

# Development of Climate Legislation

## Key findings 2009



JUSTICE  
AND  
ENVIRONMENT

European Network  
of Environmental Law Organizations



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## Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is a non-profit association with a mission that aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information.

J&E was created in January 2003 and founded as a non-profit association in September 2004. J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBÜRO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS). J&E also has six associate members: Environmental Justice Association, Spain (AJA); Centre for Legal Resources, Romania (CRJ); Front 21/42 Citizens' Association, Macedonia (Front 21/42); MilieuKontakt International, the Netherlands (MKI); Independent Institute of Environmental Concerns, Germany (UfU); and Green Action – Friends of the Earth Croatia, Croatia (ZA).

All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity. Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

To carry out its programme of work J&E relies on a number of donors and supporters. First and foremost the members themselves financially contribute to the network. However J&E has been supported by: the European Commission through the LIFE+ programme, the International Visegrad Fund (IVF), The Ministry of Housing, Spatial Planning and the Environment of The Netherlands (VROM), the European Climate Foundation (ECF), the Sigrid Rausing Trust and its own member organisations

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In 2008 lawyers from Austria, the Czech Republic, Estonia, Hungary and Slovenia described the current legal provisions regarding climate change in their countries and pointed-out their shortcomings in Legal Responses to Climate Change in EU Member States

The aforementioned document concluded as follows:

‘Based on the five analyses it can be said that indeed all states have framed strategies and programmes setting-out objectives, yet the guarantees that they will be achieved have not been (either partially or completely) integrated in the legislation.’

‘Based on our findings in the analyzed four branches of law - general environmental law, climate protection law, environmental procedural law, and spatial planning and construction law – the following trends are more or less visible in all analyzed member states:

- There are climate change strategies and programmes, accordingly policy measures are preferred to legislative measures.
- There has not been any comprehensive legislative review regarding climate change.
- The climate relevant binding provisions are primarily based on direct obligations under international and EU legal acts.

To sum up, there are international binding rules, national policy programmes, but no or far insufficient legislative measures that would guarantee reaching the Kyoto targets. In our view climate change and the adaptation to its impacts is an existing challenge for the member states. Comprehensive legislation should urgently be prepared in the environmental law and the related branches to address these deficiencies.’

In 2009 lawyers from the listed countries have monitored the legislative development in climate change topic. Primarily J&E planned to study and analyze the arising climate change acts of the member states and to help them by a model framework act, but national legislative developments have not resulted in separate acts or even official drafts in 2009. By this time the legislation procedures are under way in Austria, Hungary, the Czech Republic and Slovenia from the five listed countries even if they are in an early phase. Most of the aforementioned states are planning to integrate the results of the UN Copenhagen Climate Conference 2009 December in the draft of the future climate change act hence there have not been any official draft published by this time.

J&E lawyers have monitored the legislative development in the member states and made national Reports on the concepts, directions of the climate legislation. Each report presents the provisions on emission mitigation, adaptation to the impacts of climate change and research activity of the existing legal documents in a wider sense (laws, strategies, programs are covered) and of the published drafts or concept papers of the future national climate change act. We have to emphasize that the reports present the current situation (November 2009), but the legislative procedures are under way and due to it the studied and presented drafts will presumably change in the near future.

## Key findings of the reports

### Emission mitigation, prevention

Based on the reports there are several laws in the member states in order to ensure the attainment of the Kyoto emission mitigation targets (2012). Even so the Austrian and Slovenian report state that the measures in place based on the existing laws will not be sufficient to fulfil the international commitments they have accepted. Estonia, the Czech Republic and Hungary will have no serious problems in attaining the targeted reduction level by 2012 but all three reports point out that this is due to the changes in industry and economy caused by the political changes of the early 1990s. This advantage will not be repeatable, thus it remains questionable how the existing legislation will ensure attaining long term and future emission mitigation commitments of the states.

In *Austria* climate change is an issue broadly discussed on political and on social level. During the year 2009 various proposals for Climate Protection Acts or changes to existing legislation have been made. Key issue of all proposals is the determination of the rules for burden-sharing between the federal state and the provinces and questions of competences.

In the *Czech Republic* a proposal of Climate Change Act was introduced to the Parliament by the Czech Social Democrats Party in autumn 2009. The draft contains a basic mitigation target of 50 % in 2050 compared to the base year (2009) in form of a yearly moving average reduction. However, the draft is of very vague wording as well as of insufficient scope. It does not contain tools sufficiently ensuring fulfilment of the target. The draft should be voted for the first reading in the Parliament in early 2010.

In *Estonia* the matter of a future climate change act or the possible ways of emission mitigation have not been discussed on either social or political level in 2009.

The *Hungarian* Parliament adopted the Resolution No. 60 of 2009 (24 of June) on the Preparation of a Framework Act on Climate Protection on 24 June 2009 which is in fact a political commitment and not law at this stage. According to the Resolution the draft of the Framework Act have to be submitted to the Parliament before 28 February 2010.

In *Slovenia* the drafting process is still at the very beginning, so only comparative analysis on climate change laws and a table of contents of a Slovenian Climate Change Act are available. The drafting procedure should be finished by March 2010 in order to adopt the Act by the Parliament before summer 2010.

### Adaptation to the impacts of climate change and public awareness raising

Based on the national reports it is a general feature that there has been no direct or systematic legal approach to these issues in the member states in 2009. Adaptation to the impacts of climate change and public awareness-raising are covered only by the different strategies and programs and not by the law.

In *Austria* neither of the drafts covers these issues. In the *Czech Republic* the adaptation measures are being realized only in the framework of the general agenda of the different state departments. A general programme for support of adaptation process was announced in 2009. However until now the Ministry of Environment has not presented any draft yet. In *Hungary* the Resolution on the future Climate Protection Framework Act declares that the Act shall determine the national tasks and tools of adaptation to the impacts of climate change and also the challenges concerning public awareness-raising. According to the existing table of contents of the *Slovenian* Climate Change Act, both matters have to be included in the future act.

### Research activity

Similarly to adaptation strategies, the systematic legal approach is missing regarding this issue in the member states at the present time. There are different funding sources sponsoring, among others, climate relevant projects, mostly aiming at emission mitigation or the improvement of energy efficiency. In *Austria* none of the draft Climate Protection Acts covers the issue of research activities. In *Hungary* the Parliament Resolution declares that the future Act has to determine the tasks concerning research and development in connection with the climate change topic. In *Slovenia* it is questionable currently whether the future climate change act will cover this issue.

### EU Climate and Energy package

With regard to the fact that the pieces of law belonging to the EU Climate and Energy package have to be transposed by the member states in December 2010 or later on, there are not any public concepts regarding the harmonization. The existing drafts emphasize that the future climate change acts have to correspond entirely to the mitigation obligations and obligations to increase the share of energy from renewable sources stemming from the EU legislation.

## Conclusions

To sum up, it can be said at the end of 2009 that in the examined member states the legislators have realized that the existing political measures are insufficient to combat climate change.

Different legislative measures have been introduced and legislative procedures are under way even if they have not resulted in specific climate change acts in any of the examined member states.

Accordingly, the binding provisions with a direct reference to climate change or climate protection are primarily based on direct obligations under international and EU legal acts at the present time, but presumably the situation will change in the first half of 2010.

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