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## REVIEW

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IPPC Revision: Health and environment in Europe need  
a stronger Directive

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Belgian EIA systems

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Evaluation of the German Act on EIA

*Kilian Bizer/ Jaqui Dopfer/ Martin Führ*

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## Stakeholder representation in international environmental standardisation Joint Communiqué by ANEC, ECOS, and the Pacific Institute

*Franz Fiala, in collaboration with Ralf Lottes, Jason Morrison, and Nina Klemola*

*International standardisation in the field of the environment has long been considered an important tool in contributing to sustainable production and sustainable development policies at the global level.<sup>1</sup> This has in particular been the aim of the ISO 14000 series of standards on environmental management, developed by ISO<sup>2</sup> Technical Committee (hereinafter referred to as 'TC') 207 on Environmental Management. To help ensure that the International Standards developed by ISO enjoy a degree of credibility and legitimacy, the ISO Strategic Plan<sup>3</sup> lists as one of its key objectives the need to ensure that interested and affected stakeholders are adequately involved in ISO's work and processes. The importance of ensuring the participation of public interest groups is also echoed in the ISO Code of Ethics.*

*Despite the noble objectives of openness and transparency, consumer and environmental NGOs have long wrangled with the issue of business dominance and the marginalisation of public interests in standardisation. To help improve this imbalance in the particular case of ISO TC 207, a mixed group of NGO representatives and the TC leadership – the so-called NGO-CAG Task Force – was tasked in 2003 with developing a pair of operating procedures to improve the balance of stakeholder participation in the work of the TC. While one proposed set of procedures addresses liaison organisations<sup>4</sup>, the other facilitates more balanced stakeholder participation and decision-making in standards development. Regrettably the resulting draft procedures, presented at the last meeting of ISO TC 207 in June 2008, met with sustained opposition from several national delegations and as a result the documents, representing numerous years of work, were rejected without a proper debate being held amongst members. This casual rejection marks a notable setback in the improvement of public interest representation in international standardisation.*

*This paper reflects the long process of development of operational procedures for balanced stakeholder involvement in ISO TC 207 on Environmental Management, and highlights the need for a change in the way environmental standards, supporting broader public policies, are developed.*

### 1 Lack of balanced representation

Non-governmental organisations (hereafter referred to as 'NGOs') have on many occasions decried the business community's dominance in standardisation. The basic principles of international standardisation work – consensus-building based on national positions – suggest that standards are based on broad support by all parties concerned and that all stakeholder positions are adequately reflected in the national positions.

However, this is often not the case. National mirror committees are typically dominated by business representatives, with NGO and other public interest representatives either in a minority position or not represented at all. Hence, the "national consensus" tends to be little more than a business perspective in disguise as the business community not only has the most to gain from influencing the content of standards, but has the resources available to participate. Moreover, it must be stressed that national standards bodies are free to choose the composition of their delegations to ISO Committees, and thus these are primarily composed of business interests. In the case of ISO TC 207, the term "business" should be interpreted to mean primarily industry coupled with environmental consultants and certifiers.

Meanwhile, NGOs' minority positions at the national level, if present at all, are often "filtered" by the system: although their direct participation at the international level is possible, such "liaison organisations" have few rights and thus the practical impact of their involvement remains negligible.

### 2 Developing alternative approaches

As a result of the mistrust of the NGO community concerning the traditional procedural rules of standardisation, a different route was chosen when ISO initiated work in the field of social responsibility (hereinafter referred to as 'SR') in January 2005. This ISO project relies on a stakeholder-based approach. Six different stakeholder categories were defined by the group: industry, consumers, government, labour, NGO, and SSRO (Service, Support, Research and Others). A national standards body is only allowed to nominate one person per stakeholder category to the Working Group ('WG'), and all expert members of the WG act in a personal capacity and can express their (stakeholder) perspective. Moreover, the stakeholders form caucuses which hold meetings along with WG meetings and develop joint positions on certain key issues (e.g. whether a working document

<sup>1</sup> See European Standardization Procedures: A Model for Reform by Martin Führ, elni review 2/1996, 22.

<sup>2</sup> The International Organisation for Standardisation

<sup>3</sup> ISO Strategic Plan 2005-2010 'Standards for a sustainable world'

<sup>4</sup> International or broadly-based regional organisations which participate in Technical Committees, e.g. ANEC – the European Consumer Voice in Standardisation, or ECOS - European Environmental Citizens' Organisation for Standardisation

should be upgraded to a higher level). It should be noted, however, that even this ISO WG falls back on the traditional standardisation procedures once the document leaves the working draft level and reaches higher document stages – relying primarily on national “consensus” positions. Although it is recommended that national standards forward stakeholder positions opposing the national consensus view<sup>5</sup>, it is clear that the focus shifts and such stakeholder positions will not be more than a side stream in the game.

Several operational procedures have been developed in support of the ISO SR process. Due to the lack of resources of some stakeholders, these procedures have not yet led to a fully balanced representation in the WG SR in practice, but there is broad agreement that they constitute a major improvement compared to the traditional way of ISO standards-making. Considering the close link between the subject of social responsibility and of environmental management, two of these ISO SR procedures formed the basis of the documents prepared by the ISO TC 207 NGO-CAG Task Force, set up within ISO TC 207.

It is worth highlighting that there are a number of institutions which have developed procedures following a multi-stakeholder decision-making process, such as those developed under the umbrella of the International Social and Environmental Labelling Alliance<sup>6</sup>. These enjoy a generally higher level of support among civil society representatives than ISO Committees following the national (business-led) consensual process referred to above.

### 3 The ISO TC 207 NGO-CAG Task Force

After several years of debate on NGO issues within ISO TC 207, a document entitled “*Increasing the Effectiveness of NGO Participation in ISO TC207*”<sup>7</sup> was agreed upon by NGO representatives in 2003. The document outlined major difficulties of NGO participation in ISO standardisation and called for complementing ISO procedural rules with specific measures to strengthen the NGO voice. The document was the starting point for the work of the so-called NGO-CAG Task Force<sup>8</sup>, created in the same year. The NGO-CAG Task Force consisted of representatives from NGOs – including ANEC<sup>9</sup> and the Pacific Institute<sup>10</sup> – elected by an NGO Forum and the ISO

TC 207 leadership. It is important to stress that the Task Force consisted of an equal number of NGO representatives and members of the Committee’s governing body, and was chaired by the Pacific Institute.

As a first step this Task Force came up with a work plan which contained several proposals, the most important being that the “*TC207 should assign the Task Force responsibility for reviewing the areas of the ISO Directives that pertain to stakeholder involvement, and subsequent to the review, for developing operational guidance for TC207 in ways of improving its stakeholder involvement.*” This proposal achieved an approval rate of 81% in ISO TC 207 when balloted in 2004, with opposition from seven countries, including the biggest European countries.

Subsequently, an analysis of the ISO Directives<sup>11</sup> was carried out by the Task Force. The analysis showed numerous shortcomings and inconsistencies in the ISO procedural rules, including the definition of one of the key concepts of standardisation work – the consensus principle. Its definition – absence of “*sustained opposition*” – implies a broad agreement of all parties involved. However, it is nowhere explained what “*sustained opposition*” precisely is and how it can be expressed. The positions of liaison organisations are of minor relevance in this context, as they do not have any formal means to express consent or dissent. However, the ISO Directives also provide that “*technical committees and subcommittees shall seek the full and, if possible, formal backing of the organisations having liaison A status*” (those participating at the TC or SC level) – although no detailed guidance about when and how this should be done is given in the Directives.

### 4 Recommendations for operational guidance

The analysis of the ISO Directives, carried out by the NGO-CAG Task Force, also identified possible complementary provisions not in conflict with the ISO Directives. The subsequent key recommendations for operational guidance can be categorised under four headings; consensus-building, balanced representation, the role of liaison organisations, and appeals mechanisms.

Firstly, regarding consensus building, the Task Force recommended that a written procedure on how TC 207 participants could formally express “*sustained opposition*” or “*substantial objections*” vis-à-vis the ISO Directives should be put in place, and that a clear statement that this procedure is meant to be used by P-members and liaison organisations is needed. The Task Force also recommended the inclusion of a statement that all substantial objections are to be treated equally, irrespective of their origin and that an

<sup>5</sup> According to the ISO TMB WG SR ‘Operating procedure providing guidance on national input to the WG SR’, “The national consensus positions and liaison D comments will be the basis for experts’ deliberations within the WG on how to revise the [draft] text”.

<sup>6</sup> ISEAL, e.g. Forest Stewardship Council, Social Accountability International, Fairtrade Labelling Organisations International, etc.

<sup>7</sup> See: <http://www.pacinst.org/inni/NGOParticipation/N28Final.pdf>

<sup>8</sup> The NGO-CAG (Chairman’s Advisory Group) Task Force

<sup>9</sup> ANEC – the European Consumer Voice in Standardisation - [www.anec.eu](http://www.anec.eu)

<sup>10</sup> Pacific Institute for Studies in Development, Environment, and Security – [www.pacinst.org](http://www.pacinst.org)

<sup>11</sup> ISO/IEC Directives, Part 1 - Procedures for the technical work; ISO/IEC Directives, Part 2 - Rules for the structure and drafting of International Standards

effort should be made by the TC's or the relevant subgroup's leadership to resolve all conflicts as far as possible.

Secondly, the group recommended improving national input and decision-making in the ISO structure by providing guidance on the current practice regarding stakeholder involvement at the national level, and on the communication of minority positions not covered by national positions during enquiries on draft standards. The group recommended that such communications would be circulated at the international level for informational purposes. Other recommendations on balanced representation included the introduction of a stakeholder categorisation scheme that could be used to track stakeholder participation at TC 207-related meetings; guidance on stakeholder composition for national delegations to ISO TC 207 and its working parties<sup>12</sup>; operational procedures for WGs on how to identify different stakeholder needs and how to achieve an outcome of the discussions which is as balanced as reasonably possible; and finally, the introduction of guidance on the composition of the ISO TC 207 CAG and any other existing advisory group with respect to the balance of interests.

Thirdly, the Task Force recommended improving the role of liaisons by introducing an indicative (informal) voting procedure for A-liaisons regarding preliminary work items, approval of new work items, draft standards, and resolutions. Other key recommendations included the requirement that the negative indicative votes of A-liaisons are resolved in an equally conscientious manner as negative votes of national standards bodies, and that any decision of the TC is reviewed in the case of a significant number of negative indicative votes from A-liaisons. The Task Force also recommended that A-liaisons should receive draft standards for comment, and the compilation of comments following the public enquiries.

Fourthly, the Task Force made recommendations relating to the appeals procedures and suggested the establishment of an informal conflict resolution mechanism that does not involve the Chief Executive Officer of ISO and would stay strictly within TC 207. The group considered that such a mechanism could be accessed by all P-members and A-liaisons, and recommended for it to cover only substantive objections to draft standards which have been notified during enquiries on draft standards and resolutions. The Task Force proposed that this could work at the levels of

the WGs, the Sub-Committees, and the TCs by establishing small dispute arbitration panels.

The NGO-CAG Task Force approved this recommendations document in early 2006, and the recommendations for operational guidance and the analysis of ISO rules were circulated to the ISO TC 207 members in April 2007. Based on the document, the Task Force elaborated two operational procedures for some of the aspects identified above.

## 5 Suggested operational procedures

The two suggested operational procedures were based on their ISO WG SR counterparts and had been submitted to a consultation procedure which led to the deletion of some elements – such as the appeals mechanism mentioned above – ahead of the ISO TC 207 meetings of June 2008. Further deletions and amendments were made during the TC 207 meeting in the hope that doing so would persuade some opponents of the proposed procedures to support the revised proposals. Unfortunately this proved not to be the case, despite confirmation from the ISO Central Secretariat that the proposed procedures were in compliance with the ISO Directives.

The first set of draft operating procedures aims to improve balanced stakeholder participation in ISO TC 207. The main elements of this procedure are:

- The registration of meeting participants including affiliation (national standards body or liaison, stakeholder category, developing or developed country) and the provision of participation statistics using these categories;
- Creation of an “Advisory Group on Balanced Participation to monitor regional and stakeholder balance in standards development” and to address imbalances;
- Obligation on Working Group Convenors to assess differences along stakeholder or regional lines and to take them into consideration in the consensus building process; and
- Consideration of optional measures to improve stakeholder balance.

The second set of draft operating procedures relate to Liaison A and D Organisations. The main elements of this procedure are:

- Rules and criteria for the application of potential Liaison A and D organisations;
- Review and assessment of the applications against the criteria;
- Decision-making process on approval of liaisons;
- Review of liaison arrangements and revocation;
- Provisions for full and formal backing of the organisations having liaison A status for draft standards, and other documents subject to an approval procedure;

<sup>12</sup> This should take into account the stakeholder categories as defined in the NGO-CAG Task Force's *Guidance on Stakeholder Categories in ISO TC 207*. The ISO WG SR has defined six categories of stakeholders: Consumers, Government, Industry, Labour, NGO and Other (renamed in Service, support, research and others). It is recommended that national delegations consist of one person per stakeholder group. If a stakeholder group does not want to make use of the right to be represented in the WG, another stakeholder group may fill in, but there is a maximum of two representatives per stakeholder group.

- Request for an explicit indication of support for the relevant document;
- Provision of a summary table indicating the level of support for each document from each Liaison A organisation; and
- Consideration of the support from all liaison A organisations in decision-making.

These provisions are quite modest compared with approved rules for the ISO WG SR which go so far as to require that only one person per stakeholder category is allowed to join the group, and where six stakeholder groups have been created.

## 6 End of the road for the NGO-CAG Task Force

It became clear at the June 2008 meetings of ISO TC 207 that those who had opposed the process to improve balanced stakeholder participation from the very onset were vigorously fighting the Committee's adoption of the culmination of ten years of NGO-related discussions and the key outputs of four years of work of the NGO-CAG Task Force. The Task Force's efforts to dilute the draft procedures still further during the meetings did not help. Subsequently, the controversial and disappointing decision not to submit the papers to a plenary discussion was taken by the Chair of the Committee.

Considering the NGO-CAG Task Force had been charged by the TC to come up with procedural pro-

posals, it can be argued that the TC should have had, at the very least, a chance to debate the outcome of the efforts and the document should have progressed to a ballot after the meeting. Instead, as a gesture, an alternative to the operating procedures was suggested: an "NGO Contact Group" advising the TC 207 Chair on NGO matters. This alternative cannot be accepted by non-governmental organisations as a real alternative to the objectivity of the rejected procedures.

## 7 Conclusions

The decision taken at the ISO TC 207 meetings in June 2008 should be regarded as a crushing defeat for consumer and environmental interests in standardisation, with the outcomes unlikely to enhance the faith of NGOs in the standardisation process.

At a higher level, the developments in this Committee tangibly demonstrate that when it comes to actual standards development, ISO is far from fulfilling its strategic policy commitment to ensure broad and meaningful public interest participation in advancing its goal of developing standards for a sustainable world. Until and unless ISO takes more meaningful steps to implement this commitment, it can be questioned whether it is indeed the appropriate forum to develop international standards in support of such broader public policies.

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.