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REVIEW

EU traceability of substances in articles:
supply chain communication challenges and the
perspective of full material declaration (FMD)

Julian Schenten, Martin Führ, Leonie Lennartz

Substitution requires all possible support

*Antonia Reihlen, Heidrun Fammler, Arne Jamtrot, Martyn Futter,
Jana Simanovska*

EU Emmission into the environment and confidentiality-
Comment on General Court, case T-545/11 of 21 Novem-
ber 2018

Ludwig Krämer

EU Dieselgate: unveiling the weirdness of the EU's attitude
to compliance on environmental matters

Delphine Misonne

Listen to the people: Friends of the Earth challenge 'Brexit'
public participation

William Rundle

Transparency for sustainable development
Impulse for learning processes in the value chain and in
consumer behaviour

Leonie Lennartz

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Editorial

The present issue of *elni* Review starts with two articles from the field of chemicals law.

Julian Schenten, Martin Führ und Leonie Lennartz analyse the challenges in the declaration of substances in articles in the supply chain and develop proposals on successful complete declaration. In their article “Substitution requires all possible support“ Antonia Reihlen, Heidrun Fammler, Arne Jamtrot, Martyn Futter and Jana Simanovska discuss the background and comment on the discussions of a jointly organised workshop of three EU projects which are dealing with the aim to reduce risks from hazardous chemicals.

In her contribution “EU Dieselgate: unveiling the weirdness of the EU’s attitude to compliance on environmental matters” Delphine Misonne asks whether the current inspection landscape, as applicable in the European Union and as far as environmental matters (and emissions into the environment in particular) are concerned, could have taken hold of what is now called ‘dieselgate’.

Next Ludwig Krämer comments on case T- 545/11 of November 2018 where the General General ruled that an EU substance approval dossier (for glyphosate) contains no information related to environmental emissions.

The contribution discusses once more the question, of what constitutes an emission to the environment and whether access to this information may be refused to protect confidential commercial and industrial information, unless there is an overriding public interest in disclosure.

William Rundle comments on the complaint of Friends of Earth against the United Kingdom for its failure to comply with the Aarhus Convention when legislating its withdrawal from the EU.

Finally Leonie Lennartz reports on the closing event of the project "Consumer behaviour and innovations for sustainable chemistry (KInChem)" at the Protestant Academy Loccum in September 2018.

We hope you enjoy reading the journal.

The editors welcome submissions of contributions addressing current national and international environmental laws issues in particular on the subject of strategic environmental impact assessment (SEA) for *elni* Review 2019/01 by April 2019.

Claudia Schreider / Gerhard Roller
December 2018

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Transparency for sustainable development Impulses for learning processes in the value chain and in consumer behaviour

Leonie Lennartz

Report on the closing event of the project "Consumer behaviour and innovations for sustainable chemistry (KInChem)" at the Protestant Academy Loccum on the 26th and 27th of September 2018

The Evangelical Academy in Loccum organized the conference "Transparency for sustainable development – impulses for learning processes in the value creation process and consumer behaviour" which took place on the 26th and 27th of September 2018. Co-organizers of the conference were the Society for Institutional Analysis (sofia), the Darmstadt University of Applied Sciences and the University of Göttingen. The KInChem project shaped the framework of the event content. In addition there were numerous contributions from speakers from other contexts, including several projects from the BMBF's "Research for Sustainable Development" programme (Fona), giving the conference at the same time the character of a synthesis conference.

Dr. Joachim Lange of the Loccum Academy opened the conference. This was followed by the first lecture by Prof. Dr. Martin Führ, sofia/Hochschule Darmstadt, on the initial questions of the conference: Transparency for sustainable development – where do we stand, what can we expect, where are we going? Martin Führ described the conditions and functions of transparency and stressed that more transparency does not automatically lead to an increase in the "sustainability" of development. In particular, the expectations of consumers should not be overburdened. Rather, it is important to integrate transparency in an institutional framework and to create a learning system through which transparency can become a stimulus for innovation. The Sustainable Development Goals (SDGs) of the United Nations provide a normative orientation for this, but they do not resolve the diverse conflicts of the aims. The task of the legal framework is, among other things, to provide content specifications and a procedural framework for the necessary negotiating process. Transformative research can make a contribution to triggering learning processes and thereby achieving an expanded system view.

Dr. Thomas Weber, Head of the Department "Sustainability and Consumer Policy in Civil Society" in the Federal Ministry of Justice and Consumer Protection, explained in his lecture the

role of transparency in sustainability concepts of the Federal Government. He stressed that the sustainability issue has reached a turning point and reinforced this statement with a quote from Ban Ki-Moon, former Secretary General of the United Nations: "Our generation could be the first to eradicate poverty, just as we could be the last to have the chance to save the planet." He appealed to companies and consumers to demand effective regulations from politicians. In his opinion, one possible approach would be to introduce a sustainability design guideline to ensure that only sustainably produced goods are put on the market.

Transparency through digital solutions takes its toll by providing – sometimes personal – data. Against this background, Prof. Dr.-Ing. Delphine Reinhardt, head of the research group "Computer Security and Privacy" at the University of Göttingen, discussed the challenges and solutions of information and communication technology and privacy. She explained the seven golden rules of data protection and their possible consequences. Core risks of data protection located Prof. Reinhardt in the subject areas segmentation and discrimination, another problem area being the automatic decision-making by autonomous systems. Reinhardt also emphasized that anonymization as a solution strategy in dealing with the challenges of data protection and IT security alone is not enough. The concept of Privacy by Design, in which the direct inclusion of privacy aspects in the development of apps and cryptography is organized, was presented by Prof. Reinhardt as a step towards a solution.

In the afternoon, the participants discussed in four working groups various problem areas and transparency approaches. The aim of the working groups was to formulate policy recommendations and research needs. The results of the working groups were presented the following day.

Working group 1 discussed the promotion of sustainable consumption through communication and information tools. There were impulse lectures on consumer transparency via smartphone apps using the example of "ToxFox" by BUND, as well as Augmented Reality Recommendation Agents for sustainable food shopping at the point of sale. Further impulse lectures addressed consumer expectations of online information on products and services as well as the effects of invoice design on

electricity consumption. The working group stressed that research in various areas (food, household appliances, electricity consumption, etc.) has shown that information can "nudge" consumers towards more sustainable behaviour. Prerequisite for behavioural changes of consumers in the direction of sustainable development is that there is access to relevant information that guides action. In particular, the Internet and its availability via mobile devices open up new possibilities for "smarter" information provision. However, if the market does not provide this information, the government will have to develop frameworks to create transparency for consumers and throughout the value chain. There is a need for action by the state with respect to labelling obligations in digital space. For example, the labelling of hazardous substances in products in stationary trade is already more advanced than the corresponding labelling of products in online trade. A further finding is that the incentives for the provision of information for businesses should be considered. Labelling requirements for individual sustainability characteristics only set incentives for product improvements with these very characteristics and can possibly even lead to deterioration in other dimensions. The working group saw a need for research into the long-term effects of communication and information instruments that can be used to promote sustainable consumption and their application in digital space.

Working group 2 dealt with the topic of consumer responsibility and typologies, as well as the limits of communication and information instruments, in keynote speeches and subsequent discussion. Media-influencing factors affecting sustainable consumption and the case study of Bioplastics (purchasing intention and consumer choice) were also addressed. The central finding of the working group was that consumption not only has a "private" dimension, but in particular also a "social" dimension. The working group called for consumers to be given greater responsibility. In addition, the channels for the provision of information to consumers should be extended. As a policy option, the working group formulated a demand for "harder" instruments and framework conditions that exclude unsustainable products from the market. The working group saw a need for research to address the challenge of how information to consumers should be prepared/formulated when the consumers have no interest in this information. There would also be a need for research on how to increase consumers' sense of responsibility and how to reduce the often attested gap between consumer attitudes and behaviour – the so-called "Value Action Gap".

Working group 3 dealt with the issue of measuring, processing and disseminating sustainability

information. Keynote speeches dealt with the challenges of the sustainability assessment, the design of transparent food supply chains as well as sustainability communication along the value chain of bioplastics. Further impetus was provided by the retail sector as a driving force behind higher standards in the food industry and the transfer of data on ingredients in global supply chains – the way towards a cross-sector standard. Against the background of the challenge of more sustainable nutrition and its transparency implications, the group proposed a kind of "REACH Regulation" for nutrition as a design option. REACH establishes for the area of chemical management a "learning system" in which authorities and companies develop strategies and concrete measures for "adequate risk management", based on data collected by manufacturers and importers. The idea is to develop a similar system for the food sector. The cornerstones of such a regulatory architecture would be information, communication and cooperation along the supply chains, the provision of information vis-à-vis a broad public via databases and information rights as well as comprehensive inclusion instruments, e.g. for actors from civil society and research. Applied to the field of nutrition, the system could provide full transparency on the quality of food (production, additives, etc.) and thus promote market impulses for sustainable development. The working group identified a need for action about the complexity of B2B information transfer along the value chains, not only in the food context, but in relation to all flows of goods. To that end, it could be a Full Material Declaration that enables proactive companies to provide the relevant information from their supply chains. It is also important to encourage innovative retailers and to take into account new purchasing channels such as online supermarkets and their specific requirements when providing information. Regarding the dissemination of sustainability information to consumers, the group stressed the need to reduce the flood of labels on products intended to help consumers find their way. The group identified a need for research regarding a reduction to one information label/seal, the challenges of strengthened consumer sovereignty for sustainable development and blockchain technology as a solution for more transparency.

Working group 4 discussed intermediaries for the provision of information. Impulse lectures addressed the representation of science in environmental policy decision-making processes and WikiREACH as an instrument for bridging the science policy gap in chemicals regulation. Other topics included online platforms for mutual exchange between EU agencies and public science, as well as an industry solution in

tourism. The group recommended problem and actor-adequate Science Policy Interfaces. In addition, existing incentives in the science system should be taken into account and changed. New formats for publications should be established. As an example, "consensus papers" were cited, while publishers of journals should also be won. Integration into teaching is also desirable. In addition, the working group formulated a recommendation for action in which instruments should be developed together with stakeholders to make market opportunities for sustainable development visible. Industry solutions can help to overcome these obstacles. The working group considered the further research demand for the approaches of the Science Policy Interfaces and in the market opportunities for sustainable development.

After the presentation of the results from the working groups, two further presentations followed on the following day.

Since Axel Lienhard, design and brand management at Edeka Southwest was unable to attend on short notice, Prof. Dr. Kilian Bizer, Director of the ifh Institut für Mittelstand und Handwerk at the University of Göttingen, presented his lecture on market opportunities for sustainable management through transparency. The central message of the presentation by Mr. Lienhard was that the sale of organic products at Edeka is successful. Edeka has accordingly aligned its product range and established various own brands such as "Hofglück", which are committed to animal-friendly husbandry. In addition, Edeka has long-term cooperation agreements with farmers to reduce the market risk for them. It also has several "sustainable private brands" to address different customer groups. In addition, Edeka is currently introducing a new sustainability seal named "Handlungswegweiser". This is intended to provide customers with orientation on the quality of animal husbandry.

This was followed by a lecture by Ulrike Kallee, Team "substances and technologies" of the Bund Umwelt und Naturschutz Deutschland (BUND). Ulrike Kallee presented the ToxFox App, which aims to make harmful substances in cosmetic products visible to consumers. All the consumer has to do is scan the barcode of a cosmetic product. There are currently 1.4 million downloads of the app and 35 million scans of individual products. Many customers first became aware of the topic through the ToxFox App. Ulrike Kallee pointed out that the REACH regulation gives consumers the right to information on harmful substances in products other than cosmetics, e.g. textiles, toys, electrical and sports equipment. However, the right to information is not particularly consumer-friendly in REACH.

ToxFox therefore has the additional function of barcode scanning of consumer inquiries for Article 33 (2) REACH with regard to substances of very high concern in articles. Responses from businesses are stored in a database and immediately available to consumers. In addition, companies can proactively provide information about their products in the ToxFox database. The aim is to facilitate communication between consumers and companies, as well as to encourage companies to stop using harmful substances. As part of the EU LIFE project "AskREACH", a Europe-wide app for inquiries under Art. 33 (2) REACH will be also developed. Ulrike Kallee stressed that these developments stimulate communication within the supply chain, but that there was great uncertainty in the industry about the presence of pollutants in products. BUND experienced that many companies, after receiving a request, send the corresponding products for the first time to a test laboratory for chemical analysis in order to be able to give the consumer the desired information. However, it is legally required that all actors in the supply chain communicate continuously and actively, in order to eliminate problematic substances from the products.

In the concluding panel discussion, Dr Hyewon Seo of the Federal Environment Agency (UBA) pointed out problems associated with the term sustainability. The term has arrived in society, but actors use the term in different ways. A way to promote sustainable development is to identify top runners on the company side who set standards and pull other players along with them. With regard to consumers, she emphasised the challenges of a consumer-based approach/education. A larger proportion of consumers are currently not reachable regarding the topic of sustainability. Prof. Dr. Ludwig Theuvsen, Head of the Department of Agriculture, Agricultural Policy and Sustainability at the Ministry of Food, Agriculture and Consumer Protection of Lower Saxony, emphasised that consumers have heterogeneous preferences with regard to sustainability. These are particularly pronounced among a relatively small group of consumers with an above-average level of education. In addition, the purchase of groceries is a largely habitualized process characterized by behavioural heuristics. Sustainability labels directly on the product and with corresponding information are therefore better suited as a solution than an app. Due to their market power and proximity to consumers, Theuvsen assigns the large retail chains a special position in the food sector. Sustainability has arrived in retail as a business model, but due to the lack of general consumer awareness, there are often only selective improvements in individual product areas (e.g. fair trade coffee). Theuvsen continues to note an

increasing decline in nutritional knowledge, which makes sustainable consumption more difficult. On average, Theuvsen sees an increase in “unsustainable” consumption patterns such as “ultra discounts”, also in the area of textiles and air travel.

Conference chairman Dr. Joachim Lange from the Loccum Academy guided the discussion by asking the following question: What can transparency achieve and where are the limits?

Dr. Hyewon Seo responded by saying that transparency is needed when trust is not present. If there is confidence, consumers would also be willing to pay a higher price for more sustainable products. As an example, she cites the rising sales of regional products, which are usually more expensive but enjoy greater consumer confidence. She also stressed the importance of science, as it creates knowledge for industry. Prof. Dr. Ludwig Theuvsen emphasized the importance of a mix of instruments using animal welfare as an example. The legislator can set a minimum standard as a regulatory instrument by the animal protection law. Although regulatory law also follows social trends (e.g. in piglet castration), if the customers are not willing to pay, it would quickly lead to a migration of production abroad. Regulatory measures or levies usually lead to poorer competitiveness. In such a situation, government support would be needed to provide incentives for producers and trade. Transparency for consumers can also create fair competitive conditions, but only lead to more sustainability if there is a willingness to pay. In addition, Theuvsen stressed the difficulty of sustainability assessment not only for consumers. These would often be based on heuristics such as "organic" or "regional". However, a regional product is not always more sustainable than an imported product.

Prof. Dr. Kilian Bizer explained that a lot can be learned from chemicals policy. The entire system is at stake and requires an overall reliable information architecture. The state must provide this architecture and it must be consumer-oriented. Under these circumstances, transparency could enable market differentiation and open up market opportunities for more sustainable products and business models. As one result of the conference, he formulated the demand to create an institutional framework for the food sector similar to that for chemicals; here, too, it is important to stimulate the self-responsibility of the actors through a “learning system”. Approaches in this direction can be found in the European Commission's proposal on transparency risk information for food (COM(2018) 179), but further steps need to be taken.

In his closing remarks, Prof. Dr. Martin Führ emphasized: If changes towards sustainable

development are to be promoted, the state is not a troublemaker – especially from the perspective of proactive companies – but rather the one who provides the framework conditions for sustainability-oriented business models to succeed. This view gives the debate on regulation a different twist. He emphasized that companies should understand market opportunities as they are. In this sense, transparency is also a prerequisite for economic incentives to provide impulses that influence behaviour. The state is, however, overburdened in its attempts to prescribe concrete steps towards the Sustainable Development Goals: The SDGs rather formulate a normative orientation framework for social search processes. The interfaces between science and regulatory practice ("Science Policy Interfaces") should be designed in such a way that enquiries and answers can be made in both directions. This is an important building block for ensuring the ability of the regulatory and administrative system to learn. This has to be completed by accompanying legal impact research, which periodically and systematically evaluates whether the legal framework achieves the intended objectives effectively and efficiently, in order to be able to make adjustments if necessary.

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.

DECLARATION OF MEMBERSHIP

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

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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.

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
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 - Advice for legislation and institution development
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- **Companies and environment**
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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 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 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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