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# elni

## REVIEW

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Land degradation neutrality under the SDGs: National and international implementation of the land degradation neutral world target

*Elizabeth Dooley, Ennid Roberts and Stephanie Wunder*

Perspectives and actions to improve water quality in European Union Member States

*Giuseppe Sgorbati and Nicoletta Dotti*

Enforcement of the EU ETS in the Member States

*Jonathan Verschuuren and Floor Fleurke*

Access to the transposition of EU environmental law by Member States: Only if no infringement proceedings initiated

*Anaïs Berthier*

Recent Developments

*Investor-to-state dispute settlement mechanisms: Five new questions and one old problem*

*Innovations for sustainability: The perception of chances and risks (Conference report)*

*Governing environmental impact assessment in Turkey*

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## Editorial

On 25 September 2015, in New York, 193 Heads of State and Government adopted a resolution entitled ‘Transforming our world: the 2030 Agenda for Sustainable Development’ in the United Nations General Assembly. This Resolution defines 17 Sustainable Development Goals as well as 169 targets and can be considered the final integration of ecological, economic and social Sustainable Development objectives, supported by a separately established financing framework, the Addis Ababa Action Agenda, as well as a transparent and inclusive reporting system to observe progress as to the achievement of its goals and targets.

*elni Review* puts the spotlight on the current state of play as regards legal arrangements and implementation in respect to some of the Resolution’s major objectives. Among these is the target to, “by 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world”. Measured by this benchmark, and having in mind that 2015 was the “International Year of Soils”, researchers from the *Ecologic Institut* (Berlin) analyse the national and international implementation of the “land degradation neutral world” target.

The impact of water quality, as well as quantity of quality water, on Sustainability Development is inter

alia reflected in Goals 6 and 14 of the Agenda 2030. In addition, according to certain EU Water Framework Directive objectives, European waters have to achieve “good ecological and chemical status” by 2015. Against this background, experts from the *EU Network for Implementation and Enforcement of Environmental Law (IMPEL)* assess perspectives and actions to improve water quality in Europe.

Another sustainable development hotspot is the climate, which is addressed inter alia in the Resolution’s 13<sup>th</sup> Goal. Amongst the most prominent instruments to combat climate change are emissions trading systems (ETS). *Jonathan Verschuuren* and *Floor Fleurke* examine the enforcement of the EU ETS in the Member States.

Furthermore, *Anaïs Berthier* questions access to the transposition of EU environmental law by Member States by analysing a ruling of the EU General Court in case C-612/13P (*ClientEarth v Commission*).

This issue’s *Recent developments* section provides an update on the TTIP-related ISDS discussions, a conference report on how the perception of chances and risks affect innovations for sustainability as well as a statement on environmental impact assessment law in Turkey.

*Julian Schenten/Gerhard Roller*

October 2015

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Conference report: "Innovations for sustainability:  
The perception of chances and risks"  
Protestant academy Loccum, 20 - 22 January 2014

*Lisa Beiderwieden, Sarah Brockmann*

## 1 Introduction

Sustainability is becoming more and more important in social discourses: new technologies are needed in order to face the problems of climate change and to use limited resources in an effective and efficient way. However, resources like rare earths also reveal the need for efficient resource use. In addition, basic environmental and health questions can also spur innovations that promote sustainability. According to Kilian Bizer, Professor for Economic Policy and Director of the Center for European, Governance and Economic Development Research (cege) at the Georg-August University of Göttingen, governmental incentives for the individual and situation-specific motivation of economic actors are not able to bring about an on-going dynamic innovation process that is based on the guiding principles of sustainable development. Instead, framework conditions are needed that allow for a process in which actors control the consistency between their actions and the normative goal on their own initiative. In the case of a detected discrepancy, creative and appropriate solutions should be developed without permanent accompanying government stimuli. Therefore, the question is how these conditions should be drafted and which incentives and obstacles for sustainable innovations exist. This amounts to creating an innovation-friendly legal framework that sets the appropriate incentives for actors to behave according to the established targets.

These questions were dealt with during the conference "Innovations for sustainability. The perception of chances and risk", that was held in the Protestant Academy Loccum from 20-22 January 2014. The conference concentrated on chemical regulations with a specific focus on nano-materials and the relationship between breeder privileges and biopatents. This conference report summarizes the different discussion threads and positions. The Center of European, Governance and Economic Development Research in cooperation with the University of Applied Science Darmstadt and the Protestant Academy Loccum were in charge of the organization. The conference was part of the project for Responsive Regulation of Innovations for Sustainability that is funded by the German Federal Minis-

try of Education and Research within the scope of its WIN2 funding priority.

## 2 Contributions to the Conference

*Martin Führ*, Professor for Public, Constitutional and Technology Law at the University of Applied Science Darmstadt, highlighted the potential of nano-materials to develop sustainable innovations. However, there remain many uncertainties concerning their impacts on the environment and human health. To report these different impacts and to allow for a sound understanding of their effects, additional data collection is needed. The EU chemical regulation REACH aims to generate substance-related knowledge. It requires the companies in the value chain to control the risks represented by produced and used chemicals in an appropriate way. To a huge extent, the companies are directly responsible for respecting and implementing the regulation. In order to see the impact of REACH and consequently to what extent companies register their chemicals in accordance with the regulations and document their appropriate risk management, an empirical analysis of incentives and obstacles was performed. The results show that companies only respect the minimal requirements instead of performing nano-specific tests. Due to the lack of knowledge regarding possible and real dangers of the chemicals used, they focus on their short-term utility. Otherwise this demanding procedure would not generate individual advantages for the firm to the extent that costs could be avoided when not participating in the registration. To strengthen the social and ecological motivation in comparison to the purely economic one, Martin Führ proposes a modification of the minimal requirements or a modification of the framework conditions.

*Wolf-Michael Catenhusen*, off-duty State Secretary at the German Federal Ministry of Education and Research as well as Deputy Chairman of the National Regulatory Control Council (*Normenkontrollrat*) of the Federal Chancellery, pointed out that in the past, many accidents in the chemical industry in Germany occurred because of insufficient knowledge concerning the impacts of chemicals. These experiences also spurred learning processes that gave rise to demands for precise risk assessments and the registrations of chemicals.

Since these processes need a lot of time, structural changes have to be analyzed over a longer time span to see how appropriate framework conditions for a sustainable use of innovations should be drafted. This further allows identification of the relevance and impact of basic innovations at an early stage. If these basic innovations are socially accompanied and promoted by industrial policy, a country can remain internationally competitive in innovation processes. According to Catenhusen, in Germany these three conditions have been met the first time met in the case of the basic innovation of nanomaterials. At an early stage, measures had been taken to understand their impacts on the environment and human health. Other measures aimed at finding answers to methodical questions of risk assessment while opening a broad public discourse on these issues.

Furthermore, if the generation of sustainable innovation is to be promoted, Wolf-Michael Catenhusen emphasized that politics and the private sector should not be in competition with each other but rather act as critical partners in a national innovation system. In doing so, the creation of so-called innovation alliances can bring about structures that spur sustainability as well as innovations.

The way in which the state, society and companies deal with nano-governance was analysed by *Julia Hertin*, the Deputy Secretary General at the German Advisory Council on the Environment (Sachverständigenrat für Umweltfragen, SRU). The current ruling principle for nano-governance is risk prevention, meaning that precise knowledge of a risk, that is not acceptable from a normative point of view, is a prerequisite for state inference in chemical merchandising. In contrast, the SRU is in favour of the implementation of the precautionary principle which attributes greater discretionary powers to the state. Therefore, chances and risks of state action that are uncertain should always be carefully weighed up. This leads to the integration of normative aspects and, as a result, a trans-scientific approach. Besides utility concerns, the new principle also requires the respect of trans-scientific criteria in the risk assessment. The early involvement of the society in the decision-making process should secure public interests and strengthen the acceptance of possible innovations. Additionally, the sense of responsibility and the precautionary principle should be implemented into innovators' thinking. This could be problematic since demands for transparency are seldom met voluntarily. Therefore, the implementation of binding rules in this area could be useful.

From an economic point of view, the innovation process can bring about both intended and unintended side effects. *Frank Beckenbach*, Professor

for Economics at Kassel University, discussed their relevance. To take one example, several households could decide to buy a new refrigerator. Even though the individual intention was to save energy, these purchases would result in a higher energy consumption on the aggregate level. Some groups of society, like fridge producers, may assess such a rebound-effect positively, others negatively. Therefore, when designing a control and regulation system, it is important to keep in mind various target groups and to differentiate between group interests and general interests. Since it is not possible to identify causalities with the help of statistical analysis, Beckenbach proposes an agent-based modelling as the methodology for analysing the side effects. On this basis it is possible to show how a market can evolve in given framework conditions.

Legislation on impact assessment provides an efficient tool for analysing the extent to which the goals of REACH have been realized with regard to nanomaterials. For this purpose, *Julian Schenten*, a Member of the Research Staff at the sofia research group at the University of Applied Science Darmstadt presented the model of interdisciplinary institutional analysis. A delta analysis reveals the extent to which the actors meet the requirements that they are asked to fulfil. In the framework of the project "Responsive Regulation of Innovation Behavior for Sustainability" (ReSINa) it became clear that REACH is not currently generating the optimal framework conditions in order to spur sustainable innovations in nanomaterials.

Since a variety of factors have to be taken into account in an interdisciplinary context, science is confronted by methodical challenges when aiming to identify target-oriented modifications. An intelligent combination of different methods could be considered as the only way to come up with an efficient solution, as put forward by *Kilian Bizer*. With regard to REACH, this combination should include interviews, simulation and economic laboratory experiments.

Another discussion during the conference focused on the capacity of market mechanisms to overcome uncertainties in chemical markets that are caused by asymmetric information. Kilian Bizer also based his response to this question on interdisciplinary institutional analysis. Risk information that is contained on safety data sheets (SDS) passes several markets in the supply chain which results in uncertainties about the quality of the information for the consumer. Since the demand for reliable SDS cannot be satisfied, the market is likely to collapse in the long run. Market mechanisms do not provide suitable conditions to promote an innovation process in the market. On the contrary, exogenous regulation is needed, e.g. sanctions for inadequate SDS.

*Klaus Berend*, Representative of European Commission's Directorate General Enterprise and Industry, analysed whether REACH regulation had contributed efficiently to resolving the aforementioned issues since its adoption in 2006. The focus was on an European perspective. In his point of view, REACH has already helped to reduced knowledge gaps. However, additional legal improvements are still necessary. Many measures that are required by REACH are difficult to implement by small and medium-sized enterprises in the current version of the regulation. Therefore, the implementations need to be made easier, especially for SMEs.

National funding possibilities for sustainable innovations were indicated by *Volkmar Dietz* from the German Federal Ministry of Education and Research. Policy makers' demand for a rapid application of innovations would bring about innovations that are efficient in the short term, but are not sustainable. To ensure sustainability in the innovation process, increased interdisciplinary cooperation is necessary. Sustainability not only refers to the integration of economic and ecological aspects, but also includes social components. Therefore, society should be involved throughout the whole research process to ensure consistency between social interests and innovations that thus gain social acceptance.

*Klaus Möller*, Professor for Accounting, Controlling and Auditing at St. Gallen University, presented results concerning the capacity of firms to realize sustainability aspects. Even though sustainability is taken into account in the innovation process, it is only profitable to a certain extent for rational, profit-oriented enterprises. The limited integration of sustainable aspects in the decision-making processes that follow the investment decision is due to decreasing marginal returns. The degree to which firms implement these considerations depends on their individual preferences and hence varies greatly. In general, the consideration of sustainable aspects is often not profit-maximizing.

### 3 Conclusion

The conference showed that the current legal framework is not optimal to promote innovations for sustainability. Therefore, economic policy should aim at finding an appropriate level of entrepreneurial self-responsibility and political regulation. Moreover, it is important to integrate society at an early stage into the innovation process in order to sensitize people to the respective problems. If it is possible to modify the legal framework to reach these goals, it will help to generate sustainable innovations without the need for continual external stimuli.

For more information on the ReSINa research project and the conference (including slides), please visit [www.sofia-darmstadt.de/resina.html](http://www.sofia-darmstadt.de/resina.html).

## 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](mailto:Roller@fh-bingen.de).

### DECLARATION OF MEMBERSHIP

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

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

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

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

#### The Environmental Law Division of the Öko-Institut:

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

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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:

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

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- **Environmental advice in developing countries**
  - Advice for legislation and institution development
  - Know-how-transfer
- **Companies and environment**
  - Environmental management
  - Risk management

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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
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- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
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## elni

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

*Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. 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 researchers, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

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

### Publications series

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

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