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## REVIEW

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'Better Regulation' with 'Make it Work': An assessment of the Make it Work's Drafting Principles on Compliance Assurance

*Lorenzo Squintani*

Environmental modernization and administrative simplification in Portugal

*Alexandra Aragão*

The Non-Regression Principle under EU and German Water Law 'on the Ground'

*Eckard Rehbinder*

Evidence based legislation? Adequate protection of EU citizens against aircraft noise

*Franziska Heß and Martin Führ*

Statement on the Circular Economy concept

*Franz Fiala and Michela Vuerich (ANEC)*

Recent Developments

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## Editorial

The aim of simplifying environmental law persists; it rekindled with the European Commission 2015 update of the Better Regulation Strategy and the related ‘Regulatory Fitness and Performance programme’ (REFIT) striving for “making EU law lighter, simpler and less costly”. At the same time, the ‘Make it Work’ initiative launched by several EU Member States adds some dynamics to the debate by providing first implementation experiences.

Against this background, *elni Review 1/2016* throws a spotlight on the simplification of environmental law. *Lorenzo Squintani* analyses the first ‘Make it Work’ Drafting Principles on compliance assurance with particular attention given to simplification matters, but also taking into account regulatory burdens and the EU’s objective of a high level of environmental protection. Subsequently, *Alexandra Aragão* reports on environmental modernization and administrative simplification experiences in Portugal and gives critical analysis of recent legal changes that took place in 2015.

Besides, *Eckard Rehlinger* assesses the landmark 1<sup>st</sup> July 2015 decision of the European Court of Justice on the Non-Regression Principle and specifically addresses remaining open questions not answered by the court. *Franziska Heß* and *Martin Führ* discuss the current body of scientific knowledge on aircraft and based on this evidence derive legal implications with respect to EU legislation aiming at adequate protection of EU citizens against aircraft noise.

Furthermore, in a *Statement* contribution *Franz Fiala* and *Michela Vuerich* articulate *ANEC*’s perspective on the circular economy concept presented by the European Commission in December 2015. Finally, in the recent developments section *Miriam Dross* sums up highlights from a recent statement by the *German Advisory Council on the Environment* as regards the impacts that the planned TTIP agreement could have on German and European environmental protection standards.

We hope you enjoy reading of *elni Review 1/2016*.

Contributions for the next issue, in particular with respect to CETA’s impact on environmental law (see the ELNI Forum announcement), are very welcome. Please send contributions to the editors by mid-September 2016.

*Julian Schenten/ Martin Führ*

June 2016

### ELNI Forum:

**8 September 2016**

**Brussels, Belgium**

### **“Assessing CETA’s Impact on Environmental Law”**

ELNI in cooperation with the Centre d’Etude du Droit de l’Environnement (CEDRE) is organising the 2016 ELNI Forum on “Assessing CETA’s impact on Environmental Law”. The Forum will take place at the **Saint-Louis University** in Brussels, Belgium between 2pm and 5.30pm.

The following topics, among others, will be discussed between law scholars and practitioners as well as representatives from the NGO and political/administrative scenes:

- The nature (a mixed agreement?) and validity of CETA
- The impact of CETA on existing environmental legislation and application
- The impact of CETA on future environmental legislation

Further details will soon be available on [www.elni.org](http://www.elni.org) and on <http://www.usaintlouis.be> (CEDRE)

## Statement

### The circular economy concept needs to be geared to a resource-saving economic model to avoid running in circles

*Franz Fiala and Michela Vuerich (ANEC, the European consumer voice in standardisation)*

#### 1 Introduction

In ‘The 30-year update’ of their Report<sup>1</sup> to the Club of Rome concerning ‘The Limits to Growth’ (first published in 1972), the authors recalled in the preface the fundamental finding of the original report, namely that global ecological constraints related to resource use and emissions will have a significant influence on global developments in the twenty-first century. Resource constraints and the finite capacity of the Earth to absorb pollutants will – as a result of the necessary additional expenses to cope with these constraints – eventually lead to a (not necessarily abrupt) decline of the world economy. The authors initially “*hoped that such deliberation would lead society to take corrective actions to reduce the possibilities of collapse*”. However, despite all positive developments, the required course correction has not taken place and the global environmental status has become even worse. “*Consequently, we are much more pessimistic about the global future than we were in 1972. It is a sad fact that humanity has largely squandered the past 30 years in futile debates and well-intentioned, but half-hearted, responses to the global ecological challenge. We do not have another 30 years to dither. Much will have to change if the ongoing overshoot is not to be followed by collapse during the twenty-first century*”. Sadly, the authors had to conclude that current policies ineffectively cope with ecological limits and, thus, this overshoot will intensify greatly over the coming decades.

Some have dismissed the conclusions of this study, conducted by a team of researchers at the Massachusetts Institute of Technology (MIT) headed by Dennis Meadows, as an overly pessimistic doomsday scenario disregarding the ability of the current economic system to adapt. Surely one can challenge the computer models, scenarios and assumptions used as an oversimplification. Clearly, the real world is different from models and ‘predictions’ cannot be made. However, the aim of the report was to illustrate likely trends and possible developments, rather than to provide precise forecasts. After all, it does not really matter whether a certain resource is depleted in 50 years (with rising

prices reflecting the increased effort for resource extraction) or if it takes twice the time. The important issue is that the resources are finite and, sooner or later, the limits to further growth of material and energy flows will be reached.

What matters much more in this context is the missed opportunity to initiate a fundamental change with a view to preventing the overshoot by driving the system in a sustainable direction. A review of the history of the ‘Limits to Growth’ (LtG) report<sup>2</sup> states: “*When it comes to taking serious action, little has been done to reach a sustainable form of development, with the exception of some modest technical adjustments*”. The review also confirms the continued validity of the basic findings of the original study: “*In re-examining the analysis and central arguments of LtG, we have found that its approach remains useful and that its conclusions are still surprisingly valid*.” This is despite the fact that most politicians pay tribute to ‘sustainable’ development in sententious talks and despite industry loudly trumpeting commitments to ‘Corporate Social Responsibility (CSR)’ for many years. What has been achieved in the decades of busy activity since the publication of the first Club of Rome Report in the early 1970s? Are we making any headway or are we just running around in circles?

These are thoughts that also come to mind when examining the Commission communication, ‘Closing the loop - An EU action plan for the Circular Economy’<sup>3</sup>, published in December 2015. It is rather difficult to see how this action plan could contribute to the desperately needed fundamental change of direction associated with significantly reduced resource use, as opposed to the concept of infinite growth enriched with circular flows.

1 Meadows et al (2004). Limits to growth: The 30-year update.

2 Nørgård, J.S., Peet, J., and Ragnarsdóttir, K.V. (2010). The History of The Limits to Growth, Solutions, Vol. 2, No 1, pp. 59-63. <http://orbit.dtu.dk/en/publications/id%28fd0ea3e1-7450-4dba-a2fe-3156183404e6%29.html>.

3 COM(2015) 614 fin, c.f. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0614>.

## 2 The concept of circular economy: on the right track?

ANEC believes the discussion on circular economy risks being misled from the onset if we lose the key aim of a strategy leading to sustainable development. The final objective needs to remain the socially acceptable reduction of the use of resources and of environmental and human health impacts. It cannot be taken for granted that a circular economy automatically leads to reduced material and energy flows, and that recycling is economically and environmentally beneficial *per se*. However, this seems to be a key assumption behind the Commission communication, including the related regulatory proposals which contain a strong bias towards recycling at the expense of other equally or even more relevant goals (such as prevention or reuse for which no targets were set). This is of greater concern as criteria and conditions for useful recycling have not been formulated.

An economic system whereby solutions are found to keep the same - or even lead to increasing - material consumption rates can remain destructive and unhelpful: material circles can still be created with high effort using a lot of energy, or other resources leading to significant pollution or introduction of problematic chemicals in new product cycles. Resources considered 'renewable' can be produced by demolishing ecosystems. The European support for biofuels, resulting in huge deforestation and biodiversity loss for the sake of palm oil production in countries like Indonesia, may serve as a warning example. Support for renewable energy and materials beyond certain quantitative limits is likely to compete with food production with the prospect of increasing (energy) poverty and hunger in the world. The concept of 'circular' economy thus leads to the wrong focus, despite parts of the approach being useful - e.g. recycling of certain scarce materials, or if the production of virgin materials requires a large amount of energy or resources (which can be saved). However, recycling is not an end in itself.

What we actually need is a 'resource-saving' economy which eliminates 'useless' consumption first of all, i.e. consumption that does not add anything to the quality of life (such as the consumption of plastic bags or other forms of unnecessary disposable packaging; products that are not used, such as wasted food, or products for which demand is artificially created). Avoiding production and consumption of such products would also be an important contribution to satisfy the first priority of the waste hierarchy: prevention of waste. It is quite revealing that, for example, no food waste targets have been established, and the legislative

proposal amending Directive 94/62/EC on packaging and packaging waste includes neither prevention targets nor separate reuse targets (only combined targets for packaging waste to be prepared for reuse and recycling).

It requires strong market interventions and measures to reduce consumption of limited benefit (if any) and sales of such products. To this end, there is a need to challenge current market practices that foster material demand, in particular by reducing advertising which stimulates the throwaway society and supports the so-called psychological obsolescence (replacement of functioning articles by new ones), reducing life-spans and usage times of products. Advertising restrictions have already been taken at national level in some countries<sup>4</sup>. Not to give any thought to such highly relevant aspects also shows the rather limited perspective of the European Commission.

Industry needs to be encouraged to produce long-lived products on the one hand and the consumer needs to be encouraged to disregard non-sustainable consumption which - at least in some cases - should become contemporarily more expensive (e.g. through fees for disposable packaging). One practice that should be avoided is the advertising of 'free of charge' products that hide follow-up costs (e.g. mobile phones), stimulating frequent replacements - and even disposal - of fully functional appliances. This practice could be banned.

Another example is the disposal of millions of still-functioning CRT TV screens when LCD screens were put on the market.

## 3 Production

*"A circular economy starts at the very beginning of a product's life. Both the design phase and production processes have an impact on sourcing, resource use and waste generation throughout a product's life"*. With these words the Commission starts the chapter on production in its Communication. The corresponding chapter in a document on a 'resource-saving economy' would ask a different question: is the product needed at all? Could the function of the envisaged product be provided differently? How can the envisaged functionality be provided using a minimum of resources?

Once the need for a product is established, the further questions would be related to the design of the product optimising its durability, reusability, reparability and

<sup>4</sup> Kreiß, C. (2014): Geplanter Verschleiß: Wie die Industrie uns zu immer mehr und immer schnellerem Konsum antreibt - und wie wir uns dagegen wehren können Gebundene Ausgabe.

so forth, still aiming at minimising its resource consumption and related environmental burdens. Thus, the waste hierarchy would be the guiding principle, thereby preventing early failure of products and rampant consumerism. To give first priority to waste prevention means not only giving political support to durable and repairable products but also substituting – wherever feasible and useful – disposable by reusable products (e.g. giving strong support to reusable packaging and discouraging one-way and oversized packaging). That the Commission has no intention of establishing any quantitative goals in this context is a serious omission.

Then, with a view to enhancing trustworthy recycling, it is crucial to ensure that no hazardous chemicals are contained in the consumer products. A systematic approach to addressing chemicals in products relevant for consumers needs to be developed, including a generic ban on CMR substances where needed.<sup>5</sup> It is insufficient to consider elimination of dangerous chemicals only at the end of the product cycle. It is necessary, for example, to set stringent rules for printing inks for various products, eliminating substances of concern in order to avoid such substances then being transferred to recycled materials used in, for example, packaging, resulting in food contamination. We are looking forward to the announced assessment of the Commission concerning “*the interaction of legislations on waste, products and chemicals*”.

We welcome the intention to promote widely the Best Available Techniques Reference (BREF) documents. However, it must be also borne in mind that these documents are often not as ambitious as they could be and Member States may also deviate from the established BAT when granting permits. It would also be beneficial to establish BREFs in the non-industrial area to establish best practice benchmarks (e.g. for the retail and services sectors).

### 3.1 Resource-saving and indicators

In support of the resource-saving policy, indicators are needed for overall resource use at EU and Member State level, particularly in the case of energy, water, relevant materials waste, artificial and built-up land use and use change. In addition, appropriate sub-indicators should be developed.

Furthermore, meaningful resource efficiency indicators (like energy efficiency indicators) are needed and must relate resource consumption to a physical output, e.g. the amount of a material needed to produce a

product unit (or better, a service unit taking into account the lifetime of a product and the service it delivers) or unit of another material. From this follows that such indicators must be defined for key processes. By contrast, the resource productivity indicator proposed by the Commission in its Roadmap to a Resource Efficient Europe<sup>6</sup> (setting possible resource efficiency indicators) is of little use.

Indicators are also needed to measure the per capita overall consumption level of citizens. To this end, it will be crucial to measure direct and indirect resource consumption, (including the consumption embedded in products) by citizens for energy, water and relevant materials, or per capita consumption of key products associated with high resource consumption (e.g. meat)<sup>7</sup>.

By contrast, we do not consider the Environmental Footprint methodology, promoted by the Commission, can be considered a suitable instrument to derive robust and meaningful indicators as pointed out in our position paper<sup>8</sup>. Life Cycle Assessment (LCA) based information systems (Type III labels, EPDs, etc.) have been strongly and repeatedly criticised by ANEC – particularly in a consumer context – with respect to the methodology (e.g. high subjectivity, poor robustness and precision, etc.), the choice of indicators (dubious models, questionable relevance, etc.) and limitations regarding the verifiability of any data and claims. However, ANEC acknowledges that LCA is an excellent tool for (rough) orientation in the initial phase of environmental product labelling or criteria setting, and for comparing system alternatives, but only with respect to those (few) aspects which can be adequately covered by LCA, i.e. those which are quantifiable, can be aggregated and reliably modelled in a sound scientific manner (such as total energy consumption). The basic criticism as regards methodological drawbacks using LCA holds also for the Organisational and Product Environmental Footprint (OEF, PEF) methodology, generally using the same concept while adding additional concerns, e.g. because of the naïve assumption that the establishment of additional standardised specific rules for products (‘Product Category Rules’) will lead to a better comparability of the environmental performance of products.

5 See 2014 ANEC position paper 'Hazardous chemicals in products - The need for enhanced EU regulations' <http://www.anec.eu/attachments/ANEC-PT-2014-CEG-002.pdf>.

6 COM(2011) 571, 'Roadmap to a Resource Efficient Europe' [http://ec.europa.eu/environment/resource\\_efficiency/pdf/com2011\\_571.pdf](http://ec.europa.eu/environment/resource_efficiency/pdf/com2011_571.pdf).

7 ANEC position about resource efficiency indicators in response to 2012 EC consultation 'Options for Resource Efficiency Indicators'.

8 Chapter 7 of ANEC position paper 'Environmental Assessment goes astray: A critique of environmental footprint methodology and its ingredients' proposes how to develop a framework for indicator development embedded in the system of political decision making.

It remains to be seen what the “*monitoring framework for the circular economy, designed to measure progress effectively on the basis of reliable existing data*” to be developed by the Commission will look like.

### 3.2 Resource reduction targets

As ANEC expressed in an earlier contribution to the European Commission on resource use and efficiency, we support a compulsory reduction of overall energy consumption, accompanied by specific sectoral energy saving targets (e.g. for buildings, transport, industrial facilities, etc.).

Targets for material consumption should be set for specific materials (e.g. rare earths) and industrial processes based on feasibility studies. Targets for water use and artificial and built-up land use (change) should be established. As quickly as possible, indicators for direct AND indirect (embedded in products) consumption by citizens of energy, water, relevant materials and land (use change) or products associated with unacceptably high or unnecessary resource consumption (such as meat or mobile phones) per capita should be agreed upon as a prerequisite to fix targets. Similarly, there could be targets for the minimum lifetime of the most relevant products.

### 3.3 Relevance of product features

As the Commission Communication<sup>9</sup> on circular economy correctly points out, “*better design can make products more durable or easier to repair, upgrade or remanufacture. It can help recyclers to disassemble products in order to recover valuable materials and components. Overall, it can help to save precious resources*”. The Commission is also right in saying that “*current market signals appear insufficient to make this happen*”.

Regulatory product requirements need to be established to ensure that short-lived and resource intensive products are excluded from the market. This may be carried out by establishing technical provisions in support of durability, reusability, reparability, (indication of) availability of spare parts, recyclability or resource efficiency. It is acknowledged that the Commission intends to incorporate such requirements product-by-product in the implementing measures relating to the Ecodesign Directive (2009/125/EC). However, this Directive so far covers only energy-related articles and is, therefore, much too limited. If the scope of the Ecodesign directive was broadened to other articles, its success would be exponentially extended.

On the other hand, aspects such as upgradeability and modularity will be relevant for some products but not for all.

There is no one-size-fits-all solution to product design and there is a need to recognise differences across materials and products.

### 3.4 Standardisation request on material efficiency aspects

Product specificity clearly also relates to the envisaged technical standardisation. The European Standardisation Organisations are currently considering a Commission standardisation request on material efficiency. Work needs to be set in the eco-design measures at the outset for the standards to be useful and feasible. The prioritisation of the product-specific aspects cannot be left to industry alone: they need to be identified in the legal eco-design framework, either as part of the product-specific studies or as a separate study in the preparatory phase.

The current standardisation request will deliver some generic and perhaps useful documents, but nevertheless studies in Ecodesign preparatory phases will need to define product-specific requirements in terms of durability, reusability, reparability and so forth.

The development of the ‘Feasibility study for setting-up reference values to support the calculation of recyclability/recoverability rates of electr(on)ic products study’ recently announced by the European Commission Joint Research Centre<sup>10</sup> also promises to be useful as a background to this standardisation work.

## 4 Consumption patterns

The establishment of technical specifications is a long and resource-consuming undertaking. In addition, conducting the durability tests themselves may take extensive test times and turn out to be overly costly. A consequence would be that Member States will not use such tests for enforcement.

A much more efficient way would be to strengthen regulations relating to legal warranties and commercial guarantees. Unfortunately, the Commission Communication addressed only the implementation of existing rules relating to the 2 years legal warranty period. The existing rules and their better enforcement will, however, do little in support of a lifespan extension. A much more radical approach is needed: obligatory commercial guarantee statements by industry, linked to the life expectancy of a product, would make a significant difference. This approach is discussed in a study commissioned by the German Federal Envi-

<sup>9</sup> *Supra* note 3.

<sup>10</sup> C.f. <http://eplca.jrc.ec.europa.eu/?p=1452>.

ronmental Protection Agency (UBA)<sup>11</sup>. Manufacturers would be obliged to declare a guarantee time but would be free to choose any time period. Consumers would most likely give preference to those products with higher guarantee times.

This is a market-based and efficient instrument which can be implemented fairly quickly. By contrast, the development of any legal requirements and related standards takes many years.

A main reason for the ever shorter product circles resulting in products being discarded or no longer used is (apart from limited technical lifetime) the permanent pressure exerted by economic operators stimulating the purchase of new products before the old product has reached the technical end of life.

The lifetime of products is also limited by fashion trends. For example, with the advent of the digital economy, smart appliances become more and more common, and marketing methods make consumers believe they need to follow fashion and change, for example, their mobile phones after a short period of use (especially for lack of software upgrades). These products also contain noble metals that are lost when consumers are not encouraged to use the product for longer or at least to return the older product for re-use.

This element has not been given attention by the Commission in the area of circular economy. This is a serious omission because this dimension may be more important than the technical limitations of the product life. It requires counteracting marketing practices by industry (e.g. by imposing taxes on advertising, and financing objective information for consumers with the revenues). Instead of stimulating consumption, non-consumption should be promoted, e.g. by disallowing telephone operators to provide a mobile phone free of charge to consumers (which is not genuinely free of charge anyway).

As regards the Commission's intention to tackle false green claims, we highlight the energy label and the ecolabel, as well as the eco-design requirements, as constituting the most successful product labelling tools from a consumer perspective. At the same time, we call on the Commission not to use the product environmental footprint as a tool to measure and communicate environmental information to consumers. It is inappropriate and focus should remain on the

improvement of existing successful European schemes.

As regards green public procurement, the Commission strategy is in line with ANEC demands on the importance of supporting its higher uptake. Certainly, it is key that administrations lead by example in prioritising the purchase and use of sustainable products and services. However, the current guidelines lack ambition and are, therefore, of limited use.

## 5 Priority sectors

As the circular economy strategy states, different industry sectors have different resource uses and waste generation. It is opportune that a choice of priority sectors was made in the strategy: construction and food waste are certainly key as regards their environmental impact. It seems, however, that the selection has been made on the basis of the level of challenge that the circular economy goal poses to the certain sectors.

In our view, the circular economy strategy of the Commission would have needed to start from a more ambitious assessment of the key sectors that need to be tackled.

Current research shows that people in Finland use an equivalent of 40 tons of materials annually<sup>12</sup>. The Finnish example can apply to many other Western countries as, in most industrialised countries, total material consumption (TMC) amounts to between 40 and 50 tons per capita in a year.

Interestingly, the article shows the main areas for resource use are housing, transport and food (as did the Commission-funded EIPRO study of 2006<sup>13</sup> which focused on the related burdens of energy consumption). This shows, for example, that consumer electronics may not be the most important issue – despite the fact that they are the focus of the public debate. However, the mere fact that the so-called 'planned obsolescence', mainly related to electrical and electronic appliances, has attracted significant public attention is a good justification for also making this area a priority.

The current trend of celebrating certain eco-innovative production practices as single-minded solutions is not helpful in the long term if a new overall strategy is not established. Will we have solved the problem of re-

11 Schlacke, S., Alt, M. and Tonner, K. et al. (2015). Stärkung eines nachhaltigen Konsums im Bereich Produktnutzung durch Anpassungen im Zivil- und öffentlichen Recht, [www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte\\_72\\_2015\\_staerkung\\_eines\\_nachhaltigen\\_konsums\\_im\\_bereich\\_produktnutzung\\_0.pdf](http://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte_72_2015_staerkung_eines_nachhaltigen_konsums_im_bereich_produktnutzung_0.pdf).

12 Lettenmeier, M., Liedtke, C. and Rohn, H. (2014). Eight Tons of Material Footprint—Suggestion for a Resource Cap for Household Consumption in Finland, Wuppertal Institute for Climate, Environment and Energy (and other institutes).

13 European Commission Joint Research Centre: Environmental Impact of Products (EIPRO). Analysis of the life cycle environmental impacts related to the final consumption of the EU-25, May 2006 <http://ipts.jrc.ec.europa.eu/publications/pub.cfm?id=1429>.



source scarcity with some sort of lightweight short-lived disposable objects made of biomaterials? Not at all. A more ambitious and fundamental change is needed.

In principle, in ANEC's view the priority sectors for action are construction, food and transport, with consumer electronics also deserving attention for its educational value.

### 5.1 Transport

We believe transport should have been tackled among the priorities in the new package. A shift to extended and improved public transport is needed with a corresponding reduction of car/lorry use. The use of cars/lorries needs to be discouraged wherever appropriate, particularly in cities. This would in turn prolong the lifetime of these vehicles and thereby reduce resource needs for their production. In addition, far more ambitious fuel efficiency targets (or CO<sub>2</sub> emission targets) for all kinds of vehicles should be set.

As the data<sup>14</sup> recently published by the European Environment Agency shows, while emissions from official testing reported by national authorities show that new cars sold in the European Union are increasingly more fuel-efficient, the method used is widely considered unreliable, given emissions are measured following the requirements of the outdated New European Driving Cycle (NEDC) test procedure.

The recent 'Dieselgate' affair made apparent the observations that ANEC<sup>15</sup> has stressed for many years in its work in the UNECE World Forum for Harmonization of Vehicle Regulations: the need for the new test to measure fuel consumption (WLTP) should be applied as soon as possible to enable test procedures more in line with real life than current ones. The preliminary data collected by EEA in the report also shows a 9% increase in new car sales in 2015 compared with 2014.

The European Circular economy transition needs especially to consider durability, reusability and reparability of vehicles in addition to the foreseen work on waste management of end of life vehicles.

### 5.2 Construction

In light of ANEC views on how to achieve sustainable construction as expressed in our position paper 'Laying the foundations for sustainable buildings', we are

also keen to follow actions announced in the area of construction and demolition.

Policy measures should focus on enhanced durability of buildings and building products, and promote design for deconstruction (making recycling of certain materials easier, and reuse of components possible). In our paper, we provide recommendations on how to tackle the aspects we deem crucial: energy savings, durability of buildings and building products, and information provision to enhance sustainable choices. The paper further proposes consideration of accessibility and adaptability in the design stage, as well as recyclability and the reusability of building parts. It identifies areas for which political frameworks need to be developed: to enable affordable energy prices, to develop a trade system for used building products, and to address emissions to indoor air.

We also look at the parallel evaluation of the Energy Performance of Buildings Directive and deem targets for the energy consumption of the building stock and renovation targets should be established and not only for public buildings. More harmonisation is needed with respect to test methods but also with respect to requirements. It appears that the so-called 'nearly zero-energy buildings' is defined differently among Member States.

### 5.3 Food

Current agricultural practices are not sustainable and are resource-intensive. We need fundamental change in this area. As stated above, waste generation reduction targets – including those for food waste – should, among other targets, be set. Targets for (the reduction of) highly resource-intensive meat consumption should also be established.

### 5.4 Plastics

By 2017, the European Commission foresees the development of a strategy on plastics in the circular economy, addressing recyclability, biodegradability, the presence of hazardous substances of concern in certain plastics, and marine litter.

In light of these areas of focus, we believe it is crucial to prevent as far as possible the presence of hazardous substances in plastics. But, without the European legislative systematic approach to addressing chemicals in consumer products that ANEC wants, the recyclability of plastics will remain a difficult objective to achieve.

Once again, the priority that is not considered is the most relevant: waste prevention by reducing the production and consumption of disposable plastics products. Moreover, in light of the focus on recycling of

<sup>14</sup> Reported CO<sub>2</sub> emissions from new cars continue to fall, 14 April 2016, by the European Environment Agency (EEA), see <http://www.eea.europa.eu/highlights/reported-co2-emissions-from-new>.

<sup>15</sup> ANEC Press Release: Consumers welcome new test cycle for the fuel-efficiency of new cars, <http://www.anec.eu/attachments/ANEC-PR-2014-PRL-008.pdf>.

the revised legislative proposals on waste, it is key to take account of the wide differences existing in waste management and recycling infrastructures at local and cross-border level.

Similar obvious obstacles exist in the plastics lifecycle as for the development of markets for secondary raw materials in the EU: producers are often not aware of the origin of the materials/substances in their products due to increased complexity of supply chains and a lack of transparency.

Besides containing rare elements, consumer electronics are widely composed of plastics. Given the focus given to these products in the public debate, it is important to give attention to both the complexity of plastics used when considering recycling and the durability of these products. We believe that there is educational value for the consumer in tackling the sustainability of these products. Not only because the possible ‘planned obsolescence’ of these products has attracted attention, but also because premature product failure comes at a cost.

## 6 Conclusions

Further to the publication of the circular economy package, we look forward to clarity on concrete political targets and actions under the current headlines.

We are concerned that, in the end, we will see little else than a promotion of the recycling industry, with continued high material and energy streams, and some lip-service commitments to durability. A careless promotion of renewables and the establishment bio-economy could potentially do a lot of damage, as the biofuel example has taught, since just making products a bit lighter and more resource-efficient will not solve our fundamental problems.

We need real commitment to reduce material and energy flows significantly (including those that occur outside Europe), rather than just enhancing efficiency which could lead to even higher resource consumption. This requires not only measures to prolong the technical lifetime of products, but also to counteract the fashion-driven premature replacement of products now encouraged by industry. Both require strong market interventions to reduce consumption of questionable value and to counteract promotional activities by business.

There is also a need to develop measures based on meaningful, robust and verifiable indicators. Hence, indicators based on LCA (such as the Environmental Footprint) are not suitable to this end as they rely on numerous assumptions and methodological choices (and have other serious limitations).

Finally, we believe any policy measures should bring about changes in a foreseeable future. In this context, a legal obligation for manufacturers or importers to indicate commercial guarantee times – to stimulate competition aimed at increasing the service lifetime of products – seems a more promising instrument than elaborating sophisticated technical measures to enhance the lifetime of products.

We need a ‘resource-saving economy’ including circular elements, rather than reversing the order and going for a ‘circular economy’ in which resource-saving is a mere side aspect.

The present barrage of bilateral free trade agreements among countries is indicative of the failure of the WTO system. It is therefore crucial that the mistakes made in the JEPAs not be copied and, at worse magnified, by replicating it in other regions and countries.

For existing JEPAs the preferred remedy is to amend the “originating goods” definition by removing the waste definitions, and remove the listing of toxic wastes and banned and controlled substances under the respective annexes of the JEPAs.

The solutions to avoiding a conflict between the trade-oriented JEPAs and trade-restrictive MEAs clearly lies in separating the “goods” from the “bads” at the very beginning. This can be done only if governments approach the negotiating table with a consciousness of the magnitude of the agreement into which they are entering and respect for the various crosscutting issues that affect trade, such as but not limited to environment and health. Only when governments begin dealing with trade in this manner can we rightly call such agreements “new age”.

## Imprint

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We invite authors to submit manuscripts to the Editors by email.

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

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**elni membership**

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

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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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  - Environmental 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
- Role of standardization bodies
- 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 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](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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