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# elni

## REVIEW

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The genome editing technique is covered by Directive 2001/18 - Comment on Advocate Bobek's Opinion in case C-528/16

*Ludwig Krämer*

The ECJ Rules Environmental NGOs Must Have Access to Justice in Water Law Procedures

*Summer Kern and Gregor Schamschula*

The role of legislation and courts in the protection of the environment in the European Union and its impact on the European integration of Albania

*Erjon Muharremaj*

Simulation games in the Regulatory Impact Assessment – Simulation of the implementation of the EIA Amending Directive 2014/52/EU

*Martin Führ, Jaqui Dopfer, Kilian Bizer et al.*

Recent Developments

## CONTENTS

Editorial .....	1
The genome editing technique is covered by Directive 2001/18 - Comment on Advocate Bobek's Opinion in case C-528/16 .....	2
<i>Ludwig Krämer</i>	
The ECJ Rules Environmental NGOs Must Have Access to Justice in Water Law Procedures .....	7
<i>Summer Kern, Gregor Schamschula</i>	
The role of legislation and courts in the protection of the environment in the European Union and its impact on the European integration of Albania .....	11
<i>Erjon Muharremaj</i>	
Simulation games in the Regulatory Impact Assessment – Simulation of the implementation of the EIA Amending Directive 2014/52/EU .....	17
<i>Martin Führ, Jaqui Dopfer, Kilian Bizer et al.</i>	
The "Peoples' Climate Case" summarized .....	25
<i>Hugo Leith, Roda Verheyen and Gerd Winter</i>	
Book Review: "Environmental Crime in Europe" by Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi (eds.) .....	28
<i>Nicola Below</i>	
Imprint .....	29
Authors of this issue .....	29
elni Membership .....	30

## Editorial

The current issue of *elni Review* contains several contributions focussing on different aspects in the field of European environmental law practice.

In his profound article “The genome editing technique is covered by Directive 2001/18 – Comment on Advocate Bobek’s Opinion in case C-528/16” *Ludwig Krämer* argues that genome editing must be understood as being covered by the provisions of Directive 2001/18 on the deliberate release of genetically modified organisms into the environment.

“The ECJ Rules Environmental NGOs Must Have Access to Justice in Water Law Procedures” by *Summer Kern* and *Gregor Schamschula* assesses the current developments of implementation with regard to access to justice in Austrian Water Law. The ruling in question can certainly be seen as a milestone in environmental case law.

The article by *Erjon Muharremaj* “The role of legislation and courts in the protection of the environment in the European Union and its impact on the European integration of Albania” delivers interesting insights with regard to

the current state of environmental law in Albania and its shortcomings with regard to jurisdiction. This certainly will have an impact on the acquisition negotiations with the European Union.

Finally, *Martin Führ, Jaqui Dopfer, Kilian Bizer et. al.* discuss simulation games as a method for regulatory impact assessments. They set out their experiences with the method acquired during the impact assessment of the EIA Amending Directive 2014/52/EU.

The current issue of the *elni Review* delivers information about recent developments; a summarized version of the “Peoples’ Climate Case”-application delivered by the applicants and a review of the book “Environmental Crime in Europe” by the editors Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi.

We hope you enjoy this issue.

*Nicola Below/Martin Führ*

July 2018

*Book Review*

**“Environmental Crime in Europe”**

**by Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi (eds.)**

*Nicola Below*

The book “Environmental Crime in Europe” by the editors Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi is the second edited volume of the the EU-project “European Union Action to Fight Environmental Crime” (EFFACE). EFFACE was a 40-month research project funded under the European Seventh Research Framework Programme. Eleven European research institutions and think tanks were involved. The project assessed the impacts of environmental crime as well as effective and feasible policy options for combating it from an interdisciplinary perspective, with a focus on the EU.

The book is a follow-up to the results of the research strand of EFFACE dealing with actors, instruments and institutions involved in the fight against environmental crime and goes beyond a mere technical implementation study. The aim of this collection is to explore how environmental crime is controlled and environmental criminal law is shaped and implemented within the European Union and its Member States, from a technical and practical point of view. In doing so, it focusses on seven countries, particularly France, Germany, Italy, Poland, Spain Sweden and the United Kingdom. The selection took into account the differences in the legal traditions (civil law and common law) and a reasonable geographical spread. The book consists of three strongly interrelated parts.

Part I examines the European legal framework, looking in particular at Directive 2008/99/EC on the protection of the environment through criminal law and the specific competences of the EU in this domain. This part introduces the analysis in question and concludes with a critical discussion on the history and elements of the Environmental Crime Directive.

Part II – the country studies – forms the core of the book. The idea is to study implementation within the much broader context of functioning environmental criminal law in the wider context of the entire system of criminal law in each of the country. To this end, the country chapters address on the material side the definition of environmental crime, substantive criminal law principles, the structure of environmental crime, the transposition of Directive 2008/99/EC, procedural provisions, the role of inspections, the prosecutor, courts, administrative sanctions and the applicable type and magnitude of sanctions. On the practical side, the authors reflect

on the way in which environmental crime is dealt with, paying attention to the types of penalties imposed, the number of prosecutions and administrative sanctions imposed, etc. In result, the country studies deliver judgements on the effectiveness of the enforcement practices, taking into account the effect of domestic environmental crime law on compliance.

Part III provides a comparative analysis based foremost on a methodology developed at the Max Planck Institute for Foreign and International Criminal Law in Freiburg im Breisgau (Germany). The method focusses on the ability of criminal law to protect environmental interests, particularly in its relationship to administrative law. A distinction is made between the protection of environmental interests via so-called abstract endangerment, concrete endangerment and independent crimes. Based on the comparison the book concludes with an outlook on the state of affairs, indicates the main challenges for the future and formulates recommendations.

Environmental pollution is a continual issue in the European Union. Although diverse European and national policies strongly affirm the importance of environmental protection, the outcomes are still arguable. Whereas there may be diverse assumptions as to the question of why environmental harm still occurs, little is still known and little is scientifically backed about the reasons. The book “Environmental Crime in Europe” by the editors Andrew Farmer, Michael Faure and Grazia Maria Vagliasindi is one of the many puzzle pieces that the legal discipline in Europe needs to construct a more viable regulatory framework in the future. The book sets out the relations between, on the one hand, the strongly interrelated legal framework relevant to environmental protection and, on the other, the impacts of this legal framework, as well as other possible influences on the actors involved: from legislator to criminal. The focus on the practical side is not only a precious contribution to European scientific discourse, but also delivers insights to practitioners dealing with environmental crime in Europe.

## Imprint

**Editors:** Nicola Below, Martin Führ, Andreas Hermann, Gerhard Roller, Julian Schenten and Claudia Schreider

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

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

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

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

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

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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).

**DECLARATION OF MEMBERSHIP**

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

There is no membership fee. The PDF-version of elni Review is included.

If you want to receive the print version of the elni Review the fee is €52 per annum for commercial users and €21 per annum for private users and libraries.

Please indicate, whether you want to receive the elni Review as print version or PDF-version.

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

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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:

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

#### Main areas of research

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

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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
- Self responsibility

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- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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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.

### elni Board of Directors

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