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REVIEW

'China REACH': Assessing the implications for non-Chinese companies producing and exporting new substances to China

Gareth Callagy

Nanomaterials and European Novel Food law:
The uncertain path to reasonable regulation

Julian Schenten

Access to documents: Interaction and gaps in the REACH
and Aarhus Convention systems

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Waving or drowning?
The legal impacts of the Cancun climate negotiations

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A human right to a clean and healthy environment in Europe.
Dream or reality?

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The European Court of Justice and the Justification of
Trade Restrictions for the Benefit of Animal Welfare:
A Change of Mind?

Tania Van Laer

Current Environmental Perspectives in Controlling, Handling and
Management of Used and Waste Electricals and Electronics
Equipment (WEEE) in Small Island States – A Review on Zanzibar

Aboud S. Jumbe

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Editorial

The present issue of *elni Review* (1/2011) covers a variety of recent international environmental law issues alongside two country-specific contributions on EEE-waste regulation in Zanzibar, Tanzania and chemical substances legislation in China respectively. The key focus of the current edition of the journal, is *chemical substances regulation*.

Three articles approach this topic from different points of view:

First off, *Gareth Callegy* provides an overview of the legal impacts of the “Chinese REACH” legislation; an amendment to Chinese law which recently entered into force. By comparing the legal obligations arising from Regulation (EC) No. 1907/2006 (REACH) and the Chinese pendant, he points out inter alia the legal issues which European registrants will face when marketing chemical substances to the “Middle Kingdom.”

Subsequently, *Julian Schenten* analyses the state of affairs as regards the regulation of Nanomaterials in the food sector. Focusing on Regulation (EC) No. 258/97 on Novel Food, he identifies the weaknesses in terms of health protection and points out necessary key features which reasonable regulation of such chemical substances should have.

The third article concentrating on chemicals is by *Vito Buonsante*; it creates a bridge between the REACH Regulation and access to documents claims. In this context the author examines the interaction and gaps in the REACH and Aarhus Convention systems as well as the role of the European Chemicals Agency (ECHA).

The other contributions cover a variety of up-to-date legal issues:

Head of Legal at Friends of the Earth England, Wales and Northern Ireland, *Gita Parihar*, shows the legal impacts of the Cancun UN climate negotiations which took place in December 2010. In doing so, she develops a line of reasoning which remains relevant beyond the Bangkok Climate talks in April 2011.

Asking in his title ‘A human right to a clean and healthy environment in Europe: Dream or reality?’, *Jan Van de Venis* provides an introduction to the development of a human right to a healthy environment on a global scale. He analyses the ways in which this human rights-based approach to environmental issues evolved, what tangible benefits such a right could bring, along with where it currently stands globally and, more specifically, in Europe under the European Convention on Human Rights.

The contribution that follows, *Tania Van Laer* examines whether EU law allows Member States to justify, on the basis of animal welfare, unilateral measures that impose trade restrictions. At the same time she considers the main

principles of the free movement of goods as well as the established view of the Court of Justice.

The final article outlines the electronic waste situation in Zanzibar, Tanzania. In the absence of consumer protection provisions and specific environmental guidelines to regulate the import of these products or manage their safe disposal, the small island state is failing to implement the principles of the Basel Convention. Against this background *About S. Jumbe* presents the current activities of the Department of Environment, Zanzibar, which is now in the advanced stages of preparing a legal document which contains a set of regulations on the import, handling, and disposal of used and waste electrical and electronics equipment.

Finally, the issue covers recent developments regarding the situation of access to justice in Ireland – the only EU country in which the parliament has not ratified the 1998 UNECE Aarhus Convention.

Contributions for the next issue of the *elni Review* are very welcome. Please send them to the editors by September 2011.

Julian Schenten/Gerhard Roller

May 2011

elni Forum 2011

24th May 2011
in Brussels, Belgium

“Access to Documents at European Level – Key issues and practical experiences”

Bondine Kloostra presents key issues on access to documents regarding environmental information, including a recent decision of the ECJ (Stichting Natuur en Milieu). Vito Buonsante and Ludwig Krämer will present their practical experiences in access to documents, including the access to documents held by the European Chemicals Agency (ECHA). Eva Kruzikova will provide the point of view of the EU Commission.

This event will be held at the EU Liaison Office of the German Research Organisations (KoWi), Rue du Trône 98, 1050 Brussels, 8th Floor.

For more information about participation, including registration forms, please visit <http://www.elni.org/elni-events.0.html>.

Current Environmental Perspectives in Controlling, Handling and Management of Used and Waste Electricals and Electronics Equipment (WEEE) in Small Island States A Review on Zanzibar

About S. Jumbe

1 Introduction

Never before in the history of the islands of Zanzibar has an issue of environmental concern evoked such a passionate debate and been of such controversy as the current problem of unregulated import and selling of Used and Waste Electricals and Electronics Equipment (also known as e-waste). Initially, for many decades since the economic liberalization of the country in 1984, "Second Hand Goods" were mainly understood to be garments, shoes, and the reconditioned Japanese vehicles imported into the country. However, the period between the late 1990s and the beginning of 21st Century saw a new trend of imports where almost all consumer products, particularly the domestic electrical and electronic appliances, were flooded into the local markets from the Far East (China). These mainly included Calculators, Battery Cells, Electronic and Electrical Toys, TV sets, Video Recorders, DVD/CD Players, Radio Sets, assembled desktop computers, etc.

By mid-2005, the environmental management of these flooded e-waste products was already exhausted and in the absence of specific guidelines to regulate the import of these products as well as managing their safety disposal system, the country was already failing the principles of the Basel Convention (2009) in controlling the trans-boundary movement of hazardous waste. No sooner than when the Revolutionary Government of Zanzibar was contemplating on possible introduction of Environmental Standards into the local environmental management and enforcement system to curb the import of sub-standard goods, than another new trend of its own scale and magnitude emerged on top of it – the sudden surge in import of e-waste such as old and broken down washing machines, refrigerators, electric cookers, microwave ovens, deep fryers, blenders, etc. from the countries of the European Union.

It looks almost certain nowadays that Zanzibar has become a battleground for dumped products between Europe and Asia. An average Zanzibari consumer, irrespective of his/her economic status has been alarmingly exposed to the quantitative junk of sub-standard products on one hand, and exploited to adopt the so-called "durable" but dumped products from the countries of the European Union. The Used Electrical and Electronic Equipment (UEEE) have been conspicuous in every corner of the Zanzibar Municipality for the

past five years and so have the rising environmental consequences. Everything from refrigerators, stoves, microwaves, vacuum cleaners, personal computers, printers, calculators, fax and answering machines, radios, luminaries, clocks, game boys, drills, chain-saws and sewing machines dominate the shopping districts of Zanzibar. The ordinary consumer in Zanzibar is left with neither choice of quality nor prior health or environmental information on the type of the so-called imported second hand good. This problem has been compounded by a complete absence of a Bureau of Standard for Zanzibar.

Meanwhile, as Zanzibar continues to receive end-of-life products particularly from the countries of the European Union without any specific environmental regulations or standards, the Zanzibar Ports Authority has no mandate in imports/exports clearances. Instead, the Zanzibar Customs & Excise Department which is responsible for the task, has not yet risen up to the urgency of immediate need of imposing checks and balances in regulating entry of these products that clearly violate the international initiative on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal.

Who's on the right side of the debate with respect to this issue? The Zanzibar Chamber of Commerce believes that such imports of used products have improved the living standards of much of the impoverished population of the country, while the Department of Trade complains about its limited mandate in safeguarding the interests of the country's vulnerable consumers. As the debate about how to approach this issue continues, so are the environmental impacts and concerns associated with the unregulated import, handling and final disposal of these products.

2 Literature Review

Environmental information for the consumers on the health and ecological risks posed by these imported goods is very scarce in Zanzibar. This problem is apparently visible in various levels of the policy making structure in the environmental management sector in the country. In the global perspective on the rising e-waste export market, *Rolph Widmer et al (2005)* state that Electronic waste, or e-waste, is an emerging problem as well as a business opportunity of increasing significance, given the volumes of e-waste being

generated and the content of both toxic and valuable materials in them. Given the high toxicity of these pollutants especially when burned or recycled in uncontrolled environments, the Basel Convention has identified e-waste as hazardous, and developed a framework for controls on trans-boundary movement of such waste. The Basel Ban, an amendment to the Basel Convention that has not yet come into force, would go one step further by prohibiting the export of e-waste from developed to industrializing countries.

Junaidah Ahmad Kalana (2010) says that e-waste is often misunderstood as only computer or electronic equipment and components. But, in reality, it includes a wide range of products from simple devices to complex goods. These may be white products such as refrigerators, washing machines, microwaves, and “brown” goods such as TVs, Radios, and Computers that have reached their ends for their current holder or owner.

Kopacek & Kopacek (1999) indicate that by the end of the internet decade of the 1990s, European Union was already producing 10 to 12 Million Tons of e-waste in its backyard. One decade later, the scale and magnitude of the UEEEs and WEEEs which are currently being phased out under the new EU Directives that call upon manufacturers of the electronic and electrical equipment to avoid using components of specific dangerous metals has developed into a global fallout of export of such dumped products from the West.

Jing Zhao et al (2009) in their case that traced movement of e-waste from the European Union to Nigeria define the Basel Convention as the most comprehensive international environmental agreement to control the movement and management of hazardous waste across national borders. The Convention puts focus on the minimization of hazardous waste generation.

Moreover, *Jing Zhao et al (2009)* point out that the convention also sets out a three-step strategy to try to achieve the goal of “environmentally sound management” in order to protect human health and environment against the adverse effects resulting from the generation, management, trans-boundary movements and disposal of hazardous wastes: first, minimizing the generation of wastes; second, treating wastes as near as possible to where they were generated; and third, reducing international movements of hazardous wastes.

The Basel Action Network Report (BAN report) (2009) states that African countries are the key recipients of growing amount of UEEEs that are imported by container ships, primarily from North America and Europe. Much of these imports are not re-usable and much of the equipment that is repaired contains unusable parts, all of which are discarded or burned in formal and informal landfills. Still other equipment is functional but maybe of such an age and condition that

it quickly becomes waste in the recipient country. The report contends that these functional and near-end-of-life products pose significant environmental and human health impacts to an extent that additional control measures are needed for African countries to move rapidly and implement effective control to achieve local compliance and most importantly to protect their local environment and public health.

The Basel Action Network Report (BAN report) (2009) continues by stressing that the environmental and human health impacts from imports of functional equipment are significant and a great cause for concern. Further, many African nations as Parties to the Basel Convention are obliged to control these imports. Those African countries which have ratified the Bamako Convention likewise are obliged to prevent such hazardous wastes, even more broadly defined, from being imported into the continent of Africa.

However, to date such imports of used equipment have not for the most part been controlled in accordance with even the Basel Convention or Bamako Convention obligations even though much electronic waste is clearly hazardous under these two Conventions. Further, even when the UEEE is not defined as hazardous waste under the Basel or Bamako Conventions, it may be necessary to apply new definitions and additional requirements to control non-functional wastes, nuisance waste or near-end-of-life wastes.

3 Objective for the Government

The Revolutionary Government of Zanzibar and the Government of Finland through the Ministry of Foreign Affairs jointly approved the implementation of the second phase of the Sustainable Management of Land and Environment or SMOLE-II (2009) for Zanzibar for the period of 2010-2013. One objective for the Department of Environment, Zanzibar, was to deliver a high quality regulatory framework and implementation activities affecting the control of import and handling of Used and Waste Electrical and Electronics Equipment into Zanzibar through appropriate and efficient use of accepted legal instruments.

4 National Legal Framework

Zanzibar is a state within the United Republic of Tanzania and even though Tanzania has a National Environmental Management Act, 2004, along with the national Environmental Management (Hazardous Waste Control and Management) Regulations, 2009, these legislations do not apply to Zanzibar since Environmental legislation is a non-Union matter. Nevertheless, Zanzibar has its own National Environmental Policy, 1992, and Zanzibar Environmental Management for Sustainable Development Act, 1996, is the principal environmental legislation for all matters pertaining to conservation, management and enforcement of environmental regulations for Zanzibar

(2004). While the National Environmental Management Council (NEMC) of Tanzania is the institution responsible for environment on the other side of the Union (mainland Tanzania), the Zanzibar Department of Environment is the official institution responsible for environment for Zanzibar isles.

Recently, the National Environmental Management Council of Tanzania (NEMC) put into action another critical international convention known as the Montreal Protocol, in addition to the already implemented principles of Basel Convention, in its efforts to regulate import and utilization of dumped and sub-standard products at least on Mainland Tanzania (2007). The critical concern here was the use of banned gases in refrigeration and air conditioning systems that came with mainly old and end-of-life products such as air conditioners and refrigerators. As the checks and balances vis-à-vis e-waste products continue to be mainstreamed within the national regulations of the Mainland Tanzania, such controls are yet to be adopted for Zanzibar. Not only that, this loophole is compromising the environmental governance of Zanzibar, but also creates a serious dent in Tanzania's efforts towards environmental management and sustainable development of the entire country.

Article 66, 67, and 68 of the Act, on highlighting control, handling and overall management of Hazardous Waste in Zanzibar (1996), prohibits anyone from importing, exporting, transporting within or through Zanzibar, or even discharging hazardous waste – either as a product or a byproduct – without prior informed consent of the designated authority for Zanzibar. Moreover, Article 65 of the Act calls for the institution responsible for environment to issue guidelines and codes of good environmental practice to fulfil the purpose of the Act especially on the control and management of specific environmental threats such as the import of hazardous waste into Zanzibar.

Article 65(3) of the Act elaborates that any proposed guidelines should be detailed and based on the best scientific information available to the institution responsible for the environment. Article 68(2) states that the institution responsible for the environment shall issue guidelines and prescribe measures for the management of hazardous substances for other responsible institutions.

5 Institutional Framework

The Zanzibar Department of Environment is currently the sole institution responsible for handling, management, and control of hazardous substances. Although nowhere in the Act does the introduction and interpretation of “Used and Waste Electrical and Electronics Equipment” (e-waste) appear, there is a widespread agreement that Article 66 is a fundamental basis for further legislations on e-waste, as supported by the Basel Convention's interpretation.

Following the inception of this SMOLE-II project to develop and establish legal framework on the control of import into Zanzibar of both used and waste electrical and electronics equipment, the Zanzibar Department of Environment formed a study team to engage principal national stakeholders of other responsible institutions and Non-Governmental Organizations (NGOs) to generate and provide a solid ground reality on the current status and environmental issues pertaining to e-waste. The implementation strategy included engaging the Department for active and participatory public consultations. In the end, this process revealed a maze of pre-existing gaps and missing links of coordination and cooperation between various responsible institutions involved in the entire management cycle of this sector. These gaps included:

- Absence of any quantitative or qualitative data that could have assisted in effectively reviewing previous documentation on matters pertaining to import, handling and disposal of e-waste in Zanzibar. The Tanzania Revenue Authority did not have any special system tracking imports of such second-hand products in its ports of entry. Neither did it have any disaggregated information on the products as the customs' Harmonized Tariffs System (HTS) did not recognize legal interpretation of “Second Hand Goods” (e-waste)
- Lack of relevant national policies that could have defined issues and limitation on the import of e-waste into the country. Not many institutions were deeply aware of (let alone updated with) principles of Basel Convention and the Bamako Action Network on trans-boundary movement of hazardous waste, in this case, end of life products coming under the name of “Used Electrical and Electronics Equipment”. The Department of Environment has had to push for more efforts by the state to introduce a legal mechanism to curb unregulated import of dangerous products.
- Lack of consensus among principal national stakeholders involving other Government and NGOs on specific definitions of “Used and Waste Electrical and Electronic Equipment”; their environmental threats and the immediate need to impose a legislation that could for the first time exercise control of imports of e-waste materials.
- The Zanzibar Chamber of Commerce contends that “Used Electrical and Electronics Equipment” have now become a part and parcel of the community as people are now capable of purchasing various electrical and electronic appliances in affordable prices. For the Chamber, this is a sign of the expanding national steps towards better consumer growth and development. The majority of people in the country have benefitted greatly from the second hand goods trade and the country and Government should look first into the economic status of the consumers of

this country before deciding on any further steps towards formulating mechanism that regulates and controls this business. The Chamber of Commerce suggests that the best solution is to create a mechanism of quality check and environmental standards of the second hand goods before the products leave their ports of origin.

- The Zanzibar Department of Trade says that many products sold out on the streets are often and almost completely broken down. This has resulted in a huge climb in consumer complaints. Still, even though the Department of Trade is in the process of introducing a bill to the Zanzibar House of Representatives that would see the creation of the Zanzibar Bureau of Standards, still there are no workable consumer protection provisions against such trade.
- The Ministry for Local Government Authorities, which is an institution responsible for solid waste management and disposal, agrees that so far there is no environmental accounting of the fate of the e-waste products in Zanzibar. Precisely, no data collection of such waste is documented either at the Port of entry or at the retail selling points.
- In the absence of environmental auditing mechanism to control the entire cycle of these products, human health and environmental cost has become too fragile for this industry to continue to go on in a business-as-usual manner. The visual impact of old and dilapidated e-waste products on the streets of Zanzibar has become an immediate output of the problem.
- Dumping of these products without waste segregation, non-existent waste collection system, incineration of these toxic materials into the open air, exploitation of coastal watersheds or coral rag depressions as converted landfills for these products, and many other factors of concern, have compelled the local Government authorities to call for and support a legislation that could see the introduction of the first of its kind regulation aimed at controlling the import, handling, and disposal of the e-waste materials in Zanzibar.

6 Towards Legislating E-Waste Control for Zanzibar

Zanzibar is a small island state whose economy is almost entirely dependent upon foreign import of goods and materials. Almost all imported products will certainly never be recycled or sent off the Island. The recycling industry is almost non-existent and only a fraction of materials sold as scrap metal will be shipped to the mainland Tanzania. A large chunk of the waste products is therefore dumped out in the open wherever possible: on the catchments, in the porous coral watersheds, beside the beaches, in the agricultural fields, in the storm drains and out in the open dumps. This leaves the onus of responsibility towards

the institution responsible for environment along with other Governmental organizations for immediate protective measures against contamination of water resources and human health hazards. As the quantity of the end-of-life products continues to rise, so are the management problems and the persistent calls for something to be done sooner rather than later.

In order to curb the unregulated e-waste industry in the country, the Department of Environment, Zanzibar, is now in the advanced stages of the preparation of a legal document that is to be submitted to the Revolutionary Government of Zanzibar, containing a set of regulations pertaining to import, handling, and disposal of “Used and Waste Electrical and Electronics Equipment” for Zanzibar. Once completed, these regulations shall apply to all matters pertaining to e-waste in Zanzibar. The Department will have the administrative and institutional mandate governing the control of import of e-waste as well as powers over licenses and permits; guidelines and procedures, and a number of other provisions guiding importers, retailers, consumers, and recyclers. It is expected that these new regulations will derive a legal initiative towards a total ban on import of all used and waste electrical and electronics products into Zanzibar.

Finally, it is not only just up to the local authorities of Zanzibar to engage unilaterally in finding a lasting solution to the e-waste problem of the country, but it is also imperative for the Government of Zanzibar and the Government of the United Republic of Tanzania to engage all the e-waste exporting countries, particularly those of the European Union where most of the end-of-life products originate to provide legal and technical support in preventing their e-waste products from leaving their ports. If the legal control of export of e-waste at the point of origin were to succeed, small island states like Zanzibar will be the major beneficiaries with a real possibility that in the long run the fear of an impending environmental disaster caused by importing of e-waste might be averted.

7 Acknowledgment

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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

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 Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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NATUUR
& MILIEU



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.

elni Board of Directors

- Martin Führ - Society for Institutional Analysis (sofia), Darmstadt, Germany;
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