the policy margin that authorities maintain while exercising their competences.

In the parliamentary preparation for the amendment of the Constitution, leading to the introduction of Article 7bis of the Constitution, it was therefore very extensively argued that the text is not a purely political text with only a symbolic value, but formulates a binding rule of law.[10] Perhaps to put this issue beyond all doubt, the Secretary of State for Sustainable Development and Social Economy declared that due to the new constitutional provision "*a right to policy decisions is created that takes into account a long term vision and attempts to include the economic, social and ecological balances in these policy decisions*".[11] This statement goes too far. After all, a citizen does not derive any rights from Article 7bis of the Constitution. Meanwhile, most legal authors, dealing with this subject, confirm that Article 7bis of the Constitution contains a legally binding standard.[12] Moreover, it is a standard with constitutional value, which means the standard obtains the highest rank in the hierarchy of legal standards. The place occupied by this standard in the hierarchy can play a part in assessing the validity of subordinate legal, regulatory or individual government acts and in balancing interests.

2.2 Qualification of the 'standard' sustainable development

2.2.1 No personal rights, but an obligation for the government

Article 7bis of the Constitution does not address citizens who are granted certain rights or are imposed certain obligations. There is a broad consensus that this constitutional provision does not create new personal rights.[13] This is shown by where the new constitutional article is anchored, the addressee of the included standard of conduct and the reference to the concept of 'objectives' in that constitutional provision. Thus, a citizen cannot go to court claiming restitution for reasons of infringement of his or her 'right' to a sustainable existence. Since Article 7bis of the Constitution does not create any rights, citizens cannot set up a liability claim against the Belgian State or any other government for omitting to develop initiatives to realize the objectives of sustainable development.

From the wording of this constitutional stipulation and its embedment in the constitutional architecture it can be derived that the constitutional provision addresses the government exclusively.

As regards the scope of *ratione personae*, Article 7bis of the Constitution seems to have a wide scope. Both the governments belonging to the legislative power as well as those belonging to the executive power are envisaged. In this context, certain authors also mention the judiciary power[14], but it seems disputable whether this 'government' is the addressee of the new target stipulation in the Constitution as well. Although the literal reading of this constitutional provision suggests otherwise, this obligation also applies to the local administrations, such as provinces or municipalities. The Secretary of State for Sustainable Development and Social Economy has declared the following: "*The use of the terms 'Federal State', 'Communities' and 'Regions', rather than the term 'government', is based on the idea that provinces and*

9 See Council of State, Judgment nr. 177.450, 30 November 2007, n.v. Moerwegel Mink.

10 Preparatory Report of the Senate, 2005-2006, nr. 3-1778/2, 11, 12 en 41; Preparatory Report of the Chamber , 2005-2006, nr. 51-2647/004, 3, 4 en 10.

11 Preparatory Report of the Senate, 2005-2006, nr. 3-1778/2, 13.

12 C.H. BORN, *o.c.*, 202 en 215 e.v.; J.-F., NEURAY en M. PALLEMAERTS, *o.c.*,139.

13 C.H. BORN, *o.c.*, 218-219, 240; F. DELPÉRÉE, *o.c.*, 231; J.-F., NEURAY en M. PALLEMAERTS, *o.c.*, 139.

14 C.H. BORN, *o.c.*, 224.

municipalities are subordinate instances, acting within the legal framework. It seemed better to merely mention the instances having a legislative competence. The subordinate instances are undisputable, though indirectly, taken into account".[15] These authorities are therefore bound by the standard on the basis of the principle of legality. *A fortiori* also other legal persons of public-or private-law, charged by the authorities with tasks of public utility, are seized by this constitutional target stipulation.

As regards the scope *ratione materiae*, the constitutional provision applies to all areas of competence relevant for sustainable development or one of its components (environmental policy, economic and social policy), so that a large number of policy areas are qualified, including among others fiscal policy, defense and security policy, external relations policy or justice policy. Moreover, Article 7bis of the Constitution applies to the realization of public policy in the broad sense, including permitting policy. The latter will, of course, not always be obvious since it is often not easy to test an individual decision of the authorities, for a relatively local situation, and its actual impact against a framework of objectives defined on a much larger, even worldwide, scale.

2.2.2 Obligations for the government

The constitutional objectives article is no non-committal affair for the government. This has been accepted before for other legal environmental principles and policies. However the question arises of the extent to which the authority is bound by the constitutional policy target of Article 7bis of the Constitution.

More specifically two obligations seem to result for the government from Article 7bis of the Constitution: a negative obligation, namely the obligation of the government to adjust their policy and decisions to the objectives of sustainable development, and a positive obligation, namely the duty to develop initiatives to realize the objectives of sustainable development[16]. Some authors state that Article 7bis of the Constitution also contains the obligation for judges to interpret other stipulations in light of the concept of sustainable development.[17] This interpretation is, in our view, too broad. The 'interpretative effect' following from this stipulation is to be conceived not so much as an obligation for the government, in this case the judicial government (which, as mentioned above, is in our view not the standard addressee of Art. 7bis of the Constitution), but as a result of the juridical anchoring of sustainable development in the Constitution, through which it belongs to formal law.

Before taking a closer look at the nature of the obligations arising for the government from Article 7bis of the Constitution, it should be noted that Article 7bis of the Constitution, in default of special stipulations regarding the coming into force, came into force on 26 April 2007, the day on which the new article was published in the Belgian Law Gazette. Therefore, the obligations mentioned above apply in principle starting from that date.

(i) Alignment obligation

The above-mentioned 'negative' obligation requires that the government cannot take a decision contrary to the constitutional policy goal and that it needs to draw its policy and take its decisions in line with this goal. In the parliamentary preparatory documents this obligation is defined as follows: "*the principle of sustainable development (is) a general policy orientation against which concrete standards can be tested in this sense that it cannot be harmed*".[18] It is conceived as a new governance concept, which the government must take into account when concretising its policy.[19] Moreover, it concerns a constitutional provision with the highest rank in the hierarchy of rules, which must be respected by all governments, both legislative and executive.[20] Since the objective of sustainable development is also inserted in the terms of reference of Article 3 of the Treaty on European Union, this alignment obligation is also an application of the principle of Community loyalty as contained in Article 4 of the Treaty on European Union. Community loyalty is for that matter not only applicable to the central government, but also to the territorial and functional corporate bodies.[21]

This alignment rule requires the government, when making its decisions, to integrate the constitutional sustainability objective in its decision-making process. During the parliamentary discussion of this new constitutional article, it has been stressed that the three policy components of sustainable development (ecology, economy and the social component) must be integrated into the decision-making and that one should furthermore strive towards a balance between those components.[22] The 'sustainability assessment' therefore stretches beyond the principle of environmental integration. The latter focuses indeed

15 Preparatory Report of the Chamber, 2005-2006, nr. 51-2647/004, 7.

16 C.H. BORN, *o.c.*, 225.

17 C.H. BORN, *o.c.*, 240.

18 Preparatory Report of the Senate, 2005-2006, nr. 3-1557/1, 3.

19 Preparatory Report of the Senate, 2005-2006, nr. 3-1778/2, 39.

20 Cf. Conseil Constitutionnel, Décision n° 2005-514, 28 april 2005, *JO,* May 4, 2005, 7702, www.conseil-constitutionnel.fr.

21 See Court of Justice, June 22, 1989, Case nr. 103/88, Fratelli Constanzo, *Jur.* 1989, 4035.

22 Preparatory Report of the Senate ,2005-2006, nr.3-1178/2, 66, 69, 71.

merely on environmental interests.[23] The first step of the integration process holds the decision-maker to involve the consequences of his or her decision on the three components of sustainability in the decision-making process.[24] The second step involves a balancing of interests, where alongside the principle of fairness, proportionality or balancing of interests which are recognized in our legal order as principles of good governance, a number of (environmental law) principles such as the integration and the precautionary principle are used as guidelines. Further, in the context of the balancing of interests, the link between Article 7bis of the Belgian Constitution and Article 23 of the Belgian Constitution should be noted.

It is said that this obligation implies a radical change in mentality.[25] However, to a certain extent a concrete application of this can nowadays be found in Article 1.2.1, §2 of the Flemish Decree concerning general provisions relating to environmental policy, which states that the pursuit of a high level of environmental protection must be based on "*a balancing of the various social activities*", or in Article 4.1.1. of the Flemish Code on Spatial Planning on account of which "*the spatial needs of the different social activities are weighted against each other simultaneously*" in view of a sustainable spatial development. This balancing is also reflected in the 'principle of the evaluation *ex ante*', contained in Article 6, 11° of the Decree Integral Water Policy, on account of which a prior evaluation must be made of the consequences of the decisions regarding the integrated water policy on the environmental, economic and social aspect. In sustainable development, however, the long-term vision and the geographical dimension are also considered.

Finally the question arises of how strong this alignment rule or compliance obligation makes itself felt. The parliamentary preparation indeed suggests that the government has little space for maneouver, since it explicitly states that 'no prejudice' can be done to it.

After all the realization of a policy goal holds as a rule no obligation of results for the government, but only an obligation of efforts, which allows a largepolicy margin.[26] This can also be derived from the formulation of the text of Article 7bis of the Constitution, which refers to "*striv[ing] for*". The government thus retains a weighing space which also, for that matter, fits in with the balance of interests. This observation also impacts on the definition of the scope of the judicial audit review which, because of the big policy space of the government, can only be marginal. Only very clear and recognizable violations can be sanctioned by court should the case arise.[27]

(ii) Contract clause

Secondly, governments are obliged to run an active policy on sustainable development. That assignment is also considered as an obligation of means.[28] The instruments that can be used herefor are numerous. This can include amongst other things the use of a planning tool, the drafting of strategies and sustainability programs or the design of *ex ante* evaluation techniques or sustainability criteria.

Furthermore, Article 7bis of the Constitution is direct-acting (auto-executive). No prior action of the legislator is needed to run this constitutional provision.[29] Thus, the governments themselves, at all relevant administrative levels, will have to give an interpretation to that assignment as regards content, within the framework of their respective competences and if necessary with observance of the relevant (higher) standards.[30] Also in this context, they dispose of a wide margin of appreciation.

2.3 Guidelines concerning content for the sustainability test

The debate on the legal effects and enforceability of a principle or rule of law mostly starts with the question of its definition with respect to content. Although the concept has been circulating for over thirty years and has embedded itself in everyday speech, many authors have trouble determining the delineation of the term as regards content. The definition of sustainable development is very abstract and general.[31]

Article 7bis of the Belgian Constitution has not remedied this vagueness. The constitutional legislator indeed preferred not to give a definition of sustainable development, because the issue was felt to be too academic; instead it opted to let the concept evolve in the course of time.[32] The real motive is probably that the text was the result of a consensus. Thus, the constitutional legislator has given a short, yet at the same time dynamic interpretation to the concept.[33]

However, to create legal effects a better delineation as regards content is relevant.[34] The question is what normative guidelines have to be complied with by the

23 See L. LAVRYSEN, *Principle of Integration: The Belgian Report*, Avosseta (Budapest April, 18/19, 2008), www.avosetta.org.

24 C.H. BORN, *o.c.,* 234.

25 C.H. BORN, *o.c.,* 237.

26 Preparatory Report of the Senate, 2005-2006, nr. 3-1778/2, 14 en 70.

27 J.-F., NEURAY en M. PALLEMAERTS, *o.c.,* 140.

28 *Ibidem.*

29 C.H. BORN, *o.c.*, 231.

30 Preparatory Report of the Senate, 2005-2006, nr. 3-1778/2, 72; J.-F., NEURAY en M. PALLEMAERTS, *o.c.*,139.

31 See X. THEUNIS, 'Le développement durable: une seconde nature', *Amèn.* 2000 (numéro special), 9.

32 Preparatory Report of the Senate, 2005-2006, nr.3-1178/2,10.

33 Preparatory Report of the Chamber, 2005-2006, nr. 51-2647/004, 7.

34 Preparatory Report of the Senate, 2005-2006, nr.3-1178/2, 70,72.

government when applying the sustainability test discussed above. An all too high level of abstraction of a standard contains the risk of legal immobility – a reason for not using it. Of course this content can be clarified further concrete form is given to the objectives, article in strategies, sustainability criteria, etc. But also these instruments will have to be calibrated to the normative core of sustainable development. The question therefore arises of how the normative content of sustainable development can be better clarified.

The Constitutional Assembly often reverts to the definition used in the Brundtland Report because there would be international consensus with regard to this formulation. But this definition as such does not provide much guidance.[35] In connection with the hearing initiative on the insertion of sustainable development in the Constitution, M. Pallemaerts proposed two techniques in order to achieve a better delineation of the concept as regards content: the formulation of the principles which clarify sustainable development such as the principle of double equity or the principle of shared, but differentiated responsibilities, and the linking of sustainable development to other constitutional stipulations, particularly those contained in Article 23 of the Belgian Constitution.[36]

2.3.1 The principles behind sustainable development

Although the demand to also anchor these principles in the text of Article 7bis of the Constitution was not withheld, the parliamentary preparation systematically takes up five principles which were in the Rio Declaration linked to the pithy definition and which were also presupposed in the first federal plan for sustainable development (2000-2004). More specifically, it concerns the principle of double equity; the principle of shared, but differentiated responsibilities; the integration principle; the precautionary principle and the principle of participation. It was posed that everyone agrees that these principles form the basis of a coherent and sustainable policy[37]and that, despite the short formulation of sustainable development in Article 7bis of the Belgian Constitution, the concept must be conceived in light of these principles.[38]

These principles are not unknown in the Belgian legal order. Some of them, namely the principle of integration and the precautionary principle, are anchored as general environmental principles in formal law and the jurisprudence has been applying them for a long time. From the perspective of legal enforceability of the concept of sustainability this is not an unimportant finding, since the legal status of these principles is already better fixed. This is however not true, or is less true, for the other principles. The principle of participation, for example, inserted in international law by the Treaty of Arhus[39], is – although anchored in the Flemish Decree Integral Water Policy and the Flemish Decree Mobility Policy – scarcely applied in practice. There is only one judgment known, which did not uphold the violation of the principle.[40] The principles of 'double equity' and of 'shared but differentiated responsibilities' are very exotic for the Belgian legal order. These latter principles could perhaps be brought together under the principle of 'non-averting'. This means one cannot avert the detrimental consequences of some decision or interference to others, other generations, states or regions. Herein also lies the 'polluter pays principle', which ultimately comes down to the prohibition of averting environmental costs to someone else, namely society.

In the discussion about the selection of principles which are important for the normative definition of sustainable development, the precautionary principle is put forward as a principle that is useful for the temporal and geographical notion of solidarity, which is linked to the concept of sustainable development.[41] In consequence a compliant application of Article 7bis of the Belgian Constitution means that the decision-making government, in case of doubt regarding the detrimental consequences for future generations or other countries and regions, will have to opt for a solution which is in accordance with the principle of non-averting (*in dubio pro prolibus*).

In the margin of all this, one can also ask the question of whether the above-cited principles such as the principle of (environmental) integrity or the precautionary principle have implicitly obtained a constitutional status via the codification of sustainable development in the Belgian Constitution. This question is not merely academic. In case the answer is affirmative, this means in any event a juridical upgrade of these principles. In that case, these principles obtain the rank of constitutional legal rules, while before they were merely anchored in a legal act or policy documents. Although the last word in this regard has definitely not been spoken, this view seems certainly defensible.[42]

35 J.-F., NEURAY en M. PALLEMAERTS, *o.c.*, 135-136, 139.

36 Preparatory Report of the Senate, 2005-2006, nr.3-1178/2,71-72.

37 Preparatory Report of the Senate, 2005-2006, nr.3-1178/2, 44.

38 Preparatory Report of the Chamber, 2005-2006, nr. 51-2647/4, 13.

39 www.unece.org/env/pp/treatytext.htm.

40 Council of State, 9 January 2007, nr. 166.439, Apers.

41 Preparatory Report of the Senate, 2005-2006, nr.3-1178/2, 71; See also M. PAQUES en B. JADOT, o.c., 239; H. VEINLA, Sustainable Development as the Fundamental Principle of Europe's Environmental Ius Commmune', o.c., 118-120; H. VEINLA, Precautionary Environmental Protection and Human Rights, Juridica International 2007, 95.

42 See also in this sense C. H. BORN, o.c., 238-239.

2.3.2 Sustainable development as condition for the realization of social basic rights

In the parliamentary preparations the bond among Article 7bis and 23 of the Constitution frequently arises. The three components of the concept 'sustainable development', namely the social, economic and ecological rights, are united in Article 23 of the Belgian Constitution.[43] It was stated that sustainable development is precisely the condition to realise the right to a dignified life, anchored in Article 23 of the Constitution.[44] When one looks at sustainable development from a legal perspective, the fulfilment of the basic needs of every individual indeed is the central issue.

As regards content, Article 23 of the Belgian Constitution seems to serve as a guide while executing the target acquisition of Article 7bis of the Constitution in the following sense. Article 23 of the Belgian Constitution plays a part in the balancing of interests. In this balancing the government has to strive towards a solution that is not detrimental to the social economic basic rights as comprised in Article 23 of the Constitution. Vice versa, Article 7bis of the Belgian Constitution also gives an extra dimension to Article 23. An interpretation of Article 23 of the Constitution in compliance with Article 7bis also means one has to judge the basic social-economic rights in light of an intergenerational and spatial dimension.

2.4 Juridical control and sanctioning

The core of enforceability of a legal standard is shaped by the supervision a judge can execute and the sanctioning by the latter in case of neglect of this standard. Therefore the question arises of whether Article 7bis of the Belgian Constitution is enforceable in court.

A direct testing by the courts, for example within the framework of a liability action, is excluded since this constitutional stipulation does not create any new civil rights. The question arises however whether Article 7bis of the Constitution may not be invoked within the framework of the 'contentieux objectif', more specifically in the settlement of disputes before the Belgian Constitutional Court and the Belgian Council of State. This objective litigation comprises, in a certain manner, the environmental suspension action on the basis of the Belgian Federal Law of 12 January 1993 as well since this action, as a special form of the *actio popularis*, is also disconnected from personal rights.

2.4.1 Scope of the judicial control- and sanction competence

The judicial control and sanction competence can only cover the negative obligation (the alignment or compliance duty) which follows from Article 7bis of the Constitution. It is not easy to comprehend in what way this judicial supervision could also extend itself to the neglect of an authority to take initiatives in order to realise the objectives of sustainable development (the positive obligation). After all, it is not possible to see how the Belgian Constitutional Court or the Belgian Council of State has to exercise their constitutional/legal supervision when no testable act or decision has been presented. On the other hand, it seems very difficult to conceive that the government would be forced to take measures in order to realise the objectives of sustainable development. By reserving him- or herself such a right of injunction, the judge threatens the principle of separation of powers. Therefore, the president of the Brussels court ruled that the neglect of an administrative authority to apply a fiscal legislation (i.e. the environmental tax) does not belong to the categories of actions meant by the Federal Law of 12 January 1993.[45]

2.4.2 Judicial control- and testing competences within the framework of objective disputes

(i) Testing competence of the Constitutional Court

The Constitutional Court is, according to Article 142 of the Belgian Constitution, competent to test all laws and decrees against the articles of Title II of the Constitution (Rights and Freedoms). This does not apply to the new Article 7bis of the Constitution, which is not hosted therein[46]. This does not mean that the new constitutional stipulation is meaningless in terms of the conduction of cases before the Constitutional Court.

First, it should be pointed out that Article 7bis encompasses a rule of interpretation implying that other basic rights, such as the ones contained in Article 23 of the Belgian Constitution, have to be

---

43 Article 23 of the Belgian Constitution prescribes: "*Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others:*
1 *the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation;*
2 *the right to social security, to health care and to social, medical and legal aid;*
3 *the right to decent accommodation;*
4 *the right to the protection of a healthy environment;*
5 *the right to cultural and social fulfilment.*"

44 Preparatory Report of the Senate, 2005-2006, nr.3-1178/2, 69, 72; J.-F., NEURAY en M. PALLEMAERTS, *o.c.*, 141.

45 President of the Court of First Instance of Brussel, 27 April 2001, *Journ. Proc.* 2001, 22, N. DE SADELEER, 'La sanction de l'ommission d'une autorité publique de mettre en oeuvre une législation fiscale'.

46 See Constituional Court, nr. 75/2011, 25 May 2011.

applied in conjunction with the objective of Article 7bis of the Constitution. Since 2003, the Constitutional Court has also been competent to test legal acts against all other articles of Title II of the Constitution, including the social-economic basic rights of Article 23 of the Constitution. Because of this, Article 7bis of the Constitution, via its interpretative effect, is definitely a relevant ground of assessment in the dispute settlement before the Constitutional Court, which as a consequence of this new constitutional stipulation has to attribute a more pronounced place to the intergenerational and international dimension of these rights.[47] Moreover, nothing prevents the indirect testing against Article 7bis of the Constitution in conjunction with the principle of equality.[48] Meanwhile the Constitutional Court has affirmed, when testing decrees and laws against the articles of Title II, that the Court can take the policy goal of Article *7bis* into account[49].

(ii) Testing competence of the Council of State

The Belgian Council of State is, according to Article 14 of the Belgian Federal coordinated laws concerning the Council of State, competent to test administrative decisions with regard to their legality, including the principles of good governance. In light of the principle of the above-mentioned hierarchy of standards, every administrative act - *i.e.* the regulative as well as the individual decisions, such as permits - have to respect the constitutional stipulations, including in principle Article 7bis of the Constitution.

Whether the Council of State may be convinced to test regulative acts or individual decisions like permits against the new constitutional stipulation is nevertheless very uncertain. Insofar it concerns administrative legal acts with a relatively local relevance, as is often the case for environmental or urban permits, it has to be acknowledged that a testing against the concept of sustainable development is not always obvious.

More fundamental, however, is the question of whether the Council of State will recognise the direct obligatory character of this constitutional stipulation. It is correct that the Council has already accepted the standardising force of legal policies and environmental principles in its jurisprudence, although this testing often did not lead to an annulment because, according to the Council, no manifest judgment error or unreasonable decision was presented.[50] In more recent jurisprudence, however, the Council of State seems to take a more strict position. The Council ruled, for example, that Article 1.2.1. of the Flemish Decree concerning general provisions relating to environmental policy does not entail enforceable rules, but merely general principles in terms of the general environmental policy. These principles require further elaboration in directly enforceable standards so that, according to the Council of State, a possible infringement of them may not lead to the annulment of a contested decision.[51] Somewhat similar to this is the judgment of the Council of State in which an appeal for the annulment of the Federal Plan concerning Sustainable Development, laid down by the Royal Decree of 19 September 2000, was rejected on account of the consideration that the objectives mentioned in the plan were, for lack of a legal determined sanction, only declarations of intent which have as such no immediate legal consequences.[52]

(iii) Testing competence of regular courts

In this regard, the competence of regular courts to test the constitutionality/legality of the decisions of the authorities on the basis of Article 159 of the Belgian Constitution should also be pointed out. Since Article 7bis of the Belgian Constitution does not set up civil rights, regular courts will seldom be confronted with an exception of illegality on the basis of an infringement of this constitutional stipulation.

Such an examination may however be at issue when authorities, environmental associations or – via the detour of Article 194 of the Flemish Community Decree – citizens question the legality of a building or environmental permit within the framework of an environmental suspension action, based on the Federal law of 12 January 1993, in order to achieve the determination of an environmental infringement. However, whether one could also rely directly on an infringement of Article 7bis of the Constitution within the framework of such an environmental suspension action is very uncertain. Given the multidimensional content of Article 7bis of the Constitution and in particular the fact that this stipulation does not impose direct obligations upon citizens like operators of a disturbing facility, it cannot be simply stated that the infringement of this constitutional stipulation leads to an environmental infringement which may justify the suspension of the acts contrary to the environmental legislation on the basis of the Law of 12 January 1993. In this light, the president of the Brussels court ruled, at first sight somewhat surprisingly, that environmental associations are in principle entitled to bring before the court a suspension claim, in accordance with the Law regarding environmental

47 See J.-F., NEURAY en M. PALLEMAERTS, *o.c.,* 140.

48 C.-H. BORN, *o.c.*, 242.

49 Constituional Court, nr. 75/2011, 25 May 2011

50 See for example Council of State, 19 April 2007, nr. 170.173, Aktiekomitee voor milieubescherming te Merelbeke, Council of State, 24 February 2005, nr. 141.217, Keymolen.

51 Council of State, 27 January 2006, nr. 154.217, Musschoot; Council of State, 15 July 2008, nr. 185.403, vzw zusters van de H. Vincentius A Paulo Van Deftinghe.

52 Council of State, 29 April 2002, nr. 106.127, Uyttenhove.

claims, against a decision of the government for not imposing an environmental tax since this tax is a fiscal tool serving sustainable development.[53] One could of course argue that the infringement of this constitutional stipulation may be invoked against the actions of the authorities, which are after all bound by it.

3 Concluding remarks

By inserting a new Title Ibis in the Belgian Constitution and the therein hosted Article 7bis, not only the architecture of the Belgian Constitution has been reshaped in a radical manner. With the insertion of this new category of constitutional stipulations, the discussion regarding the juridical enforceability of these general policy goals and more specifically the concept of sustainable development has come to life.

The juridical enforceability of Article 7bis of the Constitution is quite limited due to the wording of the standard, also due to the place one grants it in the structure of the Constitution. Because of the wide policy margin of the authorities, judges will often observe great reticence in their supervision of the question of whether the authorities have involved the objective of sustainable development in a (sufficient) manner in their judgement. Interference on the positive duty of the authorities to realise the objective seems entirely excluded due to the separation of powers.

In order to enhance the impact of sustainable development in the jurisprudence, the concept has to be concretised. This also strengthens the alignment or compliance duty, which benefits legal protection as well as the juridical supervision on compliance and consequently deepens the enforceability of the concept. This concretization is part of the positive obligation of the authorities. In this regard, the positive and the negative obligation are strongly intertwined. This concretization may be achieved by defining instruments such as the design of evaluation schedules or sustainable development criteria, the requirement of an explicit motivation in which one goes into sustainability, the refinement of existing impact assessments such as the EIA or SIA etc. This certainly – though not exclusively – applies if one wants to give the concept of sustainability a meaningful role within the permitting policy, in which the high level of abstraction or vagueness of a standard is often a reason for non-application of the standard.

Although one cannot deny that the objective of sustainable development is a rule of law with constitutional value and the authorities cannot ignore it just like that without risking the validity of their decisions, its ultimate repercussion for the development of administrative practice is hard to estimate. The application of the concept of sustainable development indeed raises a lot of uncertainties and resistance. In that regard, it cannot be argued that the decisions of the deputation of the Antwerp Provincial County Council are the forerunner of a new judgment ground within the permitting policy. Jurists and administrators often have a rather conservative approach to new legal concepts. This 'cold feet' approach was also apparent in connection with the legal anchoring of environmental principles, such as the precautionary principle, or the social-economic basic rights, such as the right on a healthy environment anchored in Article 23 of the Belgian Constitution. In this regard the wisdom of RUDOLF BAHRO seems to be valid as well: *"When the shapes of the old culture are dying out, the new culture is created by the few ones that are not afraid of uncertainty"*.

53 President of the Court of First Instance of Brussels, 27 April 2001, *Journ. Proc*. 2001, 22.

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 Julian Schenten

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

Ana Barreira, Director of Instituto Internacional de Derecho y Medio Ambiente (IIDMA), LL.M on Environmental Law (London University 1993) and on International Legal Studies (New York University, 1996). Member of the IUCN Commission on Environmental Law,
ana.barreira@iidma.org.

Anaïs Berthier, staff attorney at ClientEarth, an organisation of activist lawyers committed to securing a healthy planet. More info: http://www.clientearth.org,
info@clientearth.org.

Peter De Smedt, Lawyer at Ghent based Environmental law firm LDR, research collaborator at the Centre for Environmental and Energy Law of Ghent University More, Member of the Flemish High Council for Environmental Enforcement on behalf of the Flemish Council for the Environment and Nature. More info: http://www.ldr.be/,
peter.desmedt@ldr.be.

Martin Führ, Professor of public law, legal theory and comparative law, Society for Institutional Analysis (sofia), Darmstadt University of Applied Sciences, Germany, www.sofia-research.com,
fuehr@sofia-darmstadt.de.

Catherine Ganzleben, PhD, Senior Policy Advisor, Milieu. More info: www.milieu.be,
catherine.ganzleben@milieu.be.

Almut Gaude, Bund für Umwelt und Naturschutz Deutschland (BUND) (Friends of the Earth Germany),
almut.gaude@bund.net.

Steffen Foss Hansen, PhD, Senior Researcher in Risk assessment and regulation at DTU Environment, Technical University of Denmark,
sfha@env.dtu.dk.

Thomas Ormond, Dr. iur., legal officer with the regional environmental administration (Regierungspräsidium Darmstadt) in Frankfurt am Main; from 2004-2008 seconded national expert for waste shipment matters with the EU Commission (DG Environment),
thomas.ormond@rpda.hessen.de.

Eckard Rehbinder, Professor emeritus of economic law, environmental law and comparative law, Research Centre for Environmental Law, Goethe University Frankfurt/Germany,
rehbinder@jur.uni-frankfurt.de.

Marga Robesin, lawyer at Stichting Natuur en Milieu (Dutch Society for Nature and Environment, www.natuurenmilieu.nl) in Utrecht (The Netherlands) and PhD candidate at ACELS (Amsterdam Centre for Environmental Law and Sustainability), University of Amsterdam,
m.a.robesin@uva.nl.

Julian Schenten, Lawyer with media and information technology speciality, Research assistant at the Society for Institutional Analysis (sofia), Darmstadt University of Applied Sciences, Germany,
schenten@sofia-darmstadt.de.

Hendrik Schoukens, PhD-assistent at Ghent University and Lawyer at the Ghent based environmental law firm LDR. More info http://www.ldr.be/,
hendrik.schoukens@ugent.be.

Sarolta Tripolszky, Biodiversity, Water and Soil policy officer at the European Environmental Bureau (EEB),
saroltapolszky@yahoo.co.uk.

Tania Van Laer, practising lawyer at LDR lawyers (www.ldr.be) - a law firm based in Ghent - and researcher at the Centre for Environmental & Energy Law at the University of Ghent,
tania.vanlaer@ldr.be.

elni membership

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

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

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

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

Name:_____

Organisation:_____

Profession:_____

Street:_____

City:_____

Country:_____

Email:_____

Date:_____

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

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

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

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

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

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

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

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

Main areas of research

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

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

sofia

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

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

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

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

elni

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

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

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

The elni Review is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt).

elni Conferences and Fora

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

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

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

elni Website: elni.org

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

elni Board of Directors

- Martin Führ - Society for Institutional Analysis (sofia), Darmstadt, Germany;
- Jerzy Jendroska - Centrum Prawa Ekologicznego (CPE), Wroclaw, Poland;
- 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