

Editorial

Access to environmental justice and its implications for the business world

Environmental law is not a subject to which the *European Business Law Review* has devoted much editorial coverage in the recent past, but the growing importance of the area and its rapid development at Community level have persuaded us to devote a double issue to the topic.

The Institute of Advanced Legal Studies was recently privileged to host the W G Hart Legal Workshop, where a distinguished assembly of practitioners and academics from all over world met to consider and compare access to environmental justice in their various regions and jurisdictions. The organisers, Michael Palmer with Michael Anderson, Andrew Harding and Martin Lau of London University's School of Oriental and African Studies put together an interesting and varied programme from which we have adapted the contributions of four speakers. Our fifth article comes from Geert Van Calster, of the Institute of Environmental Law at the Katholieke Universiteit, Leuven and SJ Berwin & Co, Brussels, who writes on the ECJ's recent *Euro Tombesi* judgment and its importance in helping to define the concept of 'waste'.

Professor Dinah Shelton, of Notre Dame Law School, looks at the litigation of foreign environmental damage in the US courts, and also summarises four recently-brought cases linking environmental harm and human rights abuses filed against American-based multinational corporations for their actions outside the US. All of the cases are still in progress and therefore it is still too early to assess the impact of the Alien Tort Claim Act under which they have been brought in providing a remedy for those outside the US who have suffered environmental damage as the result of the actions of an American corporation. The cases involve severe environmental damage (eg *Aguinda v Texaco*, where residents of the Oriente region of Ecuador allege devastation to their region caused by decades of oil exploration, and the *Shell Oil* case where people living in the Ogoni region of Nigeria have brought a similar claim). If successful these claims will influence the development of environmental law internationally, as well as in the US.

Greenpeace is currently contesting a decision by the European Commission to fund the construction of two fossil-fuelled power stations on the Canary Islands in violation of a Community law obligation, and attempting to establish the *locus standi* of the applicants in the case – three environmental protection associations and 16 individuals. Louise Gale, EU Advisor to the Greenpeace International European Unit based in Brussels, has summarised a number of landmark cases on the issue of the rights of individuals to protect their environmental interests created by EC environment legislation. If Greenpeace win the so-called 'CO₂ court case', this could lead towards environmental groups and private individuals

gaining the right to challenge illegal decisions taken by the Commission – with important consequences for businesses involved in projects resulting from such decisions.

The issue of access to environmental law in Poland as a country applying for EU membership is the subject of Francesca Veneziano's article, which summarises the right of petition before the Constitutional Tribunal, civil law suits and *locus standi* before administrative courts. There are a number of ways in which the public can make an impact in ensuring compliance and implementation in the area of the environment including use of a sympathetic media and 'creating a dialogue' by discussing environmental issues at local level, with industry and with political representatives. The difficulty for both those making and fielding complaints is that there is still widespread disbelief amongst the people on the importance of the law, which in turn influences the attitude of government officials.

Geert Van Calster's contribution focuses on a number of questions centred around the definition of waste, including the distinction between 'recovery' and 'disposal' in the light of the differences in the regulatory regime for both, and friction created by the EC definition of hazardous waste and the terms of the Basel Convention. Waste managements are struggling both nationally and internationally to define the concept of 'waste', and the control of transboundary movements of hazardous wastes and their disposal also present problems to the industries involved. The article clarifies the present position, with all its anomalies, and looks ahead to future developments.

The effectiveness of access to environmental information as a policy instrument to protect the environment forms the basis of the article by Cliona Kimber. Her article assesses the European Community's environmental policy, and refers to Directive 90/313 on Access to Information on the Environment which is currently being reviewed by the European Commission.

The articles making up this environmental issue of EBLR have been selected from across a broad focus of subjects. They are designed to provide people in the business world with an overview of the political and social concerns underpinning the development of environmental law, as well as providing factual information on matters of current interest.