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Enforcement of Environmental Law by Individuals and Interest Groups: Reconceptualizing Standing

ABSTRACT. The paper argues that environmental law can learn from consumer law as far as standing is concerned. Valuable guidance can be given to both individual and collective action. Consumer law rests on a well-founded concept of a double-track procedural system of complementary individual and collective enforcement that has undergone a considerable development over the years. With special reference to the European Court of Justice decision C-321/95 P (Greenpeace International and 18 Others v. Commission) of 2 April 1998, three arguments are put forward. Firstly, environmental law may learn from consumer law by adopting the EC approach to confer direct effect to secondary law. This empowers the individual with respect to environmental as well as participatory ends. Secondly, environmental law may espouse modern approaches with respect to the standing of associations. Thirdly, theories of judicial review need to be rethought, taking into account the new conflicts that emerge from EC integration.

CONSUMER AND ENVIRONMENTAL LAW – TWINS OR DISTANT COUSINS?

Traditionally, enforcement of environmental law focuses on the use of administrative procedures. Other instruments such as civil environmental liability (in the sense of private party litigation), criminal prosecution, and provision of participatory rights in administrative procedure are classified as secondary, supportive instruments. On the contrary, in consumer law most EC countries have relied on private enforcement in the form of both individual and collective action for more than twenty-five years. Stimulated by the ongoing regulatory reform and the emergence of new philosophies as to private forms of regulation, environmental law has turned to consumer law for inspiration and advice.

However, the outcome of a learning process depends on the degree of structural similarity. If two fields of law are too far apart and driven by distinct conflicts of interest, little can be learnt. Since the seventies, the comparability of consumer and environmental law has been

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much debated. Depending on the conceptual perspective, they are either close twins or distant cousins.

According to the conventional perspective, they have very little in common: The consumer interest is perceived as an individual market-oriented interest, whereas the environmental interest is perceived as a public policy goal. Thus, the consumer interest, on the one hand, is positioned in the realm of market regulation; conflicts are taken care of by civil courts, and the function of procedural standing for associations is reduced to the alignment of parallel private suits, relieving the judiciary. The environmental interest, on the other hand, is regarded as one public policy goal among others, regulated by the state. The legislature determines the desired level of environmental quality; the executive enforces the rules. Environmental conflicts are perceived as conflicts between the individual and the state.

The opposing stance conceptualizes both consumer and environmental interests as public interests, pursued in private as well as public law (Cappelletti, 1981; Koch, 1990, p. 11). Both fields are understood as appearances inherent to the modern industrialized mass society that do not fit into the traditional framework of private-private vs. private-state conflicts. Due to the dynamics of public goods (Olson, 1965; Samuelson, 1954), there is little incentive for individuals to stand up for the public interest and devote time and financial means to such an undertaking. Therefore, new instruments of articulation and enforcement are needed. One of them is the recognition of standing for associations.

However, the last years have seen a softening of this clear-cut conflict between opposing viewpoints, and conciliatory and more elaborated concepts have emerged. Three conceptual directions can be distinguished.

Firstly, there is the instrumentalizing economic approach, such as that of Thomas Wilhelmsson (1998); see also Krämer (1993) and Rehbinder and Stewart (1985). Starting out from a contractual model, Wilhelmsson aligns the individual interest with both the consumer and the environmental interest. From there, parallel features as well as immanent contradictions between consumer and environmental interests become obvious, and differences can be dealt with specifically.

Secondly, there is the subjective public rights approach. Driven by the dynamics of the direct effect doctrine of EC law, scholars see the emergence of subjective rights that go beyond normative traditional subjective rights (Gerstenberg, 1997b; Masing, 1997; Reich,

1996; Ruffert, 1996; Sabel, Karkkainen, & Fung, 1999; Wegener, 1998a). In continuation of Masing (1997, pp. 35–37) and Ruffert (1997), Reich (1998) sees the direct effect jurisdiction of Community directives by the European Court as a sign of emerging subjective ecological and consumer rights in the tradition of German constitutionalism, primarily understood as rights against the state. Similarly, Attorney General Cosmas, in his opinion on the Canary Islands Case C-321/95P,[1] advocates a broadening of the "individual concern" in Art. 173 (4) (new Art. 230 IV) EC Treaty. He acknowledges that the environmental interest can be an individual concern. Oliver Gerstenberg (1997a, pp. 68–79) and Charles Sabel (Sabel et al., 1999) see ecological rights emerging from deliberative democracy, which means that they can operate not only against the state but also against other individuals. Gerstenberg conceptualizes them as distinct from classical subjective rights that depend solely on the individual's will. Deliberative rights are created through deliberation with others, but still belong to the individual's sphere (cf., Habermas, 1992, p. 430).

A third direction has taken the theory of public interest further (Mancuso, 1991; Mazzilli, 1992). The proponents differentiate the "public interest" (in the narrow sense) from the "collective" and the "diffuse" interest.[2] The public interest is the result of a policy decision by the state weighing different concerns; collective interests are the aligned, identical interests of many people; diffuse interests are defined by their indivisible nature and their attribution to an indeterminate number of people. Here, the private-public dichotomy is broken up by redefining "the public." The public sphere is not identified with the state. In between the state and the individual there is another space that can be conceived of as the "societal" space. Societal interests are these collective and diffuse interests, the interests of an indeterminate number of individuals. Instruments for enforcing these interests are either directed against the state or the individual.

These new developments make it clear that the former sharp distinction between consumer and environmental interests as public and private, respectively, has vanished. Thus, we may assume that environmental law can learn from the practice of consumer law. As the latter has a long experience with private law enforcement, in this paper I concentrate on how the consumer interest has found access to justice. Direct instrumentalist approaches will be neglected, e.g., eco-labeling, due to the fact that here the enforcement depends more on individual

initiatives than on questions of law. It will be argued that environmental law can learn something from consumer law by supplementing the individual right with more public positions in line with the direct effect doctrine of EC law and from the practice of collective action in form of standing for associations.

EXTENDING INDIVIDUAL STANDING

Jurisprudence of Art. 173 EC Treaty in General

Generally, access to judicial review is restricted to the impairment of an individual position. Due to different constitutional traditions (Danwitz, 1996; Masing, 1997, pp. 196–214; Rausch, 1994), the procedural rules of the Member States differ to the extent that they require either a normative[3] or a factual[4] concern or a combination thereof.[5] With respect to the "individual concern" of Art. 173 (4) (new Art. 230 IV) EC Treaty, the European Court adopted a somewhat mixed approach, broader than the German "Schutznorm" concept, but more restrictive than the French approach. It is widely agreed that since the very first interpretation of "direct and individual concern" in *Plaumann* in 1963,[6] when the Court basically rephrased the addressee theory, it has come a long way in extending access to justice. Academics just disagree on how to evaluate the result: Does it disrupt the national concepts of access to justice and their notions of how to balance the three constitutional powers (Danwitz, 1996) or does it fit into the framework of European integration (Kadelbach, 1998; Reich, 1998)?

Beyond direct subjective rights derived from primary law, the following four groups of cases can be identified. First, there is the group of material and procedural rights directly provided by the Treaty, e.g., the material rights of Arts. 30 or 59 (new Arts. 28/49) EC Treaty and Arts. 93 (2) and 85 (3) (new Arts. 88/81) EC Treaty as procedural guarantees.[7] These will also be attributed to associations, if they have participated in the rule-making process such as in *CIRFS*[8] or *van der Kooy*.[9] Second, there is the large set of case law on direct effects of secondary EC law which provides "unconditional and sufficiently precise" individual rights.[10] The third group of cases provides standing against the violation of duties, either by Member States (e.g., *Francovitch, Dillenkofer*)[11] or by Community bodies such as the

Commission (*Piraiki-Patraiki, Sofrimport, Extramet*).[12] The accorded *locus standi* seems to be more a reflex of the violation of that duty than a traditional individual subjective right. This reasoning is in line with common law case law, connected with names such as Lord Wilberforce.[13] The fourth group comprises cases such as *Codorniu*.[14] Although often aligned with *Piraiki-Patraiki, Sofrimport, and Extramet, Codorniu* has to be distinguished from them on structural grounds. In *Codorniu*, the Court did not refer to a violation of any duty. It merely distinguished the plaintiff from the general public by descriptive features, adopting the proposal of the Attorney General's opinion by asking two questions: First, is the plaintiff part of a "category comprising a fixed number of persons which could not be enlarged after adoption of the measure at issue (closed class)" and second, is there a "specific connection" between the applicant's situation and the measure?

Thus, individual access to justice has been broadened under the rule of Art. 173 (4) (new Art. 230 IV) EC Treaty. The impairment not only of normative subjective rights or contract positions but also of specific economic interests can be submitted to judicial review. However, all categories require the plaintiff to be an individual, an enterprise, or a group representing individuals appealing to the court in their very own self-interest.

Access to Justice in the Consumer Interest

In recent years, the consumer interest has found its way to judicial review by the extension of the individual right to such review. Thus, the consumer interest shares the enlarged access to justice granted to the individual. However difficult it might be to distinguish traditional subjective rights and consumer rights, six consumer rights can be identified: (1) the right to choose, (2) the right to information, (3) the right to protection of health and safety, (4) the right to fair bargains, (5) the right to count on business liability, and (6) the right to be heard (Wilhelmsson, 1998, p. 50). They differ from the traditional individual self-interest, because their enforcement is to everybody's advantage. However, as the consumer interest is always partly identical with an individual's economic interests, it will be enforced through the individual right.

1. The right to choose has been acknowledged as part of the freedom of the "passive market citizen" under Art. 59 (new 49) and

Art. 30 (new 28) EC Treaty.[15] The right to the freedom to make autonomous decisions, as a prerequisite of choice, is secured by the secondary EC law, namely directives having direct effect, e.g., with regard to the cancelling of contracts after doorstep selling, Directive 85/577/EEC. However, this right is only enforceable if it is included in general clauses of national law in the horizontal contract relation.[16]

2. The right to information is more complex. Although the Court of Justice explicitly recognized the consumer's right to information in GB-INNO in 1990,[17] referring to the EC Consumer Programme of 1975, and acknowledged the right to information as part of Art. 59 (new Art. 49) of the Treaty,[18] it did not attach direct effects to the right to information as part of the EC consumer protection policy under Art. 129 (a) (new Art. 153) EC Treaty.[19] Consequently, an individual right to enforce, for example, the detailed labelling regulations of the Member States or of EC secondary law has not yet been recognized; prosecution of breach of labelling duties is still mostly perceived as a government task. However, things may change. The Third Life Assurance Directive 92/96[20] and the Time Share Directive 94/47/EEC demand much more detailed information to be provided for the consumer.[21] Both insist on understandable information in the language of the state of residence. More importantly, the new emphasis on consumer policy in Art. 153 Amsterdam Treaty may be the base for the horizontal direct effect of information provisions, especially as regards labelling directives (Reich, 1999, p. 8).

3. The same structure governs health and safety regulation. Its enforcement is primarily perceived as a government task. An individual right to enforce it has not yet been acknowledged by the Court.[22] However, as soon as damage occurs, the duties can be the base for business liability.

4. The right to fair bargains is the core of the Fair Terms Directive that provides secondary EC law having direct effect vis-à-vis the consumer.[23]

5. The core body of law to secure business accountability is tort law. Especially in respect of negligence, it functions indirectly as an instrument for enforcement of safety rules. In private compensation claims the consumer can resort to Community safety standards in order to prove breach of duty. He/she may claim damages from the Member State – if safety regulations are not (properly) transposed to national law under the *Francovich I*-doctrine of state liability[24] – or from the producer under product liability rules.[25] Accountability of businesses is also secured by the duty to assure solvency.[26]

6. The right of an individual to be heard is part of the general guarantee of access to justice.

To sum up, by Art. 129 (a), Art. 3 (s) EC Treaty, and especially Art. 153 Amsterdam Treaty, consumer protection has become a policy goal in its own right which has resulted in the strengthening of the consumer's position. Primary and secondary law provide material rights that empower the individual, by means of private litigation, to enforce goals of consumer policy.

Access to Justice in the Environmental Interest

In the environmental context, the direct effect of Community law has also broadened the scope of individual rights to a certain extent. Two branches of rights can be distinguished, participatory and material. Participatory rights are largely acknowledged by secondary law. These are the right to be heard and to express one's opinion,[27] the right to information,[28] and the right to have special knowledge considered.[29] Material rights are intended to protect a given level of environmental quality. In this respect, the right to invoke environmental standards in court has been acknowledged, if these standards are designed as protective rights.[30] However, not only does the Court require the law to be precisely phrased and to have a protective and empowering intent,[31] but the rights must still be regarded as fragmentary material rights, since they protect "participation" more than "environmental quality" as such (Macrory, 1996; Wegener, 1998a).

The infant status of subjective environmental rights is partly due to the more complex structure of environmental law and the environmental interest. The law itself is complex because private and public regulation is closely intertwined. As compared with the consumer interest, the environmental interest is more intricate in two respects. (a) An individual person always has the consumer interest at his/her disposal, but this is only partly true with respect to the environmental interest. One can make use of forces of nature, e.g., photosynthesis, but one's domination of these forces is limited (Godt, 1997, pp. 139–143). (b) Although the environmental interest can be in part identical with the individual's interest, the two interests are not identical (this is in contrast to the consumer interest). Speaking in terms of the so-called theory of diffuse interests (Mancuso, 1991,

p. 59 ff.; Mazzilli, 1992, p. 21 ff.), both consumer and environmental interests can emerge as individual, collective, diffuse, and public interests.[32] However, whereas the consumer interest can mostly be interpreted as a collective interest, the environmental interest usually emerges as a diffuse interest. The distinction between these two categories has relevance for the standing requirements. By definition, the diffuse interest cannot be attributed to a fixed number of people, so requiring that there be a limited number of affected people by necessity excludes the diffuse interest.

Due to constitutional conceptions of the balance of power, most EC Member States as well as Art. 173 (4) (new Art. 230 IV) EC Treaty exclude the *actio popularis*. The individual's interest in terms of Art. 173 (4)/Art. 230 IV EC Treaty can be extended to the environmental interest only to a limited degree. The opinion delivered by Attorney General Cosmas in Case C-321/95 P, *Greenpeace*, demonstrates the potential but also the limits to the extension of individual standing to the environmental interest under the regime of Art. 173 (4)/Art. 230 IV EC Treaty.

Stichting Greenpeace Council (Greenpeace Int'l) and 18 Others v. Commission

The facts. In December 1993, Greenpeace International, two other environmental groups, and 16 private plaintiffs asked the Court to declare unlawful the Commission's decision to disburse financial assistance to Spain for infrastructure investments in connection with the construction of two power plants on the Canary Islands, on the grounds that the Commission had failed to verify that an environmental impact statement had been undertaken. In regard to the standing of the individual plaintiffs, they relied either on their objective status as "local resident," "fisherman," "farmer," or on their position as persons concerned with the consequences which construction of the power plants would have on tourism, on the health of the residents of the Canary Islands, and on the environment. It was also argued that the associations had standing under Art. 173 EC Treaty. Two arguments were put forward. First, it was held that the organizations had standing because one or more of its members had standing. Second, that they had standing in their own right as their primordial objective is the protection of the environment.

Advocate General Cosmas' opinion. Confronted with the pleading of Philippe Sands and Mark Hoskins, Advocate General Cosmas thoroughly analysed the function of Art. 173 EC Treaty and pushed the reasoning a little beyond the settled case law. Cosmas first distinguishes "environmental protection," as a Community interest, from individual environmental rights. The former he characterizes as public policy, entrusted to public authorities, open to judicial review only by the *actio popularis*, which is, however, not recognized by EC law. The latter can be created by secondary Community law and on private initiative be enforced against the authorities and other individuals by judicial review.[33] Applied to the case, he resorts to the *Piraiki-Patraiki* reasoning by stating that the Commission has a "specific and clear obligation" (para. 65) to establish, prior to the continuation of financial support, whether the relevant works were carried out in conformity with Community provisions, including the EIS Directive 85/337/EEC (para. 63). This duty "is not only of concern solely to the Commission but is also of relevance for certain individuals" (para. 65). Whether the decision is of individual concern to the plaintiffs, is a question for Art. 173 EC Treaty.

Examining this article, Cosmas confirms that the applicability of Art. 173 (4) EC Treaty can be denied neither on grounds of the "specific nature of the legal interest," nor because of "modern developments in national and international law" (para. 76). He also rejects the idea that a combination of the Commission's obligation and the rights conferred to the concerned public by Directive 85/337/EEC differentiates the "concerned public" from the "general public" sufficiently in relation to the contested act in terms of a "closed class" (para. 95 f.). Departing from this settled ground, he embarks on two distinct lines of reasoning that might turn out to be of great future importance. First, he reflects on the nature of the Commission's decision. He finds it general and abstract in regard to the individual plaintiffs. However, he argues, the function of Art. 173 EC Treaty is only to exclude general, abstract decisions of *legislative nature* from judicial review. This restriction does not apply to decisions that are abstract and general due to their *subject matter*. Cosmas qualifies the harm to the environment, which by its very nature affects categories of persons in a general, objective, and abstract manner, as non-legislative "specific subject matter" (para. 104). Second, where the general and abstract nature is due to a specific subject matter, he considers it a task of the courts to narrow down the "closed class,"

in order to safeguard the control function of the courts to protect acquired rights (para. 104). He suggests criteria like geographic proximity and the gravity of the decision. However, according to Cosmas these criteria are not met by the plaintiffs in this particular case. Consequently, the standing for Greenpeace as an association was denied too, both under the *CIRFS* rule and because the EC Treaty does not provide standing for associations beyond the two groups of applicants determined by Art. 173 (2) and (4) EC Treaty.

Analysis. Cosmas' argumentation follows a three-step structure. Formally, he rests his arguments on well-settled case law, but with respect to the content he goes far beyond earlier case law. First, he sets the framework. His cornerstones are the individual *actio popularis* on the one hand, and the standing for association, on the other. Neither of them is, nor, in his opinion, should they be, recognized by the EC legal order. Consequently, he concentrates on the "in between," individual interests in a broader perspective, and elaborates on the stretched Art. 173 judicature. Instead of taking "the environmental interest," perceived as a Community interest and as such entrusted to public authorities, as his point of departure, he transposes the interest in environmental quality into the private interest of a precise yet unknown number of individual persons. Second, although acknowledging the Commission's decision as general in nature, he attributes direct effects to the Commission's *obligation* to verify that an EIS has been carried out in respect of a funded project. This is in line with *Piraiki-Patraiki* and *Sofrimport*. The third argument rests on the English tradition of rights and remedies that is quite distinct from the narrow German-style normative right concept (cf., Ruffert, 1997, pp. 332–333), and enables Cosmas to change perspectives. Instead of focusing on the rights of the individual, whether natural or regulatory, he concentrates on the impacts of the measure on the individual, and its non-legislative nature. He considers it possible that a "closed class" of people is affected by the breach of the Commission's duty and can be determined. This is in line with the *Codorniu* decision.

His reasoning breaks new ground in two ways. First, he submits a decision of the Commission, addressed to a Member State, for judicial review under Art. 173 (4) (new Art. 230 IV) EC Treaty (cf., Krämer, 1996, p. 8). In this way, he intends to diminish an emerging gap of control that has evolved by the conceptualization of the

Commission's decisions as internal. Up to the present, judicial control of the Commission, under Art. 173 (4)/230 (4) EC Treaty, is limited to subsidy and anti-trust decisions. Second, he transposes the environmental interest into an individual interest, thus opening environmental decisions to potential review under Art. 173 (4)/230 (4) EC-Treaty. Continuing the argument of *Piraiki-Patraiki* with its reasoning on breach of duty, he in principle construes *locus standi* for the environmental interest in the sense of individual and collective standing.

However, Advocate General Cosmas' reasoning encompasses conceptional frictions. As the environmental interest tends to emerge as a diffuse interest that by definition concerns an indeterminate number of people, he postulates requirements that will never be met in reality. These requirements characterize only collective interests, defined as the parallel interests of a defined number of people. The nature of the environmental interest, however, is indivisible. If Cosmas postulates as a condition a "geographically closed class" of people and if he denies that this requirement is met in the given case of island residents, then these requirements will never be met. The diffuse interest is necessarily excluded. However, he opens up the possibility for a judicial review of the environmental interest as a collective interest and formulates precise requirements.

The Court's judgement. The Court espoused the Advocate General's conclusion, but did not follow his reasonings in its judgement delivered on 2 April 1998.[34] Contrary to the Advocate General, it adjudicated that the Commission's financing decision does not affect the environmental rights provided by EIS Directive 85/337 (para. 31).[35] Only the construction decision "is liable to the environmental rights arising under Directive 85/337" (para. 30). Note that the Court acknowledges that the Directive provides "environmental rights." However, those rights are to be protected by the national courts which may refer an issue to the Court of Justice for a preliminary ruling under Art. 177 (new Art. 234) EC Treaty. By deciding the case on the grounds of indirectness, there was no basis left for an analysis of the effects of the Commission's decision on individuals. Thus, the decision as such will have minimal impact, whereas the reasoning and the diligent work of the Advocate General might influence future proceedings.

Implications for Theory

Constitutional conceptions are challenged by a widening of the scope of individual rights, either by "directives having direct effect" or by attribution of certain interests to the individual for the better enforcement of consumer and environmental policy. Do secondary law rights share the structure of traditional subjective public rights, or are they different? What are the implications of an extension of judicial review for the function of the judiciary?

Secondary law direct effect rights. In modern thinking, the function of subjective public rights tends to be reduced to its gatekeeper function as a standing requirement. Historically, the concept of "subjective public rights" was much broader. In 1892, Jellinek defined these rights in a twofold way: They gave the individual the capacity to mobilize legal norms in the individual's interests; this capacity, however, is only recognized in the public interest (Jellinek, 1892, pp. 51, 53). With this definition, there is good reason to label secondary law rights based on the doctrine of direct effect as subjective public rights, as they empower the individual only to the extent that the law presumes (as argued by Reich, 1998, p. 163; Reich, 1999b, pp. 48, 450). However, we need to take into account that the content of the idiom "subjective public rights" has dramatically changed. It now serves as a gatekeeper for the judiciary, with positive consequences (safeguarding the functioning of the judiciary) as well as negative ones (no access for the public interest). The rights conferred to the individual through the direct effect of directives, on the other hand, owe their existence to the EC law doctrine of the *effet utile* (cf., Hilson & Downes, 1999, pp. 133–138). Its underlying dynamics imply that as many people as possible shall invoke the norms in question in court.

Additionally, the idea of subjective public rights is closely connected with the natural law concept of preexisting, universal rights, put at the disposal of individuals in their own interest, and to be used against the state.[36] Although this concept has been softened by case law with respect to third party rights (in German administrative procedure: "drittschützende Normen"), the relation is still one of general rule and exception. Due to their different functions, instead of aligning "secondary law direct effect rights" with the subjective rights tradition, I propose to designate this new category as *individual public rights*. This idiom shall reflect the unique characteristics stemming from EC law: These rights are created by a legislative body; they enlarge the individual's capacity; however, the individual cannot relinquish them. They are not universal; it is the law that determines who may invoke them (it can also be associations) and against whom (also in the horizontal direction).

The *Lemmens* case[37] shows that instead of being universal, EC secondary law direct effect rights are bound to the regulatory function of the law that provides them. In *CIA Security International*[38] the Court had ruled that the breach of a Member State's duty to report technical norms to the Commission results in the inapplicability of the relevant national regulation vis-à-vis an individual person. In *Lemmens*, the Court specified this general rule. A defendant in a Dutch criminal drunken-driving procedure invoked the inapplicability of Dutch rules on the grounds of *CIA Security*, arguing that the Netherlands had failed to report the technical measurement procedures to the Commission. However, the *Lemmens* court ruled that the duty to report is a means of protecting free trade within the Community. Its breach does not affect criminal procedure or the position of the individual therein. This indicates that "secondary law rights based on direct effect" are not universal in the way that traditional rights are conceived. They are bound to the regulatory purpose of the law from which they derive. Instead, their function is to extend the individual's power to enforce the law. They are expressions of modern reflexive communication, in an age where the clear-cut distinction between the private and the public realms has vanished (Teubner, 1998).

Judicial review. These reflections lead other important questions, i.e., why, to whom, and against what should access to justice be given. During the past five years, the direct effect doctrine has been criticized on the grounds that national doctrines on to whom to grant standing, and on what to review, are disrupted (Danwitz, 1996, p. 246). In Germany, subtle questions such as when can an individual resort to the state to make it enforce her/his interests (subjective public rights), and when may the judiciary control the executive as an exception to the principle of the separation of power, are elaborated within the dogmatic framework of the "Schutznorm" theory (Happ, 1998, § 42 No. 74). Ultimately, the "Schutznorm" concept and the separation-of-power principle are designed to restrict the power of the state in

order to secure the individual's autonomy. Those who defend the direct effect doctrine resort to the *effet utile* (Kadelbach, 1998) or restrict themselves to a functional analysis (Ruffert, 1996, p. 188). They still describe the new phenomena in terms of state constitutional law.

However, one may ask if it is appropriate to analyse the new developments within the framework of the established constitutional and administrative theories of law. Historically, they evolved as a result of the dichotomy of the state and the individual. The driving forces of the theories at hand aimed at the restriction of state power vis-à-vis the citizen (subjective public rights) and at an appropriate infrastructure of the state (separation of powers). The direct effect doctrine does not really fit into this framework. The EC grants rights in order to instrumentalize, or empower, the individual to enforce EC law in his or her favour – primarily, but not exclusively, against the Member States. The main conflict inherent in the direct effect doctrine is the conflict between the EC and its Member States, *not* that between the individual and the state.[39] The direct effect results solely from the intent to guarantee the application of Community law in the realm of the Member States' legislation (*effet utile*). In the *Greenpeace* case, the Court responded to the question of apportioning competence between EC and state jurisdiction by referring to Art. 177 (new Art. 234) EC Treaty. However, the mechanism of Art. 177/Art. 234 EC Treaty seems be too crude for the interlocking administrative decisions in the evolving European administrative law system. Analysing the emerging conflicts by national state constitutional theory is not sufficient. Instead, principles and categories need to be developed that take the "logic of integration" (a term coined by Joerges and Brüggemeier, 1993) and the EC structure into account.[40] This implies that the EC is not a "state" in the European constitutional sense and that the EC structure is not subject to the separation-of-power principle. Therefore, the legitimacy of access to justice in the EC cannot be evaluated solely on the basis of our given constitutional theories. Without adaptation they cannot apply.

At least three major complications make it necessary to rethink the standing requirements in the EC.

First, there is the fragile and unsatisfactory balance of power in the EC structure. The views on standing reflect conceptions of how best to organize the mutual control of the three constitutional powers. Although the individual resorts to the judiciary in his/her interest,

he/she also enables the judiciary to control both the legislature and the executive. The easier the access to justice, the stronger the judicial control.[41] The EC Parliament has only limited control over the Commission and the Council, because of the intergovernmental principle. Proper control and legitimacy must be provided by the national legislatures. As is well-known, this control is problematic. There is thus good reason to counteract the lack of legislative control by a widening of judicial intervention initiated by individuals or public interest groups.

Second, because of structural reasons, the lack of control of the Commission is especially deficient. European regulation increasingly involves a two-step administrative procedure.[42] This is determined by the fact that the Commission does not make direct decisions; the addressee of the Commission's decision is the Member State (like in C-321/95 P, Krämer, 1996). How effective judicial review of the Commission's decision can be is not yet clear. Often, such as in C-321/95 P, the Commission's decision can neither be submitted to the European Court of Justice under Art. 173 (4)/Art. 230 IV EC-Treaty, nor be reviewed by the national courts, due to inherent restrictions in the judicial system[43] (see Gärditz, 1998, and Wahl & Groß, 1998, p. 13). New theories and principles are needed for a better division of labour between the European Court of Justice and the Member State courts, following up on the work by Hirsch (1998). When and under which circumstances will the national court become a "European court" (Reich, 1998, p. 226)? What decisions need to be channelled to the European Court of Justice, under what circumstances, and who may be entitled to file a complaint?

Third, any theory needs to take into account that the Commission's decisions are typically abstract and general in nature. For this reason, ideas need to be developed on how to design access to judicial review. A restriction to the addressed individual and subjective rights does not help. Judicial review needs to be opened up to become more objective and collective.

The prototype for a restricted access to collective and objective judicial review is the *locus standi* for associations. It, in particular, offers the possibility of proper articulation of underlying conflicts, instead of inflicting this burden on the individual who brings the case to court.[44] This instrument shall be analysed next.

LOCUS STANDI FOR ASSOCIATIONS

Standing for Associations in General

Three distinct forms of standing for associations have evolved: Two of these are acknowledged under Art. 173 (4)/Art. 230 IV EC Treaty. The first includes two variations: either (a) the association has played a special role in the procedure which led to the adoption of the contested decision,[45] or (b) regulations such as the Information Directive[46] and the new Art. 255 of the Amsterdam Treaty provide the organization with a procedural right. This form, which Reich (1998, p. 218) labels as "formal subjective rights," gives the organizations standing in their own right. The second form of *locus standi* form is accessory to the standing of members of the organization enjoying individual standing.[47] It aligns the law suits of several individuals. The third form is the classical *locus standi* for public interest groups. *De lege lata communitatis*, this form of standing has only recently been acknowledged for consumer organizations with respect to a limited number of directives[48] but is granted by Art. 153 of the Amsterdam Treaty. Standing for environmental organizations, although much debated,[49] still exists only in national legislations.

The arguments for and against standing of associations are legion. A few should be repeated here.

Against the standing is argued: First, separation of power demands a restriction on the judiciary's control over the executive (dominance of the judges). Second, efficient judicial protection requires a restriction in numbers (the floodgate argument). Third, the democratic principle demands that individuals do not impose their vision of the public good on the majority; it is the state – embedded in procedures and split competences – that determines and represents the public good. These principles will be undermined if access to justice for associations is not restricted (circumvention); access to justice for associations needs therefore to be made as an exception to the rule.

Competing arguments in favour of standing for associations are: First, vested individual economic interests are stronger than interests shared by a lot of people (compensatory function). Second, unfair trade practices cannot be combated by individual interest litigation (market failure). Third, the state is powerless against the influence of these vested interests and therefore neglects public interests (state failure). Fourth, representative democracy structurally neglects public interests and needs democratic support (participation).

Standing of Consumer Associations

In consumer law, suits by consumer associations have become a powerful instrument for consumer law enforcement in the US and in most EC Member States.[50] Its value has been widely acknowledged nationally,[51] as well as during the evolution of EC law,[52] due to the fact that important cases were filed by associations in Member State courts and brought to the European Court's attention by way of Art. 177/Art. 234 EC-Treaty.[53] In June 1998 the EC enacted Directive 98/27 on injunctive reliefs for the protection of consumer interests[54] following a 1993 Green Paper[55] and a Commission proposal of January 1996.[56] It prescribes collective action against the violation of national laws transposing nine particular directives.[57] In conjunction with Art. 153 of the Amsterdam Treaty it can be argued that the Directive has direct effect (Reich, 1999a, p. 8). However, important consumer directives, like the Product Safety Directive, are not included, neither is the enforcement of labelling duties. "Qualified entities" shall be entitled to bring action (Art. 3 of Dir. 98/27), with reference to the three given strands of collective action in the EC: approved associations,[58] administrative bodies entrusted with consumer protection,[59] and associations fulfilling specified requirements.[60] Mutual recognition of consumer organizations' *locus standi* in cross-border litigation is explicitly provided (Art. 4).[61] General standing for associations is relegated to the Member States.[62] Such standing is provided for only in the anti-trust procedure according to Regulation 17/ 62.[63]

The nature of the standing of associations has always been contested. In Germany, adherents to the view that associations act on their own behalf prevailed. In that way, standing of organisations was aligned with the civil law standing of individuals. Consequently, little was ultimately changed. However, some adaptations to the public nature of collective action have been made or considered (Koch, 1990, pp. 50–59, 93–101; Marotzke, 1992). Mostly they relate to the three major principles of civil procedure. The principle of free disposition of the parties as regards the beginning, the end, and the content of the suit has been modified in France, Italy, and Brazil. In Germany, alterations have been discussed (Göbel, 1980; Jauernig, 1971; Reinel,

1979), but were not introduced in the two statutes providing standing for consumer associations (Leipold, 1983; Lindacher, 1990). This includes the possibility of settlements.[64] The principle of the parties' control of the factual construction of the case, including the *non liquet* danger, has also been left to the parties, especially to the plaintiff. This is also the case for so-called normative facts, hybrids between norms and facts (Lames, 1993; Schmidt, 1985). However, an alteration was introduced to the *res judicata* in the Unfair Terms Code. Although the legal force was not extended to *erga omnis* (Hadding, 1970, p. 311), the *inter alia* legal effectiveness will be extended as soon as a third party invokes it to a given applicable case. Regarding the economic framework, consumer organizations in Germany are self-sustaining but are subsidized by the public purse (Bultmann, 1996, pp. 75–78; Koch, 1990, p. 40), and court costs are capped.[65]

In sum, notwithstanding that provisions could be improved, consumer interest litigation seems to be well adapted to the nature of public interest litigation. Due to a vivid academic discussion fuelled by a growing body of case law, problematic conflicts are identified and the theoretic foundations refined. Therefore, consumer procedural law seems to be apt for helping to elaborate the practice and theory of environmental interest litigation.

Standing for Environmental Associations

Although the Fifth Action Programme for the Environment[66] and the EC draft directive on environmental liability for hazardous waste[67] have advocated the improvement of access to justice for environmental organizations, and although the Commission financed two thorough pieces of research, which came up with precise proposals for a directive on *locus standi* provisions,[68] standing provisions have not become harmonized, neither do environmental organizations enjoy standing as such. In October 1996, the Commission issued a Communication regarding the enforcement of environmental protection that broadly acknowledges the importance of improved access to justice for environmental organizations.[69]

In most EC Member States environmental organisations enjoy standing,[70] although in most cases, specific restrictions apply. In Germany, their standing is primarily restricted in three ways: first, as regards the subject matter, to natural resource protection in the narrow sense defined by federal and state statutes; second, to

administrative procedures; third, to infringements of – mainly participatory – rights conferred.[71] Thus, standing for environmental organizations is firmly embedded in administrative procedure and public law. As in consumer law, standing for an environmental organization is perceived as action on its own behalf (Kloepfer, 1989, § 5, No. 28) and thereby squeezed into the "Schutznorm" concept[72] as an abnormal exception.

In terms of procedural adaptations, no fundamental changes have been made. In part, this is due to the particularities of administrative procedure. Fees are small, the court is in charge of researching the facts of the case. However, due to the bonds of the "Schutznorm" theory, there is major opposition to proposals for the extension of standing to allow the challenging of, first, administrative decisions and circulars violating environmental regulations, and second, private infringements of environmental duties.

Given this state of the art, what can environmental law learn from consumer practice? The theoretic conception of standing and its procedural consequences need to be re-thought, and subject matters where standing can be vital need to be identified. In all three areas, consumer law can be of some guidance. With regard to the theoretic conception, detaching standing for associations from the "Schutznorm" concept may open up the vista in two ways. First, it would provide the possibility of suing private parties for their violation of environmental duties, by escaping from the state-individual dichotomy. Second, it widens the perspective as regards judicial review on behalf of the environment. Narrowing the standing provision down to the association "in its own right" focuses attention on the organization and deters from the environmental concern at stake. The seriousness of the organization should be dealt with in the approval procedure. Consumer law can be of some guidance with respect to procedural adaptations, too. Little is known about the procedural requirements that public interest litigation in the environmental interest requires. Rules need to be developed for concurring claims (Godt, 1997, pp. 289–295; Kadner, 1995, p. 282), a discussion has to take place regarding the principle of free disposition (Godt, 1997, p. 287; Kadner, 1995, p. 283), and *res judicata* needs to be extended to *erga omnis* (Godt, 1997, p. 295).

More reflection should be given to the interface between consumer and environmental organizations' standing, such as in the case of suits against companies for the breach of eco-labeling duties.[73] The BUND-

Berlin made the first step and widened the organization's aims to include consumer protection in the summer of 1998. This is a formal requirement for standing of associations under the German Unfair Competition Code. Environmental organizations could also take up the ideas that Norbert Reich has developed regarding *locus standi* of consumer organizations with respect to their participation in EC decision making (Reich, 1996, No. 270 a). One may think of the participation of environmental and consumer organizations in the Standing Committee that will assist the Commission with regard to the supplementary novel food procedure.[74] Similar possibilities may be given by the information rights provided by Art. 3 (1) Dir. 90/313/EEC,[75] with regard to the Member States as well as the Council and the Commission.[76]

CONCLUSION

Environmental law can learn from consumer law as far as enforcement is concerned. Individual enforcement can be improved by the EC secondary law direct effect rights. Collective enforcement can learn from the more elaborate consumer law theory. Not only is the distinction of different forms of collective interests and their implications better reflected there, civil procedure law can provide guidance in order to design a proper setting for litigation in the environmental interest. Both individual and collective action may assist in submitting the Commission to judicial review and in improving the yet deficient enforcement of environmental law.

NOTES

[1] Cosmas delivered his opinion on 23 September 1997. The court ruled on 2 April 1998 with very few references to Cosmas' arguments, Case C-321/95 P, http://curia.eu.int, abbreviated in Zeitschrift für Umweltrecht (ZUR) 1998, pp. 136–140.

[2] As defined in Art. 81 § 1 of the Brasilian law No. 7.347 of 1981 (in its 1985 version).

[3] Like the German so-called "Schutznormtheorie"; for a concise description, see Ruffert (1997, p. 311).

[4] Like the French (*intérêst legitime*), Belgian (*intérêst legitime/persoonlijk belang*), Dutch (*persoonlijk belang*), Spanish (*interés directo*), and Greek approaches, see Ruffert (1997, p. 326).

[5] Like the English (*sufficient interest*) and Italian concepts, see Ruffert (1997, p. 326).

[6] C-25/62 *Plaumann* (1963), ECR 211.

[7] C-169/84 *Cofaz et al v. Commission* (1986) ECR I-391; C-255/91 *Maire v. Commission* (1993) ECR I-3203.

[8] C-313/90 *CIRFS and Others v. Commission* (1993) ECR I-1125.

[9] Joint Cases 67/38 and 70/85 *Van der Kooy and Others v. Commission* (1968) ECR I-219.

[10] Since Case 8/81, *Becker v. Finanzamt Münster-Innenstadt* (1982) ECR I-53, ...

[11] The breach of duty of proper transposition may result in inapplicability (C-194/94 *CIA Securitas International SA v. Signalson SA and Securitel SPRL* (1996) ECR I-2230) or may entitle a party to damages (C-6 and 9/90 *Francovitch v. Italien* (1991) ECR I-5357; *Dillenkofer et al.* (1996) ECR I-4845).

[12] Breach of monitoring duties, C-11/82 *Piraiki-Patraiki v. Commission* (1985) ECR-207, the leading case for potential direct and individual effects on a third party by decisions of the Commission addressed to a Member State. The Court held that importers can be affected individually as members of a limited group ("a closed group of market participants"), identified or identifiable and particularly affected (the case concerned prohibition of the import of Greek cotton). See also C-152/88 *Sofrimport* (1990) ECR I-2477 and C-358/89 *Extramet Industrie SA v. Commission* (1991) ECR I-2501.

[13] Lord Wilberforce in *Inland Revenue Commissioners* (1982) AC 617, in particular p. 630: "The rule requires sufficient interest in the matter to which the application relates. The present case necessarily involves the whole question of the duties of the Inland Revenue and the *breaches or failures of those duties* of which the respondents claim" (my emphasis).

[14] Case C-309/89 *Codorniu SA v. Council* (1994) ECR I-1853, registered geographic trade mark (sparkling wine).

[15] C-45/93 *Museums Visit* (1994) ECR I-911; C-180/89 *Ital. Tourist Guide* (1991) ECR I-709; C-375/ 92 *Span.Tourist Guide* (1994) ECR I-923, note by Borries (1994).

[16] Case C-91/92, *Paola Faccini Dori v. Recreb Srl* (1994) ECR I-3325.

[17] Case C-362/88 *GB-INNO-BM v. CCL* (1990) ECR I-667.

[18] C-159/90 *SPUC v. Grogan* (1991) ECR I-4685.

[19] As advocated by AG Lenz in Case C-192/94, *El Corte Inglés v. Rivero* (1996) ECR-I 1281, para. 35.

[20] O.J. L 228/1 of 9 December 1992.

[21] O.J. L 137/42 of 19 May 1994; Reich (1998, p. 189).

[22] Product Safety Directive 92/59/EEC, O.J.L 228/24 (11 August 1992); prospectively Micklitz (1995, p. 197 ff.).

[23] Dir. 93/13/EEC O.J. L 95/29 of 21 April 1993, for details, see Reich (1996, paras 156 a – 156 r).

[24] C-6 and 9/90 (*Francovich*) (1991), ECR I-5357.

[25] Product Liability Directive in Joint Cases 67/38 and 70/85 *Van der Kooy and Others v. Commission* (1988) ECR I-219.

[26] Package Holiday Directive 90/314/EEC, O.J. L 158/59 (23 June 1990) and *Dillenkofer et al.* (1996) ECR I-4845.

[27] See AG Elmer in his opinion with respect to the EIS-Directive 85/337/EEC, C-72/95 *Kraaijeveld BV et al v. Holland* (1996) ECR I-5431, para. 70: "requires the Member States to introduce a consultation procedure to give individuals a right to express their opinion" (cited after Cosmas' opinion in C 321-95P).

[28] Information Directive 90/313/EEC; C-321/95 *W. Mecklenburg*, reported in Zeitschrift für Umweltrecht, 1998, p. 198, annotated by Turiaux (1998) and Vahldiek (1998).

[29] EIS-Directive 85/337/EEC: C-431/92 *Commision v. Germany (Großkotzenburg)* (1995) ECR I-2189.

[30] Cases C-131/88, *Commission v. Germany* (groundwater) (1991) ECR I-825; C-361/88, *Commission v. Germany* (sulphur dioxide and suspended particulates (1991) ECR I-2567; C-59/89; *Commission v. Germany* (lead content in air) (1991) ECR I-2607; C-58/89 *Commission v. Germany* (surface water) (1991) ECR I-4983.

[31] C-44/95, *Regina v. Sec. of State for the Environment ex parte: Royal Soc. for the Protection of Birds* (1996) ECR I-3805 (Lappel-Bank, Directives on Wild Birds 79/409/EEC and Habitat 92/43/EEC).

[32] In order to give some examples: The environmental interest is an individual interest as long as it is part of someone's property or research interests. It is a collective interest when a fixed number of people claim damages for the same incident (e.g., environmental liability after an accident). It is a diffuse interest for example in the case of biodiversity, because an unlimited and indeterminate number of people enjoy it. It is a public interest when it is part of the political process and is submitted to compromise (e.g., land zoning).

[33] Here, he cites Advocate General van Gerven in the latter's opinion on the case C-131/88 (para. 7), *Commission v. Germany* (groundwater) (1991) ECR I-825.

[34] C-321-/95 P Stichting Greenpeace Council (Greenpeace International) v. Commission (1998) ECR I-1651; abbreviated in: Zeitschrift für Umweltrecht (ZUR) 1998, pp. 136–140; annotated by Wegener (1998a).

[35] For a critical comment, see Wegener (1998b). Cf. also Krämer (1996, pp. 7–9).

[36] Too much emphasis on this aspect results in an overly narrow concept of direct effect rights, such as that proposed by Lackhoff and Nyssens (1998).

[37] C-226/97, *Lemmens* (1998) ECR I-3711.

[38] C-194/94, ECR I-2230.

[39] For evolving parallels with respect to the WTO order, see Godt (1998, p. 208) and Stoll (1997).

[40] One approach to the problem is provided by Bengoetxea (1993, pp. 102–104).

[41] Unless there are counterbalancing procedural rules, such as in the French procedure. France provides a comparatively broad access to justice. However, the depth of judicial review is reduced in various ways, e.g., by a limited writ of *mandamus*, by a restrictive competence of the court to investigate the facts, and by a reduced control of discretionary decisions; see Rausch (1994). In contrast, German procedural law has high barriers to entry, but provides profound judicial review ("Verpflichtungsklage": based on the principle of judicial investigation of facts and the review of proper use of discretion). These differences are due to the competing concepts of objective and subjective judicial review. However, one can now note tendencies towards convergence in both systems (Winter, 1998).

[42] See, e.g., Art. 6 (3) Novel-Food-Reg. No. 258/97, O.J. L 43/1, 14 February 1997; Art. 9 Product Security Dir. 92/59/EEC, O.J. L 228, 11 August 1992; Art. 13 (3) GMO-Release-Dir. 90/220/EEC, O.J. L.117, 8 May 1990; Art. 10 Drug-Reg. No. 2309/93, O.J. L 214, 24 August 1993.

[43] Either because of the restricted review scope determined by access rights other than classical subjective rights, or other dogmatic barriers.

[44] Cf., Alder (1998): "The driving force of the litigation in both cases was the environmental interest at stake. . . . This was mentioned only in passing. Attention was deflected from the environmental interest not only by the contrived attempt to generate a personal interest that so conspicuously failed in *Garnett* but also by the rhetoric of public interest" (p. 187).

[45] Joint Cases 67/38 and 70/85 *Van der Kooy and Others v. Commission* (1988) ECR I-219 and C-313/90 *CIRFS and Others v. Commission* (1993) ECR I-1125.

[46] Dir. 90/313/EEC O.J. L 90/158 of 23 June 1990, p. 56.

[47] Court of Justice: Joined Cases 19 to 22/62 *Federation Nationale de la Boucherie en gros and Others v. Council* (1962) ECR I-491; case 72/74 *Union Syndicale and Others v. Council* (1975) ECR I-401, Case 282/85 *DEFI v. Commission* (1986) ECR I-2469; Court of First Instance in joint cases T-447/93, T-448/93 and T-449/93 *AITEC and Others v. Commission* (1995) ECR II-1971, para. 58 and 59.

[48] Dir. 98/27, O. J. L 166/51 (11 June 1998), restricted to injunctive relief.

[49] See Führ, Gebers, Ormond, and Roller (1994a) for environmental organizations. The same instrument is discussed for economic interest organisations against intellectual and industrial property infringements, COM (98) 569, p. 17.

[50] For the UK, see the overview in the Green Paper COM (93) 576 final; regarding the political process, see Krämer (1985, para. 207).

[51] See, for Germany generally, Bultmann (1996, p. 161); Koch (1990, p. 41); for unfair contract terms, Gerlach (1993, AGB, § 13 No. 64); for unfair competition law, see Baumbach & Hefermehl (1996, § 13 No. 18 et seq.); for France, Morin (1992).

[52] Koch (1990, p. 45).

[53] Although most cases have been brought by industry associations: C-470/93, *Verband gegen Unwesen in Handel und Gewerbe v. Mars* (1995) ECR I-1923; C-315/92, *Verband sozialer Wettbewerb v. Clinique Laboratories and Estée Lauder* (1995) ECR I-317; C-126/91, *Schutzverband gegen das Unwesen in der Wirtschaft v. Yves Rocher* (1993) ECR I-2361.

[54] O. J. L 166/51 (11 June, 1998).

[55] COM (93) 576 final; see also Howells & Weatherill (1995, pp. 579–582).

[56] COM (95) 712 final.

[57] Dir. 84/450/EEC advertising, Dir. 85/577/EWG door step selling, Dir. 87/102/EEC consumer credit; Dir. 89/552/EEC television; Dir. 90/314/EEC travel package; Dir. 92/28/EEC drug advertisment; Dir. 91/13/EEC unfair terms; Dir. 94/47/EC part time; Dir. 97/7/EEC distant selling.

[58] Applies to France, Belgium, and Luxembourg.

[59] Applies to the UK, Ireland, Denmark, Sweden, and Finland.

[60] Applies to Germany, the Netherlands, and Italy.

[61] Notwithstanding that it has been argued that mutual recognition of organizations at the *locus delicti* is already implied by the non-discrimination principle of Art. 6 ECC: Fallon (1992); Reich (1992, p. 504).

[62] For more detail, see Reich (1996, No. 251).

[63] BEUC and NCC, T-37/92, ECR II-285; see Reich (1996, No. 269 a).

[64] Viewed critically by Koch (1989) and Schmidt (1989); see however, from the viewpoint of consumer practice, Bultmann (1996, pp. 91–97).

[65] § 22 AGBG; § 23 b UWG.

[66] COM (92) 23, O.J. C 138/5; revised on 31 July 1998 (Agence Europe, 1 August 1998).

[67] Art. 4 III (d); COM (91) 219 fin., O. J. C 192, S. 6.

[68] Institut für angewandte Ökologie (Ökoinstitut, Darmstadt) and Foundation of International Environmental Law and Development (FIELD, London), final report: Führ et al. (1994a). The directive proposal was reported in Führ et al. (1994b).

[69] COM (96) 500 final (22 October 1996), p. 14 ff.

[70] For an overview, see Führ et al. (1994a); also Kadner (1995, pp. 168–202) and Winckelmann (1990).

[71] For critical views, see Bender, Sparwasser, and Engels (1995, pp. 190–194); Rehbinder, Burgbacher, and Knieper (1972, pp. 178–188).

[72] § 42 (2) German Administrative Procedure Code.

[73] E.g., eco-labelling according to Regulation 880/92 of 23 March 1992; specifically for the labelling of genetically modified organisms, Reg. No. 1139/98 (26 May 1998) O.J. L 159/4 (3 June 1998).

[74] Art. 7 (1) and Art. 13 Novel-Food-Regulation No. 258/97 (27 January 1997), O.J. L 43/1 (16 February, 1997).
[75] O.J. L 158/56 (23 June, 1990).
[76] Decision of the Council 97/731/EC in O.J. L 340/41+43 (20 December, 1993). Corresponding: EuG, 19 October 1995; Zeitschrift für Wirtschaftsrecht (ZIP) 1995, 1847 – *Guardian*.

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