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elni REVIEW

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Delphine Misonne

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Sustainability and Precautionary Aspects of CETA Dissected
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Editorial

The current issue of elni Review is inter alia dedicated to a subject that has been on the Top Agenda in 2016: The Comprehensive Free Trade Agreement between the EU and Canada.

On 8 September 2016 an ELNI Forum on CETA took place at the St. Louis Faculty of Law in Brussels. A small group of environmental lawyers debated intensively different aspects of this far-reaching agreement and its impact on environmental law in Europe in particular. Delphine Misonne gives an introduction on the potential impact of CETA on environmental law, Laurens Ankersmit and Wybe Th. Douma analyse the dispute settlement schemes under CETA and shortcomings of the agreement concerning sustainability and precautionary aspects. Nicolas de Sadeleer then explains the sophisticated ratification process for CETA and the legal uncertainty surrounding it. Details of these analyses can be found in the articles of *Delphine Misonne*, *Laurens Ankersmit* and *Wybe Th. Douma*.

Besides a number of legal details, the interesting general aspect of *who should negotiate* such types of agreements arose during the discussion in the Forum. Given that CETA claims to be a progressive environmental agreement (which it is obviously not), it must be criticised that it has been negotiated only by trade experts and not by environmental experts. Whatever the outcome of this dossier is in the end, it has to be noted that public pressure and the scientific debate improved the Agreement considerably, even though it is still not sufficient from an environmental point of view.

Another persistent environmental issue in 2016 – and foreseeably also well beyond – is the so-called 'Volkswagen Scandal'; a symbol for a confidence crisis caused by and affecting not only the VW AG but also other major car manufacturers. A contribution by *Ludwig Krämer*, 'The Volkswagen Scandal – Air Pollution and Administrative Inertia' deals with the manipulation of NOx emissions from Volkswagen diesel cars on the one hand, and the manipulation of CO_2 emissions from its diesel and petrol cars on the other. Not all details of the manipulations have been made public until now. A number of conclusions may nevertheless already be drawn. In this context, the editors would also like to draw the readers' attention to the related analysis by Défense Terre ('Strengthening the regulation of defeat devices in the European Union', Legal Note, June 2016) as well as to the expert opinion by Martin Führ for the German Bundestag's Committee of Inquiry with respect to the car emissions affair.

A further article addresses the Aarhus Regulation which provides an opportunity for environmental non-governmental organisations (ENGOs) to request an internal review of an EU institution or body that has adopted an administrative act under environmental law, or should have done so in the case of an alleged administrative omission. *Thirza Moolenaar* and *Sandra Nóbrega* investigate whether the criteria that have to be met for an ENGO to be entitled to make such a motion are sufficiently clear, and whether they contribute to the objective of providing wide access for ENGOs to the internal review procedure.

This elni Review's *Recent Developments* section starts off with a report of C-673/13 Commission v. Greenpeace and PAN Europe by *Bondine Kloostra*, the representative of the two NGOs involved. In its Judgment of 23 November 2016 the CJEU rules that the concept of 'emissions into the environment' is not limited to emissions from industrial installations. Rather it includes the release into the environment of substances such as pesticides and biocides. This landmark decision will most likely influence future access to information practice – not limited to the context of pesticides. Lastly, *Elhoucine Chougrani* examines the opportunities and the challenges in applying environmental law and enforcing the sustainable development goals in Morocco and *Lynn Gummow* reports on the 5th Lucerne Law and Economics Conference.

The editors welcome submissions of contributions to the next elni Review until 1 April 2017. Please refer to www.elni.org for further detail on the call and for the author guidelines.

Gerhard Roller/ Julian Schenten

December 2016

Belgium Requests an Opinion on Investment Court System in CETA

Laurens Ankersmit

1 Introduction

On 29 of October the leaders of the Belgian federal government and the regional and community governments reached a compromise deal over the EU-Canada Comprehensive Economic and Trade Agreement (CETA).[*1] One of the key outcomes is that the Belgian federal government will seek the Opinion of the European Court of Justice on the compatibility of the Investment Court System (ICS) in Chapter Eight of CETA with the EU Treaties. As soon as the Belgian federal government makes the request for an Opinion, the Court will be able to express itself on this contentious legal issue. This article provides some background on the origins of the Walloon request before explaining why ICS could potentially pose a legal problem for the EU.

2 Wallonia's longstanding resistance against CETA and the resolution of 25 April of 2016

To insiders, the resistance put up by Wallonia in particular should have been no surprise. Over the past few years, the Walloon and Brussels parliaments have had extensive debates on the merits of CETA and have been increasingly critical of the deal. One of the main and more principled cause for opposition was the inclusion of ICS in CETA, a judicial mechanism that allows foreign investors to sue governments over a breach of investor rights contained in the agreement.

In the Parliament of Wallonia this resulted in the adoption of a resolution on the 25th of April 2016 (6 months before the compromise deal mentioned above) listing the key concerns Wallonia has about CETA.[2] In that resolution the very first request by the Walloon government was to ask the Belgian federal government: *"de solliciter l'avis de la Cour de justice européenne (CJE) sur la compatibilité de l'accord avec les Traités européens sur la base de l'article 218 (11) du TFUE pour éviter qu'un accord incompatible avec les Traités européens soit conclu et de ne pas procéder à la ratification de cet accord tant que la CJE ne s'est pas prononcée"*.

In other words, the Walloon Parliament wanted to know whether ICS is compatible with the EU Treaties, and asked the Belgian federal government to make use of the procedure of Article 218 (11) TFEU to request the CJEU's opinion on the issue. In the words of the Court, that procedure *"has the aim of forestalling complications which would result from legal disputes concerning the compatibility with the Treaties of international agreements binding upon the European Union*".[3] In particular, the advantage of the procedure is to avoid "*serious difficulties*" for both the EU internally and for third parties that would result from a successful challenge of the agreement after its entry into force.[4]

Wallonia could not make this request itself, as this power is reserved for the federal level of the Belgian Government. However, Belgium is in many ways a 'little Europe', as its regional governments need to authorize federal action at the international level in a number of fields, including trade. As a result, Wallonia had to broker a deal with the federal government of Belgium in exchange for authorising Belgium's signature on CETA.

3 Is ICS compatible with the Treaties?

The Walloon request did not come out of the blue. The issue of the compatibility of Investor-State Dispute Settlement (ISDS) and ICS (a form of ISDS) with the Treaties has been contentious among EU law insiders for a while. Recently, 101 law professors objected to ICS in an open letter because ICS is *"in strong tension with the rule of law and democratic principles enshrined in national constitutions and European law. Additionally, [ICS is] likely to affect the autonomy of the European Union's legal order, as the investment tribunals' binding and enforceable decisions on state liability threaten the effective and uniform application of EU law"*.[5]

An increasing number of academic contributions have also raised this issue.[6] Moreover, the European Asso-

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* An earlier version of this article appeared on the European Law Blog and on Investment Treaty News.

1 See the statement of Belgium in the Statements to the Council minutes of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States ST 13463 2016 REV 1 available at http://data.consilium.europa.eu/doc/document/ST-13463-2016-REV-1/en/pdf.

2 Resolution of the Parliament of Wallonia of 25 April 2016 on the Comprehensive Economic and Trade Agreement (CETA), available at http://nautilus.parlement-wallon.be/Archives/2015_2016/RES/212_4.pdf.

3 Opinion 1/09, the European and Community Patents Court EU:C:2011:123, para. 47.

4 *Ibid*, para. 48.

5 Legal statement on investment protection and investor-state dispute settlement mechanisms in TTIP and CETA (October 2016) available at https://stop-ttip.org/wp-content/uploads/2016/10/28.10.16-Updated-Legal-Statement_EN.pdf.

6 L. Ankersmit, The Compatibility of Investment Arbitration in EU Trade Agreements with the EU Judicial System, Journal for European Environmental & Planning Law 13 (2016) p. 46-63; M. Cremona, Guest Editorial: Negotiating the Transatlantic Trade and Investment Partnership (TTIP), Common Market Law Review 52 (2015) 52, p. 351–362, at 360; I. Govaere, TTIP and Dispute Settlement: Potential Consequences for the Autonomous EU Legal Order, College of Europe Research Paper in Law 1/2016 (July 2016); J. Kokott and C. Sobotta, Investment Arbitration and EU law, Cambridge Yearbook of European Legal Studies 18 (2016), p. 3-19; G. Uwera, Investor-

ciation of Judges (representing 44 national associations of judges) and the German Association of Judges (representing 16,000 German judges and public prosecutors) have opposed ICS *inter alia* on the ground that the system might not be compatible with EU law.[7]

Within the EU institutions and bodies, the compatibility of ISDS/ICS has clearly also been an issue. The European Parliament in its TTIP Resolution of 8 July 2015 called upon the Commission to ensure that the "jurisdiction of courts of the EU and of the Member States is respected".[8] In a praiseworthy feat of transparency, the opinion of the Legal Service of the European Parliament on the issue of compatibility was published this summer.[9]

The European Economic and Social Committee in an Opinion adopted on 27 May 2015 also stated that *"[there] are considerable EU treaty-related and constitutional law concerns regarding the relations of ISDS ruling with the EU legal order. Private arbitration courts have the capacity to make rulings which do not comply with EU law or infringe the CFR [Charter of Fundamental Rights]. For this reason, the EESC feels that it is absolutely vital for compliance of ISDS with EU law to be checked by the ECJ in a formal procedure for requesting an opinion, before the competent institutions reach a decision and before the provisional entry into force of any IIAs [International Investment Agreements], negotiated by the EC".*[10]

The legal service of the European Commission has itself been busy fighting intra-EU bilateral investment treaties containing ISDS. In addition to a number of ongoing infringement proceedings, the legal service also wrote several *amicus curiae* briefs contesting the jurisdiction of the investment tribunals.[11] In the *Achmea* case, for instance, the Commission wrote: "*There are some provisions of the Dutch-Slovak BIT that raise fundamental questions regarding compatibility with EU law. Most prominent among these are the provisions of the BIT providing for an investor-State arbitral mechanism (set out in Art. 8), and the provisions of the BIT providing for an inter-State arbitral mechanism (set out in Art. 10). These provisions conflict with EU law on the exclusive competence of the EU court[s] for claims which involve EU law, even for claims where EU law would only partially be affected. The European Commission must therefore [...] express its reservation with respect to the Arbitral Tribunal's competence to arbitrate the claim brought before it by Eureko B.V".* [12]

4 The autonomy of the EU legal order and the preliminary reference procedure as the keystone of Europe's judicial system

So what are the main legal issues when assessing the compatibility of ICS with EU law? It is clear that the Treaties in principle permit international agreements providing for state-to-state dispute settlement between the EU and third countries (such as the WTO's dispute settlement body). Such state-to-state dispute settlement mechanisms do not encroach on the powers of the ECJ, because TFEU Part Six, Title 1, Chapter 1, Section 5 does not grant the EU courts the power to hear such disputes.

However, when it comes to claims by individuals involving questions of EU law, the situation is radically different. The preliminary reference procedure in Article 267 TFEU gives the courts of the Member States and the European Court of Justice important powers to resolve such cases. In fact, the ECJ itself refers to this procedure as the "keystone" of the EU's judicial system.[13] It is perhaps important to recall that Article 267 TFEU was central to the ECJ's reasoning when it found that the Treaties constituted "a new legal order" that gives *individuals*, not just the Member States, rights and obligations, and whose uniform interpretation the European Court of Justice oversees.[14]

State Dispute Settlement (ISDS) in Future EU Investment-Related Agreements: Is the Autonomy of the EU Legal Order an Obstacle?, The Law & Practice of International Courts and Tribunals 15 (2016), p. 102-151; H. Lenk, Investor-state arbitration under TTIP: Resolving investment disputes in an (autonomous) EU legal order, Report for Swedish Institute for European Policy Studies (SIEPS) (2015) 2; A. Dimopoulos, The Compatibility of Future EU Investment Agreements with EU Law, Legal Issues of Economic Integration 39 (2012), p. 447–471; A. Dimopoulos, The involvement of the EU in investor-state dispute settlement: A question of responsibilities, Common Market Law Review 51 (2014), p. 1671–1720; A. Carta, Do investor-to-state dispute settlement mechanisms fit in the EU legal system? elni (2014), p. 30; J. Kleinheisterkamp, Investment Protection and EU Law: The Intra- and Extra-E Dimension of The Energy Charter Treaty, Journal of International Economic Law 15 (2012), p. 85–109; S. Hindelang, Repellent Forces: The CJEU and Investor-State Dispute Settlement, Archiv des Völkerrechts 53 (2015), p. 68–89; N. Lavranos, Designing an International Investor-to-State Arbitration System after Opinion 1/09, in M. Bungenberg and C. Herrmann (eds.), Common Commercial Policy after Lisbon 2013.

7 Deutscher Richterbund, Stellungnahme zur Errichtung eines Investitionsgerichts für ttip – Vorschlag der Europäischen Kommission vom 16.09.2015 und 12.11.2015, February 2016; European Association of Judges, Statement from the European Association of Judges (EAJ) on the proposal from the European Commission on a new investment court system, 9 November 2015.

8 European Parliament resolution of 8 July 2015 containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI)).

9 Legal opinion of 1 June 2016 "Investment dispute settlement provisions in the EU's trade agreements" available at http://www.europarl.europa.eu/committees/en/inta/publications.html?tab=Other. See for a critical assessement ClientEarth, 'Legal Briefing EP Legal Service Opinion in CETA' 5 September 2016 available at http://www.documents.clientearth.org/wp-content/uploads/library/2016-09-05-legal-briefing-ep-legal-service-opinion-on-ics-in-ceta-ce-en.pdf.

10 European Economic and Social Committee, 'Opinion of the European Economic and Social Committee on Investor protection and investor to state dispute settlement in EU trade and investment agreements with third countries' (27 May 2015) *(emphasis added).*

11 See European Commission, 'Commission asks Member States to terminate their intra-EU bilateral investment treaties' IP/15/5198 18 June 2015.

12 European Commission Amicus Curiae submission as quoted by the arbitration tribunal in Achmea B.V. v. The Slovak Republic, UNCITRAL, PCA Case No. 2008-13 (award on jurisdiction 7 December 2012), para. 193.

13 Opinion 2/13, Accession to the ECHR EU:C:2014:2454, para. 176.

14 Case 26/62, Van Gend & Loos EU:C:1963:1.

The ECJ has made clear in no uncertain terms that it has the *exclusive* power to give definitive interpretations of EU law and therefore ensure the uniform interpretation of EU law across Europe.[15] However, as a fundamental purpose of ICS in CETA is to enable investors to challenge not only EU acts and decisions based on these acts, but also national acts which might involve EU law somehow, an ICS tribunal would have to interpret and give meaning to EU law. Similarly to the context of human rights law, ICS will therefore encroach on the powers of the EU courts to rule on questions of EU law. Furthermore, ICS in CETA does not require the exhaustion of domestic remedies, which would soften the risk of divergent interpretation as well as respect the powers of the courts of the Member States to hear claims by individuals involving questions of EU law. ICS in CETA also does not require prior involvement of the ECJ for questions of EU law faced by these ICS tribunals.

5 CETA's safeguards

To be sure, the Commission has implicitly admitted and sought to address this problem in CETA. In contrast to the EU – Singapore Free Trade Agreement (FTA), Article 8.31 (2) of CETA states that its tribunals "*may consider*" domestic law "*as a matter of fact*".[16] The provision continues by stating that in "*doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party*".

The question is whether these provisions are sufficient. For one, it is hard to see how law can be considered 'as a matter of fact' since law is a social construction. This approach is likely derived from international law circles to make international law more acceptable to domestic legal systems.[17] However, as CETA will become an integral part of the EU legal order, this concept will find its way into EU law with potentially problematic consequences.[18] What if the highest courts in the Member States no longer feel required to make preliminary references because they can consider EU law as a matter of fact, as these tribunals are allowed to do?

For another, following the prevailing interpretation given to EU law, it begs the question of what happens if no such interpretation exists. CILFIT makes clear that this is anything but an exceptional situation.[19] In that case, the ECJ found that the highest courts in the Member States may only refrain from the obligation to make a preliminary reference when the "*correct application of* [EU] *law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved*".[20]

Lastly, one may wonder whether stipulating that the interpretation of domestic law is not binding is sufficient. This is considering the substantial financial consequences of the awards that are themselves binding, and the fact that ICS contains an appeal mechanism, in which the appeal tribunal can further solidify a particular interpretation of EU law.

6 Article 340 TFEU: Suing the European Union

Another problem related to the EU courts powers is that under EU law the EU courts have exclusive jurisdiction to hear and determine actions seeking compensation for damage brought under the second paragraph of Article 340 TFEU, which covers non-contractual liability of the European Union.[21] In other words, when looking to sue the European Union for damages, one must go to the ECJ.

ICS in CETA introduces an alternative to such suits for foreign investors, undermining the exclusive nature of the EU courts' powers in claims for damages.[22] Under EU law a claim for damages is an autonomous remedy, but the ECJ limits its use.[23]https://www.iisd.org/itn/2016/02/29/is-isds-in-eu-trade-agreements-legal-under-eu-law-laurens-ankersmit/ - _ftn11 In particular, actions for damages are inadmissible if they are used improperly as a disguised action for annulment or action for failure to act. An example would be to use an action for damages to nullify the effects of a measure that has become definitive, such as a fine. It is also very difficult, if not impossible, to claim damages for lawful acts.[24]

Moreover, the Court is very wary of the potential of a 'regulatory chill if it were to accept damages claims too easily. The Court has held that the "*exercise of the legislative function must not be hindered by the prospect of actions for damages whenever the general interest of the Community requires legislative measures to be adopted which may adversely affect individual ests*".[25]https://www.iisd.org/itn/2016/02/29/is-isds-in-

15 Opinion 2/13 Accession to the ECHR EU:C:2014:2454, para. 244-248.
16 Article 9.19 of the EU-Singapore FTA does not contain such clauses. It merely provides that the investment tribunal shall decide whether the treatment that is the subject of the claim is in breach of an obligation under the investment protection section in accordance with the Vienna Convention on the Law of Treaties.
17 See for a discussion J. Hepburn, CETA's New Domestic Law Clause, EJIL: Talk! Accessed at http://www.ejiltalk.org/cetas-new-domestic-law-clause/ (accessed 5 December 2016).
18 Case 181/73, Haegeman EU:C:1974:41, para. 5.
19 Case 283/81, CILFIT EU:C:1982:335.
20 *Ibid*, para. 16.
21 Case C-377/09 Hanssens_Ensch v. European Community EU:C:2010:459, para. 17.
22 See also A. Carta, *supra* note 6, p. 30.
23 K. Lenaerts, I. Maselis, and K. Gutman, *EU procedural law (*Oxford: Oxford University Press, 2015), p. 490.
24 Joined cases C-120/06 P and C-121/06 P *Fabbrica italiana accumulatori motocarri Montecchio SpA (FIAMM) and others v Council and Commission* EU:C:2008:476, paras. 164–169.
25 *Ibid*., para 174.

eu-trade-agreements-legal-under-eu-law-laurens-ankersmit/ - _ftn13 Bringing a claim under ICS, therefore, has clear advantages for investors over bringing claims before the EU courts, putting a perverse competitive pressure on those EU courts. ICS tribunals may be less wary of regulatory risk and, therefore, may be more inclined than the EU courts to decide cases that could potentially chill regulation.[26]

7 Potential negative consequences for the EU's internal market

ICS in CETA also poses challenges for the proper functioning of the EU's internal market rules. CETA's ICS provides for a discriminatory remedy contrary to Articles 45, 54, and 56 TFEU, because Canadian investors can bring claims on behalf of their EU incorporated companies. For example, a Canadian-owned Slovak company could be privileged over a Dutch company operating in Slovakia, because the Canadian-owned Slovak company would have recourse to an alternative form of dispute settlement not available to the Dutch company.

Moreover, ICS awards can counteract national and EU provisions imposing financial burdens on individuals and corporations (including provisions on fees, taxes, penalties, fines and environmental liability). While the Commission's view seems to differ, the problem goes beyond mere questions of paying back unlawfully granted state-aid.[27]

An undertaking such as Intel could opt to challenge the Commission's 1 billion Euro fine for its abuse of a dominant position on the microprocessors market, because it considers the Commission to have violated several good governance principles and therefore argue a breach of due process under the 'fair and equitable treatment' standard.[28] That standard is understood as protecting basic forms of good governance.[29] It is to be recalled that Intel not only challenged the Commission's decision before the General Court arguing a violation of the principle of presumption of innocence and inadequate proof of unlawful conduct, Intel also complained to the European Ombudsman for maladministration by the Commission. The General Court dismissed Intel's application for annulment, but the European Ombudsman partially sided with Intel.[30]

8 Conclusion

One of the most astounding aspects of this story is that it took the defiance of the Walloons to initiate a preliminary check by the ECJ on the legality of ICS. The Commission could have easily added the question of compatibility of ISDS in the EU-Singapore FTA to its request for an Opinion in Opinion 2/15.[31] That opinion was requested in July 2015, *after* the ECJ delivered its Opinion 2/13. It was obvious to informed Court watchers at the time that Opinion 2/13 raised serious questions regarding the compatibility of ISDS and ICS with the Treaties. Indeed, it is quite clear based on an access-to-documents request made by ClientEarth that the Commission's legal service was well aware of the potential negative implications.[32]

Instead of going for a 'better safe than sorry' approach (the explicit purpose of the 218 (11) TFEU procedure), the Commission took the political risk of negotiating and concluding an agreement that could potentially be annulled afterwards. That would have not only embarrassed the EU internationally, it could have resulted in serious constitutional law issues, because the EU and its Member States might have faced ICS awards that were internationally binding yet in conflict with EU law (not least because of the CETA Article 30.9 (2) so-called 'sunset clause' allowing for claims up to 20 years after termination of the agreement). In that sense, it appears that Wallonia did Europe and its trade partners a huge favour by seeking clarity on this issue before the EU entered into binding commitments in international agreements containing investor-state dispute settlement.

26 J. Kleinheisterkamp, Financial Responsibility in European International Investment Policy, International and Comparative Law Quarterly 63 (2014), pp. 449-476.

27 European Commission, 'Concept paper: Investment in TTIP and beyond - the path for reform', p. 5-6. The Commission only addresses the issue of ISDS claims that resulted out of investors' obligation to pay back unlawfully granted state aid in violation of the fair and equitable treatment standard contained in several BITs. The Commission does not consider in the concept paper similar problems resulting from paying fines, penalties or other financial obligations that the investor might incur when investing in the host state.

28 R. Wish, Intel v Commission: Keep Calm and Carry on! Journal of European Competition Law & Practice (2014), p. 1-2.

29 M. Jacob and S. Schill, 'Fair and Equitable Treatment: Content, Practice, Method' in: M. Bungenberg, J. Griebel, S. Hobe (eds.), International Investment Law, 2015, pp. 700-763.

30 See Case T-286/09, Intel Corp. v Commission EU:T:2014:547, para. 61; European Ombudsman, Decision of the European Ombudsman closing his inquiry into complaint 1935/2008/FOR against the European Commission (14 July 2009) available at http://www.ombudsman.europa.eu/en/cases/decision.faces/en/4164/html.bookmark (accessed 7 December 2016).

31 Opinion 2/15: Request for an opinion submitted by the European Commission pursuant to Article 218(11) TFEU, OJ 2015 C363, p. 18–19.

32 All documents available upon request with the author, for a sample please see http://www.documents.clientearth.org/wp-content/uploads/library/2016-02-24-redacted-document-on-isds-and-the-principle-of-autonomy-of-eu-law-following-opinion-2-13-ext-en.pdf.

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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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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

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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

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elni

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

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

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

Coordinating Bureau

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

elni Review

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

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

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

elni Conferences and Fora

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

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

Publications series

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

elni Website: elni.org

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

elni Board of Directors

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

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