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INTERNATIONALES  
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# elni

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**International Workshop on Regulatory Impact Assessment  
with a focus on environmental aspects  
15<sup>th</sup> to 17<sup>th</sup> September 2008 Berlin, Germany**

*Nicola Below*

*The International Workshop on Impact Assessment from the 15th to 17th September was located at Hotel Angleterre in Berlin, Germany. The Workshop was organized by Prof. Dr. Kilian Bizer, Sebastian Lechner, and Prof. Dr. Martin Führ from the Society for Institutional Analysis (sofia) on behalf of the Federal Environment Agency of Germany. The Workshop was focused on the evaluation of the EC-Guideline on the system of (regulative) impact assessment (RIA)<sup>1</sup> with emphasis on environmental aspects and Germany's approach to an appropriate impact assessment system on the national level. Several evaluation studies<sup>2</sup> revealed serious shortcomings and uncertainties with regard to the assessment of environmental impacts on the community level. The hosts summarised these issues, made proposals to improve national and community impact assessment systems and set up key-questions in a "background paper"<sup>3</sup> to provide a basis for an interdisciplinary discourse throughout the workshop. This working paper was given to the presenters and participants beforehand. The workshop was split into four main sessions. The first session served to localise problems and challenges of the EU impact assessment with emphasis on environmental aspects. The second session referred to the proportionate impact assessment and served the purpose of determining advantages and disadvantages of discretion and formalism in impact assessment procedures. Methods of the regulatory impact assessment with respect to environment were discussed in a third topic. The last session focused on questions about the institutionalisation of regulatory impact assessments. At all times during the presentation the participants had the possibility of asking questions or commenting directly; therefore a lively discussion was assured.*

## 1 Opening Speeches

The workshop started with the welcoming of the participants by Gertrude Penn-Bressel of the Federal Environment Agency of Germany and was followed by an introductory presentation of Kilian Bizer who recalled the main topics and provided a short overview of the main findings from the evaluation studies on regulatory impact assessments. Firstly the normative basis for the assessment of environmental impacts was pointed out. Secondly the incentives of the related actors in the European impact assessment procedure were analysed by applying the behavioural model of homo oeconomicus institutionalis<sup>4</sup>, which takes into account the formal and informal institutional context of individual behaviour. Kilian Bizer set up hypotheses on the alleged behaviour of desk officers concerning the choices of methods<sup>5</sup> and the quality control of impact assessments. In combination with the findings of the case studies analysed in the "background paper" possible solutions were presented and formed an introduction to a more detailed consideration by the following presenters.

## 2 Problems and challenges

The first session served the purpose of determining the role of the stakeholders in the impact assessment procedure and to analyse their influence on the outcome of the assessment especially with regard to environmental impacts. The main questions were the following:

- What is the actual influence of stakeholder groups, especially for the environment?
- How should effective stakeholder participation be organised?
- How great is the level of involvement of environmental groups in internet-based consultations?
- What criteria rule the priority setting for environmental aspects, e.g. "there is an environmental effect, but we can't change it" as a rule?

<sup>1</sup> European Commission (2005). Impact Assessment Guidelines, Sec(2005) 791, 15 June 2005 with March 2006 update and European Commission (2008). European Impact Assessment Guidelines. Draft version: [http://ec.europa.eu/governance/impact/consultation/docs/ia\\_guidelines\\_draft\\_text\\_final\\_en.pdf](http://ec.europa.eu/governance/impact/consultation/docs/ia_guidelines_draft_text_final_en.pdf).

<sup>2</sup> Ecologic (2007). Improving Assessment of the Environment in Impact Assessment. Amsterdam (IEEP); Watson, J. P., J. M. Wolff, et al. (2007). Evaluation of the Commission's Impact Assessment System. Brussels, The Evaluation Partnership; Jacob, K., J. Hertin, et al. (2008). Improving the Practise of Impact Assessment. Berlin, EVIA.

<sup>3</sup> Bizer, K., Lechner, S., Führ, M. et al. (2008). Improving the Integrated European Impact Assessment? Göttingen/Darmstadt, sofia (not published).

<sup>4</sup> Bizer, K. and Z. Gubaydullina (2007). Das Verhaltensmodell der interdisziplinären Institutionenanalyse in der Gesetzesfolgenabschätzung. Menschenbilder und Verhaltensmodelle in der wissenschaftlichen Politikberatung. M. Führ, K. Bizer and P. H. Feindt. Baden-Baden, Nomos. Führ, M. and K. Bizer (2007). REACH as a paradigm shift in chemical policy - responsive regulation and behavioural models. Journal of Cleaner Production 4: 327-334.

<sup>5</sup> E.g. CBA (cost-benefit analysis) and MCA (multiple criteria analysis).

- Can the employment of external environmental expertise be made cheaper and more flexible? Should financing stakeholder groups change?

The first presentation was given by *Stephen White*, representative of the Directorate General of Environment of Sustainable Development and Economic Analysis Unit. The presentation gave a valuable insight into the background, practical application and related regulatory and practical issues of the impact assessment process from the viewpoint of the European Commission. He emphasised the role of direct and daily assistance in handling impact assessments within the DGs. The speaker illustrated the procedures with diverse practical examples, i.e. the regulatory impact assessment of REACH.

The second speaker was Dr. *Klaus Jakob* from the Environmental Policy Research Centre at the University of Berlin and co-author of the aforementioned case study “*Evaluating Integrated Impact Assessment*” (EVIA). The main focus was based on the overall advantages and disadvantages of the use of the different methods and tools to obtain the data needed to assess specific impacts (e.g. IQ Tools and POINT3D) and to accomplish different purposes (e.g. justificatory impact assessment, issue specific assessments etc.).

Dr. *Pendo Maro*, Policy Officer of the European Environmental Bureau (EEB), presented the point of view of a stakeholder in the impact assessment consultation procedure and the significance of obtained data to the outcome of an impact assessment in the decision-making process.

At the end of each presentation proposals with regard to the improvement of the impact assessment procedure were formulated and discussed. Then, the participants had the opportunity to exchange their opinions at dinner and afterwards during the unofficial part of the event.

### 3 The proportionate impact assessment

The second session of the workshop on Tuesday morning focussed on the proportionateness of impact assessments. The wording of the actual European Impact Assessment Guideline<sup>6</sup> contains unclarity concerning the outreach of discretionary power of the assessing institution and formalism of the procedure. The questions to be discussed were the following:

- Is it reasonable to formalise the decision when an impact assessment has to be carried out or to what extent should discretion remain?
- Should there be a clear-cut criterion such as in the USA with the USD 100 million impact?
- Is the significance criterion of the EU impact guidelines sufficiently defined to be helpful?

<sup>6</sup> European Commission (2008), *supra* note 1.

- Does the political importance criterion of the EU impact guidelines put the environment at a disadvantage as it focuses on economic issues and asks for contestants and controversy in order to estimate political importance?
- When should a possible environmental consequence be considered significant? Should there be additional thresholds for environmental impacts?
- Which additional standards for the IA should be defined in the EU guidelines to limit discretionary power of the lead DG?

Prof. Dr. *Michael Schmidt* from the University of Technology in Cottbus opened the second topic, defined the relevant vocabulary and then located them in the impact assessment procedure proposed by the Impact Assessment Guidelines of 2005<sup>7</sup>. He pointed out the chronological relation between the roadmap and the choice of the methods to assess the impacts and presented a matrix to determine the significance of impacts of, for example, environmental impacts. The speaker combined this theoretical approach with practical examples of the correspondence between the European Commission, the Council and the Parliament about Trans-European transport axes to neighbouring countries<sup>8</sup> and the realisation of the impact assessment in this respect.

Dr. *Clive George* from the Impact Assessment Research Centre at the University of Manchester began his presentation by analysing the rules of procedure of the Commission.<sup>9</sup> In a second step he applied these rules to determine on which single step of the impact assessment procedure formalism or discretion should be preferred and pointed out the advantages and disadvantages of the current impact assessment procedure proposed in Annex 7 by the current draft Guidelines.

Thereafter a lively discussion arose and different opinions were exchanged before and during lunch.

### 4 Methods

The main topic of the third session related to questions concerning the different methods in use for determination of environmental impacts. The main questions were the following:

- Should the guidelines set a standard assessment method? Should this be CBA, the cost-effectiveness analysis or MCA?
- If CBA is selected, what are its crucial problems in terms of environmental consequences?
- How can external effects and non-market goods be evaluated simply and at reasonable costs?

<sup>7</sup> European Commission (2005), *supra* note 1.

<sup>8</sup> European Commission (2007). COM(2007)32.

<sup>9</sup> Art. 23 Nr. 5 d) Rules of the Procedure of the Commission as amended by Commission Decision 2005/960/EC, 15 November 2005.

- What discount rates should be used with IIA?
- To what extent can CBA contribute to the strengthening of environmental consequences in an IIA or could it also weaken it if environmental values are ambivalent?
- How can environmental consequences be weighted accurately within MCA or how should the weighing be procedurally organised to avoid a suboptimal provision of environmental quality?

Dr. *Giles Atkinson* from the Grantham Research Institute on Climate Change and Environment at the London School of Economics and Political Science began his presentation by showing the historical and theoretical background of the cost-benefit impact assessment method of market and non-market goods (e.g. environmental impacts). Then, he focused on the EU Water Framework Directive and the UK Air Quality Strategy as examples for cost-benefit analysis which he proposed as a useful standard method.

The following presentation of Dr. *Martin Drechsler* from the Helmholtz Centre for Environmental Research (referred to as the “UFZ” in Germany) addressed the multi criteria analysis methods and demonstrated different calculation methods (MAVT, PROMETHEE and Pareto analysis), their amount of uncertainty and the problem arising in aggregation of data.

The advantages and disadvantages of the different methods were discussed. Thereafter, the participants had the opportunity to visit the Chancellery of the Federal Republic of Germany.

## 5 Institutionalisation

The last topic of the workshop served the purpose of reflecting on the practical implementation of the workshop findings for the European and the German impact assessment procedure:

- Should drafting of legislation and the impact assessment itself be carried out by different agencies?
- What degree of independence is necessary to ensure effective quality control? How should the independence of the current IAB be assessed?
- Which intervening power in the legislative process should be allocated to the quality control agency? Can the IAB be effective without any such power?
- Which quality standards should be defined for the EU impact procedure?
- How should impact assessment be set up in Germany? Should the Regulatory Control Council (or “Normenkontrollrat”), which is responsible for reducing bureaucratic costs, function as a quality control board? How can environmental expertise be incorporated?

First Prof. Dr. *Martin Führ* presented an example of the impact assessment procedure of the Clean Air for Europe Programme (CAFE) and the Thematic Strategy on Air Pollution.<sup>10</sup> *Stephen White* then demonstrated the role of the Impact Assessment Board (IAB) and drew some possible conclusions from his practical experiences. Dr. *Jochen Gebauer* summarised the findings, applied them to possible German Impact Assessment procedures and pointed out chances and risks of the different proposals and findings which were raised during the workshop.

## 6 Conclusions

Prof. Dr. *Martin Führ* closed the workshop with a summary of main outcomes and remaining problem areas. The Workshop showed that to some extent positive examples can be found on the EU level. On the other hand there are still methodological questions to be solved, especially relating to the integration of environmental impacts.

On the background of the EU experience it appears that the RIA procedure has the potential to improve the reasoning by promoting a “*culture of analysis*” in the preparation of policy proposals.

From a German perspective the question as to whether and how a regulatory impact assessment system is introduced is influenced by the fundamental postulate of the “*rationality of the law*” underlined by the judiciary of the federal constitutional law. This includes a “*rationality test*” of each piece of legislation to ensure that the legislators have chosen an approach tailored to the problems and the involved actors (“*most harmonious fit*”) as requested by the principle of proportionality. The specific design of the RIA process remains a political decision.

The experience from the EU indicates that high level commitment towards RIA seems even more important than the formalised rules of procedure. The institutional framework should focus on the design of the internal review of impact assessments. Additionally, the desk officers in charge should have access to central<sup>11</sup> and decentral<sup>12</sup> assistance.

In their concluding contribution, the participants emphasised that they appreciated the opportunity to share their experiences about practical application, regulatory issues and the different methodological and institutional aspects of RIA.

<sup>10</sup> SEC (2005) 1133 from 21 September 2005.

<sup>11</sup> Through the use of guidelines, tools, additional support regarding to data/method and helpdesk.

<sup>12</sup> In the form of sharing know-how within the organisation (DG/ministry) in addition to the central assistance tools.

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

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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## 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. Since then, elni has grown to a network of about 350 individuals and organisations from all over the world.*

*Since 2005 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

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

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. It 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). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

### 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 Brus-

sels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

### Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

### Elni Website: elni.org

On the elni website [www.elni.org](http://www.elni.org) one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.