JUSTICE AND ENVIRONMENT

European Network of Environmental Law Organizations

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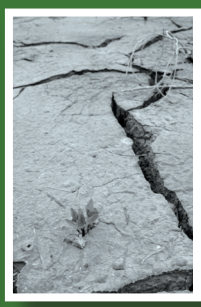
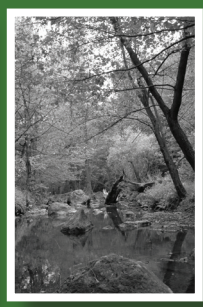
Legal Responses to Climate Change in EU Member States

Legal Analysis Collection: Climate Change – 2008





Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is an 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 an 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 Sigrid Rausing Trust and its own member organisations

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Introduction

Justice & Environment (J&E) is a European based association of public interest environmental law organisations. J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the implementation and enforcement of the European Union (EU) legislation through the use of European law and exchange of information about its use.

This collection of analyses consists of separate national analyses, as well as an overview of the common problems in the five countries where J&E has its members. Within it lawyers from Austria, the Czech Republic, Estonia, Hungary and Slovenia have described the current legal provisions regarding climate change in their countries and point-out their shortcomings.

Clearly there is an emerging consensus amongst scientists, politicians and communities of interest, that there will be significant climate change over the coming decades resulting from emissions of carbon dioxide and green house gases (GHGs); even if effective policies for reducing emissions will be implemented. In 1995 most countries (including all those covered by this document) joined an international treaty, the United Nations Framework Convention on Climate Change (UNFCCC), to begin to consider what can be done to reduce global warming. In 1997, amongst many others, the five analysed nations approved an addition to the treaty, namely the Kyoto Protocol, which has entered into force in 2005. Whereas the treaty sets out general principles and commitments, the Kyoto Protocol has already more powerful and legally binding measures. As the Convention's homepage declares, *'The major distinction between the Protocol and the Convention is that while the Convention encouraged industrialised countries to stabilize GHG emissions, the Protocol commits them to do so.'*[1]

However, the ways for emission mitigation are elaborated state-by-state, in order to adapt them to the national situation. 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.

The general overview highlights the most pressing issues and shortcomings we have discovered. Especially those which are similar in most of the countries and also points out the differences between these countries.

General Information

It is considered, beyond reasonable doubt, amongst scientists that the currently observed climate change is primarily induced by human activity. With regard to the fact that law is the basic tool for regulating man-kind's activity, therefore the law has to give adequate responses to combat climate change.

1. Scope of the analyses

These analyses aim to collect, present, assess and compare legal provisions having climate relevance of five EU member states. The national studies primarily focus on emission mitigation approaches, those direct or indirect provisions related to GHG emissions and their positive impact or shortcomings. The

[1] http://unfccc.int/kyoto_protocol/items/2830.php

other main areas of climate protection, namely: research activity, adaptation to the impacts of climate change and awareness raising, have not been reviewed in frame of this study.

The national analyses encompass several pieces of law having direct or indirect climate relevance. J&E has followed a holistic approach, based on the firm belief that climate change considerations should be integrated into all environmental and spatial planning concerns and not be considered separately. This includes: transport, housing, economic growth, water supply and waste management issues. In J&E's view climate change cannot be managed only as an environmental problem; accordingly the environmental law can not tackle with this problem alone. Therefore there is a necessity for a collective, targeted, co-ordinated and consistent approach. This holistic approach should be supported by legislation aiming at reduction of emissions and stabilization of climate change (mitigation); as well as adaptation to the inevitable changes.

Each national analysis consists of four chapters presenting relevant pieces of law in the following fields: general environmental law, climate protection law, environmental procedural law; and spatial planning and construction law. While most of these acts or regulations lack any specific reference to climate change they do contribute to the prevention of or protection against it.

2. Current situation in the analysed countries

As the Kyoto Protocol has been ratified by the member states and the European Community there are concrete emission mitigation targets (for limiting or reducing emissions) laid down and to be achieved. These targets are expressed as levels of allowed emissions, or "assigned amounts," over the 2008-2012 commitment period. Emissions trading, as set out in Article 17 of the Kyoto Protocol, allows countries that have emission units to spare – emissions permitted them but not "used" – to sell this excess capacity to countries that are over their targets. The implementation of these commitments load the different member states to various extents. Accordingly, their legal responses to climate change are in different development phases. In the case of Austria and Slovenia the attainment of the Kyoto targets is pending, Estonia, Czech Republic and Hungary have no difficulties to fulfil their commitments.

Austria's greenhouse gas emissions exceed the values determined by the Kyoto Protocol. Austria has, within the effort-sharing system of the EU[2], taken over a greenhouse gas emission reduction target of –13 %. At the moment this goal seems very difficult to reach, in 2006 Austria was 15 % above its 1990 emissions, thus 28 % from its Kyoto target, and is among the three worst EU countries.

Under the Kyoto Protocol Slovenia has committed to reduce its GHG emissions by 8% compared with the base year (1986). In 2006 Slovenia's emissions were 1% higher than the base-year level, well above its burden sharing target of 8% for the period 2008-2012.

By ratifying the Kyoto Protocol, Hungary committed to reduce its GHG emissions by 6 %. Now, the emissions are 32 % lower than in the base year (an average of 1985-87). However, this significant reduction is a consequence of the regime change in Hungary (1989-90) which brought about a radical decline in manufacturing, with the production decreasing in almost every economic sector including also energy, industry and agriculture.

[2] As part of the climate and energy package proposed by the European Commission (EC) and accepted by the European Parliament, plans were hammered out on how European Union (EU) member states would share efforts to reduce greenhouse gas emissions.

Similarly to Hungary, Estonia's significant historical and socio-economic context has created a situation, where presently the objective of reaching the target level of -8% of greenhouse gas emissions presents no actual motivation for the reduction of greenhouse gases. Estonia will have no problem in reaching the targeted reduction level by 2012, even if no measures against greenhouse gas emissions were to be taken.

The Czech Republic already emits approx. 25 % less GHG than in the base year (1990) and thus it will have no difficulty with fulfilment of its 8 % Kyoto emission reduction target. Again this situation appeared mainly as consequence of the collapse of heavy industry after 1990.

3. Particular issues of concern

As has already been already emphasized, this analysis was aimed at collection of the climate relevant laws and presentation of their shortcomings. In the tables we present the list of laws pointing out their climate relevance. We highlight the main problems of the laws, which can: be missing topics, have a flawed approach, fail to realize the most important climate change principles (laid down primarily in UNFCCC), as well as substantial or procedural legal problems. Finally we make some general legislative and/or practical recommendations in order to improve legal aspects of climate protection.

3.1.

Based on the review of general environmental laws in the subject member states, it can be said that general environmental law and air protection law are very complex branches of law. There are a great number of different legal acts, which have relevance to climate protection; even if they are not addressed as climate protection laws. Furthermore there are in each country National Climate Strategies, with either a general or narrower scope. Austria prepared the first one in 2002 and the second one in 2007, the Czech Repuplic introduced the strategy in 2004 and a new one should be adopted in the next year. While Slovenia has a strategy only for agriculture and forestry sectors at the present time, but not in overall. The Estonian programme focuses on the reduction of the emisson of GHGs, but not the climate change issue as a whole. These policy documents cover climate change issues, but have no immediate legal relevance.

It follows that policy measures are generally preferred to legislative measures at the present time. The following finding of the Austrian analysis is applicable in general to all the studied member states. *'There is no general act on climate protection ensuring a "climate mainstreaming", neither in the legislative process nor in interpretation and implementation of the laws. Even environmental laws do not in every case contain direct reference to the climate issue.'*

In the field of environmental impact assessment regulations (EIA and SEA) climate protection aspects are very briefly included. In Hungary there actually no legal obligation of assessing impacts to climate change in the EIA procedure. Nevertheless the impact of a plan, programme or concrete project on climate has to be assessed in member states, but in practice it is very limited. The Austrian analysis pointed out that assessment of climate impact is confined usually to the involvement of the following sentence in the environmental statement or report: '*that compared to the total of the Austrian emissions, the increase caused by the concrete project is irrelevant. This might be true quantitatively; nevertheless this interpretation of climate relevance would render any attempt to reduce greenhouse gas emissions in a bottom up approach meaningless.'*

3.2.

Explicit climate protection legislation is basically restricted to the transposition of international and EU acts in the member states. Accordingly, the existing pieces of law that implement the Directive 2003/87/EC establish a scheme for greenhouse gas emission allowance trading (ETS), and its amendment in respect of the Kyoto Protocol's project mechanisms (Directive 2004/101/EC).

There are crucial points in the operation of ETS in the member states. As the Slovenian analysis highlights, the allocation of the emission allowances for free (for the period 2008-2012) presumably leads to difficulties in the near future in the country, because developers are not motivated to use environment-friendly technologies and to contribute to emission mitigation. Likewise, as the current legal definition is not exhaustive and precise enough, the legal nature of the 'right to emit GHGs' has to be clarified. This is true also for other member states, where legal nature of emission allowances is also not defined or specified enough. The Hungarian and Czech climate protection law lacks controls for emission allowances over-allocation. However, the Austrian Act on the Climate and Energy fund can be mentioned as a positive example of the complementary provisions: '*which is supposed to support an increase in energy efficiency, an intensified use of renewable energy sources and a reduction of greenhouse gases.*'

3.3.

In the field of environmental procedural laws some shortcomings, which are able to restrict the efficiency of climate protection provisions, have been revealed as well. Imperfections in the integration of 'polluter pays principle' result in non-coverage of socio-economic costs of climate change and adaptation to its impacts.

There are, more or less, general public participation issues as well in the member states which contribute indirectly to deficiency of climate relevant provisions. As the Slovenian analysis points out: *'In Slovenia there is still a problem of gaining status of "NGO acting in public interest", … so for that reason no NGO has a status of acting in public interest yet.'* The Hungarian study highlighted in the Act on Priority of Certain National Projects which states that: '*The most significant projects (cost more than ca. EUR 200.000), which are always crucial regarding their impacts on climate change, have to be licensed in an accelerated procedure, wherein the public participation possibilities are limited compare to the general environmental permitting procedures*.' Likewise the incomplete structure of sanctions has been revealed by the Hungarian analysis, as there are no special rules elaborated regarding infringements in connection with GHG emission.

3.4.

A key finding of the national analyses of spatial planning law is that climate change aspects have not been integrated into spatial and development plans. As the Estonian study perfectly pointed out: '*This lack of climate change consideration in policy-making and legislating is definitely in contradiction with article 3(3) of UNFCCC and specifically art. 10(b) of the Kyoto Protocol, which provides: "Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change…". '*

At the present time in these plans there are air protection and sustainable development objectives at most, but not any climate relevant provisions. There is a positive element in the Hungarian law, the Decree on the Calculation of the Biological Activity Value of the Areas, which aims directly to prevent further loss of green areas; though its application criteria are not fully elaborated.

Based on the national analyses it is apparent that climate protection in construction law is restricted to the regulation of efficiency of energy consumption; that is linked to the transposition of the related EU directives (2002/91/EC and 2003/96/EC). In Estonia: '*The transposition of this system is concluded by the requirement, that the buildings and apartments, that are constructed, sold or rented, must have an energy certificate.*' Further aspects of climate protection are not elaborated in the construction law and the existing provisions are not linked to other related branches of law.

Conclusions

Based on our findings in the analysed 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 analysed 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. Comprehensvie legislation should urgently be prepared in the environmental law and the related branches to address these deficiencies.

AUSTRIA

1. General environmental laws

1.1 General environmental laws (particularly air protection)

a) List of the analyzed laws and their climate protection relevance

Commerce and Industry Regulation Act (of 1994): Gewerbeordnung; last amendment published in Official Journal I No. 57/2008.	For the transposition of the IPPC Directive this act has been amended. With regard to air quality it now contains state-of-the-art emission limit values for pollutants contained in the IPPC Directive.
Waste Management Act (of 2002): Bundesgesetz, mit dem ein Bundesgesetz über eine nachhaltige Abfallwirtschaft (Abfallwirtschaftsgesetz 2002 - AWG 2002) erlassen und das Kraftfahrgesetz 1967 und das Immissionsschutzgesetz – Luft geändert werden; published in Official Journal I No. 102/2002.	For the transposition of the IPPC Directive this act has been amended. With regard to air quality it now contains state-of-the-art emission limit values for pollutants contained in the IPPC Directive. This act explicitly mentions the reduction of gasses relevant for climate change as one of its aims.
Mineral Raw Materials Act (of 1999): Bundesgesetz über mineralische Rohstoffe, über die Änderung des ArbeitnehmerInnenschutzgesetzes und des Arbeitsinspektionsgesetzes 1993; last amendment published in Official Journal I No. 113/2006.	For the transposition of the IPPC Directive this act has been amended. With regard to air quality it now contains state-of-the-art emission limit values for pollutants contained in the IPPC Directive.
Act on the Integrated Prevention and Reduction of Pollution from Steam Boilers (of 2004): Emmissionsschutzgesetz für Kesselanalgen; last amendment published in Official Journal I N o. 84/2006.	For the transposition of the IPPC Directive this act has been amended. With regard to air quality it now contains state-of-the-art emission limit values for pollutants contained in the IPPC Directive.
Federal Constitutional Law Act (of 1930): Bundesverfassungsgesetz; last amendment published in Official Journal I No. 1013/1994.	The Austrian Constitution, amongst others, determines the competences of the federal state, of the provinces and of the municipalities in general and therefore also for issues with a relevance for climate. According to this act, air pollution control falls within the competence of the federal state, an exception in this area is the provincial competence for residential heating systems.
Act on the Protection from Emissions by Air Pollutants (of 1997): Immissionsschutzgesetz Luft; last amendment published in Official Journal I No. 70/2007.	The central act on air pollution control in Austria. It transposes large parts of EC air quality law (Framework Directive 96/62/EC and its three daughter directives[3]) and generally aims at a reduction of air pollutants.
Ordinance on the Incineration of Waste (of 2002): Abfallverbrennungsverordnung; last amendment published in Official Journal II No. 296/2007.	This ordinance contains emission limit values for various kinds of air pollutants relevant for waste incineration and waste co-incineration facilities.

[3] Directive 1999/30/EC, Directive 2000/69/EC and Directive 2004/107/EC (not Directive 2002/3/EC).

Act on Prohibition of the Incineration of Biogenous Material (of 1993): Gesetz über das Verbot des Verbrennens biogener Materialien außerhalb von Anlagen; published in Official Journal I No. 405/1993.	This act contains a general prohibition of large-scale incineration of biogenous materials outside of the appropriate installations for the whole year and a prohibition of small-scale incineration during the summer. Many exceptions are nevertheless foreseen, in particular regarding private households and agriculture.
Act on the Prevention of Air Pollution (of 2002): Bundesluftreinhaltegesetz; published in Official Journal I No. 151/2004.	This act contains a general obligation for "everyone" (meaning every citizen, but also every authority) to pay attention that any act or omission does not change the natural composition of the air in a way that would conflict with the aims of the act. In addition to the Act on Prohibition of the Incineration of Biogenous Material (see above) it contains a prohibition of the incineration of non-biogenous materials outside of appropriate installations.
Act on National Emissions Ceilings for particular Air Pollutants (of 2003): Emissionshöchstmengengesetz-Luft; published in Official Journal I No. 34/2003.	This act transposes the NEC Directive (2001/81/EG) and determines emissions ceilings valid from 2010 onwards. Emissions inventories are to be established and maintained and the Ministry of the Environment shall develop an emissions prognosis which is to be updated on a yearly basis.
Green Electricity Act (of 2006): Ökostromgesetz; last amendment published in Official Journal I No. 114/2008.	The act aims at an increase of the production of electricity from renewable energy sources and at the promotion of new technologies.
Act on the Upgrading of the Heating and Cooling Conduction Network (of 2008): Wärme- und Kälteleitungsausbaugesetz; published in Official Journal No. 113/2008.	The act aims at a reduction of energy consumption and CO_2 emissions by subsidizing the construction of district heating and cooling networks. Sixty million Euro is provided by the Federal State to this end. The idea behind this investment is that district heating and cooling provides for a comparatively cheap reduction of CO_2 emissions and increases energy efficiency due to the use of waste heat; which would otherwise be lost. Up to three million tons of permanent reduction of CO_2 emissions are expected through measures supported in the context of this act.
Combined Heat and Power Generation Act (of 2008): Bundesgesetz, mit dem Bestimmungen auf dem Gebiet der Kraft-Wärme-Kopplung neu erlassen werden; published in Official Journal No. 111/2008.	On the basis of this act the production of electricity through combined heat and power generation is supported.
Act on the Support of Environmental Measures (of 1993): Umweltförderungsgesetz; last amendment published in Official Journal I No. 24/2007.	This act provides for the possibility of funding, amongst others, for the protection of the environment through the avoiding or reduction of air pollutants and pollutants relevant to climate change. Funding is also possible for activities abroad.

Act on the Monitoring of the Environment (of 1998): Umweltkontrollgesetz; last amendment published in Official Journal I No. 64/2002.	The act determines the general obligations of the Ministry of Environment regarding monitoring of the state and of the development of the environment, reporting obligations and dissemination of information. It also establishes the, formerly Ministry-run, Austrian Environmental Agency (Umweltbundesamt, UBA) as a limited liability company. The UBA is responsible for maintaining an air quality inventory which fulfils the reporting obligations contained in various international agreements, including the Kyoto Protocol.

b) Main problems of the analyzed laws in the branch

The Austrian legal framework on air and climate protection is very complex. The federal state, the provinces and municipalities all share competences in this field, which has lead to a great number of different legal acts. Amendments of the Austrian Constitution have led to an increase in concentration of competences at the federal state level, yet air and climate protection do remain cross-sectional issues. Examples for provincial competences relevant for climate change concern: residential building construction, residential heating, regional planning and public transport. On the municipal level the most important competences are: land-use planning, public transport and local road construction.

Currently there is no legal basis to clarify how and by whom measures have to be taken to attain Austria's obligatory European and international reduction targets. At the same time there is no legal basis for the separation of financial burdens resulting from non-compliance with those obligations.

The Austrian Climate Strategy, of 21 March 2007, acknowledges that Austria's greenhouse gas emissions have exceeded the values determined by the Kyoto Protocol (also see below). This document also contains recommendations for action as regards climate change that correspond in general to the principles formulated in the UN Framework Convention on Climate Change (UNFCCC). These include prevention and mitigation of emissions, research and development concerning new technologies (in particular regarding energy efficiency), support of renewable energy sources, adaptation to climate change, awareness raising and support of joint implementation (JI) and clean development mechanism (CDM) measures. However, those principles contained in the strategy are not completely reflected in the relevant legislation.

The Act on the Protection from Emissions by Air Pollutants directly refers to the Climate Strategy, and therefore also to the principles contained therein. As such it has to be taken into account when developing air quality programmes. On the other hand the Waste Management Act only refers to the mitigation of the emission of gases harmful to climate in a rather general way.

An important example for climate relevant legislation is the Green Electricity Act which contains following important provisions:

- promotion of alternative energy sources;
- market entrance barriers for new technologies are reduced by fixed feed-in tariffs; and
- ncreases of the share of "green" power from 70% in 1997 to 78.1% in 2010.

One main aim of the act is to reach an increase in the production of energy from renewable resources, in particular from wind energy. However, the overall share of green electricity is actually declining due to an increase in electricity demand and, according to information from green and environmental organisations, it will take a great effort to reach the 78.1% goal by 2010 as determined in the Green Electricity Act[4]. Still, a positive achievement that was made by the introduction act is the creation of a consolidated and unified system for the promotion of alternative energy forms.

c) Suggestions

There is no general act on climate protection ensuring "climate mainstreaming"; neither in the legislative process nor in interpretation and implementation of the laws. Even environmental laws do not contain in every case a direct reference to climate issues.

One step in the right direction was made in July 2008, that from October 2008 every planned piece of legislation (on a federal level) now has to go through a climate impact assessment[5]. The results also have to be published on the cover page (Vorblatt) of the draft proposal. This assessment does not deliver legally binding results, so the climate impact assessment fulfils mainly information purposes, but the government is obliged to justify its proposals in the light of climate relevance. Thus the published information shows, only in a very circumspect way, how climate considerations have been taken into account.

1.2. Environmental impact assessment regulation

a) List of the analyzed laws and their climate protection relevance

Austrian EIA Act (of 2002): Umweltverträglichkeitsprüfungsgesetz; last amendment published in Official Journal I No. 153/2004.	Implications of a project on climate and air can lead to an obligation to carry out an EIA. This proceeding is supposed to provide for an overall assessment of the implications of large projects, as well as for measures to avoid or to reduce its negative effects on the environment. There is a special type of proceeding for transport infrastructure projects (road and railways). Additionally trans-boundary impact assessment is covered by this act.
Austrian SEA Act Transport (of 2005): Bundesgesetz über die Strategische Umweltprüfung im Verkehrsbereich; published in Official Journal I No. 96/2005.	The act determines that, in particular, environmental considerations have to be taken into account when deciding over programmes or plans regarding transport infrastructure. They have to be treated within the decision-making process related to basic strategic questions. For other areas the SEA Directive has been integrated into existing legislation, for example into the Act on Protection from Emissions by Air Pollutants.

[4] See for example: www.greenpeace.at/uploads/media/Forderungspapier_Oekostrom-Gesetz.pdf or http://www.greenpeace.at/1120.html

[5] http://www.bka.gv.at/site/5826/default.aspx.

Act on EMAS (of 2001): Umweltmanagementgesetz; last amendment published in Official Journal I No. 99/2004.	This act contains accompanying provisions to Regulation EC No 761/2001 (allowing voluntary participation by organisations in a Community Eco-Management and Audit Scheme (EMAS)).

b) Main problems of the analyzed laws in the branch

The EIA and SEA acts both contain only very limited references to climate. Nevertheless, in both cases the impact of a plan, programme or concrete project on climate has to be assessed. In practice there are limitations to this assessment, in particular with regard to EIA. Implications on climate are usually addressed, yet usually the common statement given regarding the climate relevance of projects is: that compared to the total of the Austrian emissions, the increase caused by the concrete project is irrelevant. This might be true quantitatively; nevertheless this interpretation of climate relevance would render any attempt to reduce greenhouse gas emissions through a bottom-up approach meaningless.

The constant increase in road traffic in Austria is one of the main causes for Austria exceeding its European and international obligations regarding the emission of greenhouse gases. Therefore a serious climate assessment of road transport projects, including compensatory obligations if necessary, is essential to reduce emissions in this sector.

c) Suggestions

Climate impact assessment within EIA has to be strengthened on a legal and a practical level. On the legal level the inclusion of a stronger provision on climate relevance as an assessment criterion for alternatives and for the permit itself, as well as the obligation to introduce compensatory measures in case of negative impacts on climate, is necessary. Consequently, in practice this would create a real necessity to evaluate different alternatives in the light of their climate relevance and to seriously consider climate relevance as a permit condition for a project. If it is not possible to completely prevent negative impacts on climate, the obligation to introduce compensatory climate measures or to buy emission certificates should be obligatory.

2. Climate protection laws

a) List of the analyzed laws and their climate protection relevance

Adaptation of the Austrian Climate Strategy to reach the Kyoto objective for the period 2008 to 2012 (Austrian Climate Strategy 2007): Anpassung der Klimastrategie Österreichs zur Erreichung des Kyoto-Ziels 2008-2012.	The Austrian Climate Strategy is a document *sui generis*. It does not have the legal quality of a law or an ordinance, but still strongly influences activities relevant for climate in Austria.
Ordinance on Green Design (of 2007): Ökodesign Verordnung; published in Official Journal II No. 126/2007.	This act deals with the improvement of the design of products to attain more environment friendly results. Climate relevance is not mentioned as a criterion for ecological design.

Act on the Climate- and Energy fund (of 2007): Klima- und Energiefondsgesetz; published in Official Journal I No. 40/2007.	The aim of this act is to support achievement of a sustainable energy supply (increased energy efficiency, increased share of renewable energy) and a reduction of greenhouse gas emissions. To this end a fund is established, which is supposed to support research and development regarding sustainable energy technology and climate in general, projects regarding public transport and environmentally sound goods transport and projects aimed at a promotion of sustainable energy technology on the market.
Act on the Support of Environmental Measures (of 1993): Umweltförderungsgesetz; last amendment published in Official Journal I No. 24/2007. **(Guidelines on Support of Environmental Measures Abroad (of 2003):** Förderungsrichtlinien 2003 für die Umweltförderung im Ausland.))	This act provides for the possibility of funding, amongst others, for the protection of the environment by avoiding or reducing air pollutants and pollutants relevant for climate change. Funding is also possible for activities abroad.
Act on a System for Trade of Emission Certificates (of 2004): Emissionszertifikategesetz; last amendment published in Official Journal I No. 171/2006.	The act provides for the right to emit greenhouse gasses on the basis of emissions certificates for industrial facilities. It aims at the creation of a system for emissions trading and contains the obligation for the government to prepare the Austrian Climate Strategy (see below).
Ordinance on the Monitoring, Reporting and Verification concerning the Emission of Greenhouse Gases (of 2007): Überwachungs-, Berichterstattungs- und Überprüfungsverordnung; published in Official Journal II No. 339/2007.	This act contains provisions on the monitoring of emissions of greenhouse gases, as foreseen in the Act on a System for Trade of Emission Certificates (see above). It refers to Commission Decision No 589/2007/EC (establishing guidelines for the monitoring and reporting of greenhouse gas emissions).
Ordinance on the Allocation of Emission Certificates for the Period 2008-2012 (of 2007): Zuteilungsverordnung 2. Period; Published in Official Journal II No. 279/2007.	This ordinance determines the allocation of emissions certificates for the period 2008-2012.
Act on Customer Information – Cars (of 2001): Personenkraftwagen – Verbraucherinformationsgesetz; last amendment published in Official Journal I No. 34/2006.	This act governs consumer information regarding fuel consumption and CO_2 emissions of cars.
Constitutional Law on the Comprehensive Protection of the Environment: Bundesverfassungsgesetz vom 27. November 1984 über den umfassenden Umweltschutz; published in Official Journal I No. 491/1984.	(see above)

b) Main problems of the analyzed laws in the branch

Austria has, within the effort-sharing system of the EU, taken over a greenhouse gas emission reduction target of 13%. At the moment this goal seems very hard to reach. The European Environmental Agency's report on "Greenhouse gas emission trends and projections in Europe 2008" shows that Austria's emissions in 2006 were 15.2% higher than those of the base-year level. Also the future looks rather grey than green: With only the existing measures in place the report projects a further increase of emissions to a level of 17.4% above the base year in 2010. However, Austria expects to achieve its target through substantial emission reductions from the implementation of additional measures, use of Kyoto mechanisms (financing emission reduction projects in other countries) and carbon sink activities, reaching a level 13% below base-year emissions.[6] There is doubt amongst most Austrian environmental organisations and climate change experts that this is a realistic presumption.

The Ordinance on Green Design is an example of a legal act working towards advanced consumer information. Essentially it stipulates that energy-powered products may only be placed on the market if they fulfil certain product-specific legal requirements and are equipped with a label ("CE"). The Act on Consumer Information – Cars goes one step further as regards consumer information. It demands detailed consumer information on fuel consumption and CO_2 emissions, for example in advertisements.

Research and development are covered by the Act on the Climate and Energy fund and by the Act on the Support of Environmental Measures. Within the Act on the Climate and Energy fund a fund is established which is supposed to: support an increase in energy efficiency, an intensified use of renewable energy sources and a reduction of greenhouse gases. The act directly refers to the implementation of the Austrian Climate Strategy as an aim. The programme lines of the fund cover research and development in the areas of sustainable energy technologies and climate, projects in the field of environmentally sound transport of goods and people and mobility management, as well as support for the entry into the market for climate-friendly and sustainable energy technologies. The measures foreseen in the Act on the Support of Environmental Measures go into a similar direction. This act aims, amongst others, at protection of the environment through prevention and mitigation of air pollutants and pollutants harmful to the climate, in particular CO_2 from fossil fuels and other gases relevant to implementation of European and international reduction targets.. This funding can also be used outside of Austria if the executed investments or projects help to reduce harmful emissions from Austria's eastern neighbours (Slovakia, Czech Republic, Hungary, and Slovenia) or if they help to earn reduction units for Austria through JI or CDM.

An emission trading system was introduced by the Act on a System for Trade of Emission Certificates. The facilities falling within the scope of this Act (Annex I) are only allowed to produce a limited yearly amount of CO_2. Emission certificates are allocated to the owner of those facilities according to the Ordinance on the Allocation of Emission Certificates for the Period 2008-2012 (second period). At the end of the year the owners have to report on the actual amount of CO_2 emitted by their facilities according to the Ordinance on the Monitoring, Reporting and Verification concerning the Emission of Greenhouse Gases. Redundant certificates can be sold on the market, yet if more CO_2 was emitted, corresponding certificates have to be bought.

One document, namely the Austrian Climate Strategy, has a special position within the system of climate protection legislation. It is a guidance and evaluation document which has its legal basis in the

[6] EEA Report No. 5/2008: http://reports.eea.europa.eu/eea_report_2008_5/en.

Act on a System for Trade of Emission Certificates. Art. 1 par. 2 of this act demands a revision of the existing Climate Strategy (of 2002) in case the measures taken until 2005 are not sufficient to reach the Kyoto goal. The result of this - unfortunately necessary - revision is the Climate Strategy of 2007, which was compiled under the responsibility of the Austrian Ministry of Agriculture, Forestry, Environment and Water Management (BMFLUW).

The document contains a description of the state, as well as of the past and future development, of greenhouse gas emissions in Austria. It also includes possible strategies for adapting to the expected climatic changes. It presents planned measures and measures already taken to reach the Kyoto goal. One main focus of the climate strategy 2007 rests upon the promotion of climate protection technologies and a facilitation of their entry into the market. As demanded in the Act on a System for Trade of Emission Certificates (Art 1), a major part of the document focuses, on measures in those areas and sectors which, on the one hand, show the largest discrepancy regarding the Kyoto process and which, on the other, show where the least cost for emissions avoidance can be expected. These sectors are traffic, energy production, household heating and energy consumption, as well as energy conversion and consumption in the producing sector. Working groups were established to deal with the adaptation of the old Climate Strategy of 2002 to the new circumstances. The result of these efforts is contained in the Climate Strategy 2007.

c) Suggestions

The Austrian Climate Strategy 2007 is, together with its predecessor, the Climate Strategy 2002, a comprehensive document covering the most important areas dealt with within the UNFCCC. Nevertheless it is only a political document, with a certain factual importance, and has no immediate legal relevance. Direct references to this document (in the respective current version), could help to instil the ideas and recommendations of the UNFCCC into the respective legal acts.

Currently a so-called "Climate Act" is being discussed on a political level. Draft versions already exist, but there has been no visible effort within the legislative bodies to put the act into practice. It is nevertheless essential that this act is introduced, not least as up to now no national legal basis for the separation of duties and burdens between federal state, provinces and municipalities as regards Austria's European and international greenhouse gas reduction obligations exist. It would be necessary to introduce a legal act on the constitutional level clarifying the distribution of competences between the provinces and the federal state and allowing for the legislator to pass acts containing more detailed determinations.

3. Environmental procedural laws

a) List of the analyzed laws and their climate protection relevance

General Administrative Procedure Act (of 1991): Allgemeines Verwaltungsverfahrensgesetz; last amendment published in Official Journal I No. 5/2008.	The General Administrative Procedure Act is the basic legal document for administrative procedures in Austria.
Environmental Senate Act (of 2000): Bundesgestz über den Umweltsenat; last amendment published in Official Journal I No. 2005/14.	This act establishes the Environmental Senate as a level of jurisdiction competent primarily for appeals from EIA procedures (whereas there is no jurisdiction for the senate in transport infrastructure EIA).

Act on Environmental Information (of 1993): Umweltinformationsgesetz; last amendment Published in Official Journal I No. 6/2005.	This act transposes the Directive 2003/4/EC (on access to environmental information).

b) Main problems of the analyzed laws in the branch

The General Administrative Procedure Act is the basic legal document for administrative procedures in Austria. It is therefore also relevant for environmental procedures carried out by state authorities. It contains no specific reference to climate issues.

The Environmental Senate Act is relevant for climate issues as it establishes the Environmental Senate as court of appeal, in particular for administrative decisions in EIA proceedings. Yet the relevance of this act for climate issues depends, as it is the case for the General Administrative Procedure Act, on the relevance that climate is attributed in the (EIA) proceedings (see above).

The Act on Environmental Information can be seen in the context of public awareness raising. Data on climate and climate change is considered environmental information and therefore has to be publicly accessible. Authorities even have to arrange for active dissemination of the information.

c) Suggestions

From a formal point of view the Austrian system of environmental procedural laws can be considered appropriate. Proceedings relevant for environment and/or climate are carried out on the basis of the same procedural laws and by the same authorities as any other proceeding. EIA proceedings are an exception. Due to the jurisdiction of the Environmental Senate (as established by the Environmental Senate Act) there is a different kind of proceeding with a different competent authority.

In practice, the general shortage of resources for the work of the authorities has an impact on the quality of environmental proceedings. For this reason, demands are often expressed by environmental authorities as well as by the competent courts concerning an increase in administrative efficiency and more resources for the authorities in question.

4. Laws on development planning, spatial planning and construction

4.1. Spatial planning law

a) List of the analyzed laws and their climate protection relevance

Spatial Planning (competence of the provinces)

Burgenland Spatial Planning Act (of 1969): Burgenländisches Raumplanungsgesetz; last amendment published in Provincial Official Journal No. 23/2007.
Carinthia Spatial Planning Act (of 1969): Kärntner Raumordnungsgesetz; last amendment published in Provincial Official Journal No. 136/2001.
Lower Austria Spatial Planning Act (of 1976): Niederösterreichisches Raumordnungsgesetz; last amendment published in Provincial Official Journal No. 8000-23.

Upper Austria Spatial Planning Act (of 1994): Oberösterreichisches Raumordnungsgesetz; last amendment published in Provincial Official Journal No. 1/2007.
Salzburg Spatial Planning Act (of 1998): Salzburger Raumordnungsgesetz; last amendment published in Provincial Official Journal No. 108/2007.
Styria Spatial Planning Act (of 1974): Steirisches Raumordnungsgesetz; last amendment published in Provincial Official Journal No. 47/2007.
Tyrol Spatial Planning Act (of 2006): Tiroler Raumordnungsgesetz; published in Provincial Official Journal No. 27/2006.
Vorarlberg Spatial Planning Act (of 1996): Vorarlberger Raumplanungsgesetz; last amendment published in Provincial Official Journal No. 35/2008.
Vienna City Development, City Planning and Construction Act (of 1930): Wiener Stadtentwicklungs- Stadtplanungs- und Baugesetzbuch; last amendment published in Provincial Official Journal No. 41/2008.

b) Main problems of the analyzed laws in the branch

In the course of the constitutional separation of competences between the federal state and the provinces, the main competences for spatial planning and construction law have been allocated with the provinces. This has caused a broad variety in laws governing spatial planning and construction law; with twenty different acts dealing with these two issues.

Within the area of spatial planning, the federal state only has competences in areas that are otherwise covered by federal competence, so-called "cross-sectional matters". These can be found for example in the field of road and railway construction, aviation or forestry. In those areas the federal state is competent for including the necessary spatial planning measures when regulating those issues. Such cross-sectional matters also exist for the municipal level with regard to local spatial planning, resulting in competences being set there. This fragmented situation leads to an increasing demand for co-ordination, in particular between the federal and the provincial level. This demand is primarily served by voluntary co-operation.

All provincial spatial planning acts contain references to environmental protection within their provisions on aims and principles of provincial spatial planning (for example Art. 1 Lower Austria Spatial Planning Act and Art. 2 Vorarlberg Spatial Planning Act). Only a very few (Burgenland, Salzburg and Styria) contain references to air quality as an issue of spatial planning and none explicitly refers to climate change.

c) Suggestions

An inclusion of climate change as an issue of spatial planning could help to increase the relevance of this issue within the respective proceedings.

4.2. Construction law

a) List of the analyzed laws and their climate protection relevance

Law on Rent (of 1981): Mietrechtsgesetz; last amendment published in Official Journal I No. 124/2006.

Act on the Energy Identification Pass: Energieausweis-Vorlage-Gesetz; published in Official Journal I No. 137/2006.

In housing issues there are only very limited competences for the federal state, the most important concern the Law on Rent and the Law on the Energy Identification Pass. Both acts are federal laws which concern energy efficiency and do not exactly fit the category of construction law in a narrower sense. However, the law on rent, amongst others, determines the relationship between tenant and landlord as regards the improvement of energy efficiency of a rental object. While the Act on the Energy Identification Pass determines, that in case a building is rented or sold, an energy identification pass has to be handed over to the tenant/buyer by the landlord/seller. The necessary contents of this pass are determined on the European level by Directive 2002/91/EC.

Construction Law (competence of the provinces)

Burgenland Act on Construction (of 1997): Burgenländisches Baugesetz; last amendment published in Provincial Official Journal No. 53/2008.
Carinthia Act on Construction (of 1996): Kärntner Bauordnung; last amendment published in Provincial Official Journal No. 22/2004.
Carinthia Building Regulations (of 1985): Kärntner Bauvorschriften; last amendment published in Provincial Official Journal No. 10/2008.
Lower Austria Act on Construction (of 1996): Niederösterreichische Bauordnung; last amendment published in Provincial Official Journal No. 8200-14.
Upper Austrian Act on Construction (of 1994): Oberösterreichische Bauordnung; last amendment published in Provincial Official Journal No. 36/2008.
Upper Austrian Act on Construction Technique (of 1994): Oberösterreichisches Bautechnikgesetz; last amendment published in Provincial Official Journal No. 34/2008.
Salzburg Basic Act on Construction Activity (of 1968): Salzburger Bebauungsgrundlagengesetz; last amendment published in Provincial Official Journal No. 69/1968.
Salzburg Act on Construction Technique (of 1976): Salzburger Bautechnikgesetz; last amendment published in Provincial Official Journal No. 66/2008.
Salzburg Act on Building Inspection (of 1997): Salzburger Baupolizeigesetz; last amendment published in Provincial Official Journal No. 96/2004.
Styrian Act on Construction (of 1995): Steiermärkisches Baugesetz; last amendment published in Provincial Official Journal No. 27/2008.
Tyrol Act on Construction (of 2001): Tiroler Bauordnung; last amendment published in Provincial Official Journal No. 73/2007.
Vorarlberg Act on Construction (of 2001): Vorarlberger Baugesetz; last amendment published in Provincial Official Journal No. 34/2008.
Vienna Act on Construction (of 1930): Bauordnung für Wien; last amendment published in Provincial Official Journal No. 41/2008.

b) Main problems of the analyzed laws in the branch

A particularity of Austrian federalism is the so called "15a agreement". The title refers to Art. 15a of the Austrian Federal Constitution Law Act, which allows agreements between the federal state and its provinces, as well as between the provinces themselves. It is, amongst others, an instrument for the harmonization of the fragmented legal situation caused by the individual competences of nine different provinces in various areas.

One important 15a agreement concerns subsidies for housing construction and was concluded between the federal state and the provinces in 2008. Subsidies for the construction of new houses, which are provided by the provinces, will, as soon as the agreement enters into force (presumably in the beginning of 2009), be linked to insulation standards (also for public buildings) as well as to climate friendly heating systems. The agreement also covers existing houses for which it demands a general refurbishment as regards thermal insulation. For subsidies for new heating systems a "focus on innovative climate-relevant systems" is required. The agreement also contains target values for heating demand.[7]

One part of the abovementioned 15a agreement concerns the integration of the so-called "Thermal insulation guideline No. 6" of the Austrian Institute of Construction Engineering into the respective legal acts. It contains calculation methods, limit values and other technical aspects of heating, cooling and energy demand as well as standards for the thermal insulation of buildings. All provinces have transposed this guideline into their acts on Construction; therefore a real harmonization in this area was reached. As regards the other aspects of the new agreement, transposition into the provincial legal systems is not uniform.

c) Suggestions

As mentioned above, the separation of competences between the federal state and the provinces obstructs the creation of a consistent legal situation. The new 15a agreement was a step in the right direction, nevertheless there is a long way to go for a true harmonization of all legal aspects relevant for the environmentally sound construction of buildings.

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[7] http://umwelt.lebensministerium.at/article/articleview/70474/1/7337.

ESTONIA

1. General environmental laws

1.1 General environmental laws (particularly air protection)

a) List of analyzed laws and their climate protection relevance

Sustainable Development Act (Säästva arengu seadus, 22.02.1995 – RT I 1995, 31, 384)	This act provides the basis for the national strategies for sustainable development. It is relevant for climate change[8], because it also concerns the conservation of biodiversity, use of natural resources and balanced development of the environmentally sensitive fields of economy.
Water Act (Veeseadus, 11.05.1994 – RT I 1994, 40, 655).	This act provides the general grounds for the conservation of clean water and ecological balance in water bodies. These goals are climate change relevant, since they are essential for the preservation of biodiversity, especially wetlands, which are important CO_2 sinks in Estonia.
Nature Protection Act (Looduskaitseseadus, 21.04.2004 – RT I 2004, 38, 258)).	One of the main aims of the Nature Protection Act is the conservation of biodiversity. Conservation of biodiversity is connected to climate change in several ways: Estonian natural ecosystems are dominated by forests and wetlands, which are essential as CO_2 sinks, at the same time climate change influences biodiversity itself, so the regulation for its conservation must adapt to influences from climate change.
Ambient Air Act (Välisõhu kaitse seadus, 5.05.2004 – RT I 2004, 43, 298).	From the climate change perspective, the Ambient Air Act is definitely the most important one among general environmental acts. Its Section 1 provides explicitly, that the act regulates activities, which bring upon emission of pollutants to the ambient air, damage to the ozone layer and appearance of the factors, which cause climate change.
Integrated Pollution Prevention and Control Act (Saastuse kompleksse vältimise seadus, 10.10.2001 – RT I 2001, 85, 512))**.**	This act determines environmentally hazardous activities and lays down the basis for integrated prevention and control of pollution arising from such activities, and in order to prevent or reduce the harmful effect of human activity to the environment.

[8] Here the term "climate change" is used strictly in the meaning of "climate change induced by human activity".

The Earth's Crust Act (Maapõueseadus, 23.11.2004. – RT I 2004, 84, 572).	The Earth's Crust Act regulates, among else, the use and conservation of mineral deposits. As such, it also provides the restrictions and other regulation concerning oil-shale extraction. Extraction of oil-shale has a major climate change relevance, because the production of electricity from oil-shale is overwhelmingly the most CO_2 emitting industrial activity in Estonia.
Waste Act (Jäätmeseadus, 28.01.2004. – RT I 2004, 9, 52).	This act provides general requirements for preventing waste generation and the health and environmental hazards arising there from. It also prescribes the organisation of waste management, with the objective to reduce the harmfulness and quantity of waste. It has a climate change relevance, since (especially organic) waste causes emission of greenhouse gases.
Environmental Charges Act (Keskkonnatasude seadus, 7.12.2005. – RT I 2005, 67, 512).	This act provides the basis for determination of the natural resource charges and the rates of pollution charge. Additionally, it covers the charges for oil-shale extraction and emission of CO_2.
Regulation No 122 of the Minister of the Environment of 22 September 2004 "The limit values for the pollutant and smoke content of exhaust gases and noise of a motor vehicle" (Keskkonnaministri 22. septembri 2004. a määrus nr 122 "Mootorsõiduki heitgaasis sisalduvate saasteainete heitkoguste, suitsususe ja müratasemе piirväärtused", RTL, 128, 1986).	The regulation includes special limit values regarding CO_2.
Regulation No 76 of the Minister of the Environment of 13 December 2006 "Procedure and form for reporting on the activities related to pollution of the ambient air" (Keskkonnaministri 13. detsembri määrus nr 76 "Välisõhu saastamisega seotud tegevusest aru andmise kord ja vorm", RTL 2009, 11, 131).	The regulation concerns all the activities related to pollution of the ambient air that need environmental permits; so emissions of several greenhouse gases are covered.
Regulation No 94 of the Minister of the Environment of 16 July 2004 "Method of determination of the emission values of carbon dioxide into the ambient air" (Keskkonnaministri 16. juuli 2004 määrus nr 94 "Välisõhku eralduva süsinikdioksiidi heitkoguse määramise meetodid", RTL 2004, 101, 1625).	The regulation directly concerns the emission of CO_2

Regulation No 101 of the Minister of the Environment of 2 August 2004 "Emission levels of pollutants and capacities of plants used beyond which an ambient air pollution permit and a special pollution permit is required" (Keskkonnaministri 2. augusti määrus nr 101 "Saasteainete heitkogused ja kasutatavate seadmete võimsused, millest alates on nõutav välisõhu saasteluba ja erisaasteluba", RT I 2004, 43, 298).	Sets also levels for several greenhouse gases like CO_2, CH_4 (methane) and fluorides

b) Main problems of the analyzed laws in the branch

(i) The listed general environmental acts in Estonia all contribute to the prevention of or protection against the climate change. Additionally, some of these acts, like for example the Water Act and Nature Protection Act, could have a positive role in adapting to the impacts of climate change.[9] However, most of these acts lack any direct reference to climate change. Only the Ambient Air Act regulates climate change issues explicitly, though some provisions of the Environmental Charges Act take into account the UNFCCC and the Kyoto Protocol. In all other cases the texts themselves and also the letters of explanation of drafts lack any referral to climate change.

Certainly some of the general environmental acts, although having climate change relevance, might not need to address climate change explicitly in their texts. However, this question should be clearly analysed by the legislator, but, as it was mentioned previously, we do not find any evidence or referral to an analysis of this question from the letters of explanation of the draft laws.

However, there are some policy documents which cover climate change issues and also prescribe the preparation of some legislative amendments. Firstly, the "National programme for the reduction of the emission of greenhouse gases 2003-2012" was adopted on the 30th April 2004. According to article 10 of the Kyoto Protocol, the adoption of this programme was the obligation of Estonia as a party to the Kyoto Protocol. As such, the National programme for the reduction of the emission of greenhouse gases 2003-2012 is strictly aimed at fulfilling the requirements of Article 10 of the Kyoto Protocol and only concerns the obligatory topics listed in Article 10(i) – energy, transport and industry sectors as well as agriculture, forestry and waste management. Therefore, the programme does not cover most of the general environmental law acts, which have climate change relevance.

Yet the Waste Act (waste), Integrated Pollution Prevention and Control Act (industry) and Earth's Crust Act (energy) do fall in the scope of the mentioned programme, but the programme does not include a comprehensive analysis on the needs of new legislation in these fields. It describes very briefly some of the general problems in these fields, without any proper argumentation and then prescribes very specific actions.

Concerning new legislation, the programme mostly just prescribes the transposition of EU directives. Conclusively it can be said, that the National programme for the reduction of the

[9] It is not scientifically clear, whether Estonia already experiences impacts of the climate change caused by human activities. However, according to the precautionary principle, the possibility that impacts have already occurred or will do so in the near future cannot be precluded. (Different sources consider increased eutrophication as one of the probable impacts of climate change in Estonia).

emission of greenhouse gases 2003-2012 is not able to provide exhaustive information for the necessity of amendments of any general environmental acts

Secondly, the National Environmental Strategy 2030 is currently the underlying document for planning of environmental policy. It provides general guidelines and objectives for environmental management and protection and establishes the most important goals to be achieved by the year 2030. The areas it covers are directly taken from Sixth Community Environment Action Programme.10, so consequently it also deals with climate change.

In the introduction of the National Environmental Strategy 2030 there is mentioned, that the climate change work-group analysed the issues of energy and transport. The climate change chapter itself is separated into four sections: energy production, energy consumption, protection of the ozone-layer and transport. The strategy provides only general directions for activity, without going into detail, but the associated National Environmental Action Plan 2007-2013 already contains a list of specific activities, which propose direct investments. As well as amendments to legislation and recommendations for sectoral development plans. As in the "National programme for the reduction of the emission of greenhouse gases 2003-2012", a proper analysis of legislation is missing from these documents. The National Environmental Strategy 2030 is very broad and general, lacking argumentations, and the National Environmental Action Plan 2007-2013 provides already very specific measures, which are generally policy actions and do not concern legislation.

After analyzing the texts of general environmental acts, letters of explanations of their drafts and related policy documents, we can say that the Integrated Pollution Prevention and Control Act, Earth's Crust Act, Nature Protection Act, Water Act, Waste Act and Sustainable Development Act do have climate change relevance, but have been drafted without taking this relevance into account.11 They do probably have positive impacts for protection against and adaptation to climate change, but these seem to be caused by the fact, that in some parts, the aims of these acts simply coincide with the principles on which UNFCCC and the Kyoto Protocol.

The above-mentioned situation is in contradiction to articles 3 and 4 of UNFCCC (respectively the Principles and the Commitments) and article 2 of the Kyoto Protocol. Special attention should be paid to article 3(3) of UNFCCC, which says, that "The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects…. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sector." It should be clear, that in order to take "comprehensive precautionary measures and policies to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects", the possible need for legislative measures in the scope of all the above-mentioned general environmental acts should be studied. Until this kind of analysis has been made, it is not possible to say, if and how these acts should ideally address climate change. For example, the Nature Protection and Water acts might, or might not, need to be amended in order to "prevent the causes of climate change or mitigate its adverse effects" – this question needs a thorough analysis based on scientific, legal and other information.

[10] Available in: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002D1600:EN:NOT

[11] The Waste Act and Integrated Pollution Prevention Control Act transpose some of the EU directives, which incorporate climate change-related provisions. As the analysis hereof is not so much aimed at the transposition of the EU acts, but the legislation in the competence of the national legislator, this kind of climate change related provisions are not studied.

(ii) Although the Ambient Air Act addresses climate change explicitly, its sections 116-122, which concern the emission of greenhouse gases and climate change are exclusively aimed to fulfil direct obligations of the UNFCC and the Kyoto Protocol or to transpose the European Union acts, which regulate the fulfilment of the obligations of UNFCC or the Kyoto Protocol. This is especially visible from the wording of Section 117, which states, that "*Activities for the reduction of climate change are organised by the Ministry of the Environment on the basis of the requirements for restriction the limit values of emissions of greenhouse gases provided by the United Nations framework Convention on Climate Change and the Kyoto Protocol to the United Nations Framework Convention on Climate Change*". The only provision which does not correspond to a direct international obligation is an unbinding recommendation for the emitters to take additional measures to reduce emissions.[12]

(iii) Article 2(v) of the Kyoto Protocol has provided, that its Parties should implement "*progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting…*" In Estonia, one of the instruments to promote sustainable development and phase out market imperfections is Environmental Charges Act, based on the principle that the polluter should pay for the damages to environment. This means, that the charges should effectively be imposed on the emission of greenhouse gases as well. However, on 5 October 2008, the National Audit Office published the report Impact of the use of pollution charges to the reduction of environmental pollution[13], which revealed the serious lack of efficiency of current pollution charges. It was explained in this report that the current rates of pollution charges are much lower (often ten times) than the possible expenses for the deterioration of natural environment. The rate of charge for the emission of CO_2 was presented as a specific example of that, since it is significantly low even compared to other charges covered by the mentioned act; although an annual rise of the rate is provided for (in 2009 the rate is 31.3 Estonian Crowns per tonne (EEK/t) or approximately 2 EUR/t[14]). The National Audit Office also found, that according to article 19 of the Environmental Charges Act, only the energy producers are obliged to pay charges for the emission of the CO_2, but not other industries. We can thus say that this provision is definitely in contravention with the polluter pays principle and the goal of the Kyoto Protocol to "*phase out market imperfections*". Finally, the report made many general findings about the practical inefficiencies of the whole environmental charges system, for example the accuracy of operators' pollution reports is almost never checked by supervisory bodies. Also, if an operator exceeds emission limits, increased pollution charges should be imposed in addition to fines, but in practice only fines are imposed, which are many times lower than increased charges. In its answer to the report, the Ministry of Environment admitted that in the Environmental Charges Act is not completely implemented properly.

(iv) Another important greenhouse gas, methane, is, due to a recent amendment of the Environmental Charges Act, now explicitly excluded from the list of substances which emission brings upon the obligation to pay pollution charges. This amendment was reasoned by the fact, that Estonia was one of the very few EU countries, that had created environmental charges for the emission

[12] Section 118: "*The possessors of sources of pollution shall take additional measures to reduce the emission levels of carbon dioxide and other greenhouse gases such as methane, nitrogen dioxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, accumulation of which in the ambient air may cause climate change.*"

[13] Available in: http://www.riigikontroll.ee/upload/failid/ka_40047_saastetasud_6.10.2008_lopp.pdf

[14] Article 19 of the Environmental Charges Act.

of methane[15], and this created a significant competition disadvantage to Estonian farmers. The exclusion of methane from the list of substances subjected to environmental charges is contrary to the *polluter pays* principle and definitely negative for reduction of greenhouse gas emissions. However, the specific socio-economic context (significant competition disadvantage of farmers in the EU free market) might in this case justify the contravention. On the other hand, emission of methane is charged in the Czech Republic and through deposition charges of landfills also in Austria, Belgium and Norway.[16]

(v) The most important procedural legal problem among the general environmental law acts can be found in the Nature Protection Act, which lacks any explicit references to supervision of the act. Although in practice, the Environmental Inspectorate still supervises the Nature Protection Act (in accordance with the Environmental Supervision Act), it formally does not have powers to do so.

c) Suggestions

(i) A comprehensive analysis, which would involve scientific, economic, legal and other aspects, should be conducted in order to determine, if and how climate change should be approached in general environmental laws. This analysis should be relevant to all the general environmental laws listed above.

(ii) The rate of emission charges of CO2 should be critically reviewed and amended in order to comprehend with the actual damage caused to the environment. The emission charges of CO2 should apply to all emitters.17

(iii) The current exclusion of methane from environmental charges might be justified, but the charging of methane, indirectly through the inclusion of methane charges into waste deposition fees, should be considered.

(iv) The Nature Protection Act should be amended so, that the Environmental Inspectorate is granted an explicit right to supervise the act.

1.2 Environmental Impact Assessment regulation

a) List of analyzed laws and their climate protection relevance

Environmental Impact Assessment and Environmental Management System Act (hereof: EIA Act).	The EIA Act provides the legal basis and procedures for environmental impact assessments (EIA) and strategic environmental impact assessments (SEA). Impact assessments have been explicitly mentioned in Article 4(f) of the UNFCCC as appropriate measures for minimizing the adverse effects of climate change.

[15] Article 16 of the Environmental Charges Act provided, that the emission of volatile organic compounds is subject to environmental charges. This includes methane, which is one of the most important volatile organic compounds.

[16] Report of the National Audit Office of 6 October 2008: Impact of the use of pollution charges to the reduction of environmental pollution. Available in: http://www.riigikontroll.ee/upload/failid/ka_40047_saastetasud_6.10.2008_lopp.pdf

[17] See also Report of the National Audit Office of 6 October 2008: Impact of the use of pollution charges to the reduction of environmental pollution. Available at: http://www.riigikontroll.ee/upload/failid/ka_40047_saastetasud_6.10.2008_lopp.pdf

b) Main problems of the analyzed laws in the branch

As the EIA Act is the act transposing EU directives 85/337[18] and 2001/42[19], it should incorporate an obligation for assessing the impacts towards climate change in EIA and SEA reports. Concerning SEA, the EIA Act has correctly done so.[20] Concerning EIA, the legislator has not transposed this obligation, but instead provides that an EIA Report has to include assessment of impacts on climate.[21] This is an incorrect transposition of the EIA Directive as the current wording of the EIA Act does not ensure that impacts related to climate change are being included in EIA reports.

c) Suggestions

Section 20(1(6)) of the EIA Act should be amended, so that it would require impacts related to climate change instead of climate to be incorporated into the EIA report.

2. Climate protection law

a) List of analyzed laws and their climate protection relevance

Ambient Air Act (Välisõhu kaitse seadus, RT I 2004, 43, 298).	(see chapter 1.1. of this analysis)
Government of the Republic Regulation No 8 of 18 January 2005 "List of areas of activity and procedure for greenhouse gas emission allowance trading" (Vabariigi Valitsuse 18. jaanuari 2005.a. määrus nr 8 Käitajate tegevusalade loetelu ja kasvuhoonegaaside lubatud heitkogustega kauplemise kord, RT I 2004, 43, 298).	The regulation provides the conditions for trading of the allowed greenhouse gas emission units and lists the activities, during which greenhouse gases are emitted to air and the operators that are required to have trading permits.
Government of the Republic Regulation No 257 of 20 December 2007 "Summated limit value of emission of greenhouse gases released by stationary sources of pollution and a corresponding distribution plan for 2008-2012" (Vabariigi Valitsuse 20. detsembri 2007.a. määrus nr 257 "Paiksetest saasteallikatest eralduvate kasvuhoonegaaside summaarne lubatud heitkogus ja selle jaotuskava aastateks 2008–2012", RT I 2004, 43, 298).	The regulation provides the summated limit value of 12,717,058 tonnes of emission of CO_2 for the period of 2008-2012 and lists the distribution of this limit value among specific operators.

[18] Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

[19] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

[20] „ A strategic environmental assessment report shall set out the following...an assessment of the potential significant direct, indirect, cumulative, synergistic, short and long-term, positive and negative environmental impacts, including impacts on...climate changes" (Article 40(3(6)) of the EIA Act).

[21] The environmental impact assessment report…determines the potential environmental impact of the proposed activity and its actual alternatives, including the indirect impact and combined impact with other activities, impact to the state of the environment, including... climate." (Article 20(1(6)).

Regulation No 5 of the Minister of the Environment of 3 February 2005 "Requirements for an application for trading licence, requirements for trading licences, the procedure for the issue of trading licences and for the submission of reports on trading of greenhouse gas emission allowances, and the procedure for supervision over and certification of trading of greenhouse gas emission allowances" (Keskkonnaministri 3. veebruari 2005 määrus nr 5 "Kasvuhoonegaaside lubatud heitkogustega kauplemise loa taotlusele ja kauplemisloa sisule esitatavad nõuded, kauplemisloa andmise kord ning kasvuhoonegaaside lubatud heitkogustega kauplemise aruande esitamise, järelevalve ja andmete tõendamise kord", RT I 2004, 43, 298).	This regulation provides the conditions for issuing trading licences and the further reporting and supervision of greenhouse gas emissions.
Regulation No 16 of the Minister of the Environment of 11 March 2005 "The competence requirements for persons engaged in the installation, operation, dismantling and leakage control of equipment containing substances that deplete the ozone layer or fluorated greenhouse gases" (Keskkonnaministri 11. märtsi 2005.a. määrus nr 16 "Osoonikihti kahandavaid aineid ja fluoreeritud kasvuhoonegaase sisaldavate seadmete installeerimisega, käitamisega ja lammutamisega ning lekkekontrolliga tegeleva isiku pädevusnõuded", RTL, 32, 446).	This regulation provides some specific requirements concerning substances that deplete the ozone layer or fluorated greenhouse gases.
Government of the Republic Regulation No. 329 of 12 November 2004 „Requirements for activities performed on substances that deplete the ozone layer and procedure and standard forms for reporting of amount of substances that deplete the ozone layer or fluorated greenhouse gases in equipment" (Vabariigi Valitsuse 12. novembri 2004.a. määrus nr 329 "Osoonikihti kahandavate ainetega seotud toimingutele esitatavad nõuded ning seadmes sisalduvate osoonikihti kahandavate ainete või fluoreeritud kasvuhoonegaaside kogusest aruandmise kord ja aruande vormid", RT I 2004, 80, 537).	The regulation provides some additional requirements to EU Regulation 2037/2000 regarding the procedures during the import and export of ozone-depleting substances, their collection and supervising the equipment that contains such substances.
Regulation No 69 of the Minister of the Environment of 16 November 2005 „The formats of the maintenance record of equipment containing substances that deplete the ozone layer or fluorated greenhouse gases" (Keskkonnaministri 16. Novembri määrus nr 69 "Osoonikihti kahandavaid aineid või fluoreeritud kasvuhoonegaase sisaldava seadme hoolderaamatu vorm ja pidamise kord", RTL, 114, 1755).	This regulation provides some specific requirements concerning substances that deplete the ozone layer or fluorated greenhouse gases.

b) Main problems of the analyzed laws in the branch

(i) The specific climate protection law in Estonia consists of 2 chapters in the Ambient Air Act[22] and the lesser acts based on the provisions of these chapters. A majority of the provisions are aimed at either fulfilling the direct obligations under the Kyoto Protocol and the Montreal Protocol or transposing EU Law[23], which aims to fulfil the previously mentioned international acts.

Regarding the emission of greenhouse gases regulated by the Kyoto Protocol, the Ambient Air Act provides the basis for the implementation of the three mechanisms of the Kyoto Protocol: Joint Implementation, Clean Development Mechanism and Emissions Trading. Those mechanisms are implemented in order to achieve Estonia's target of reducing greenhouse gas emissions by eight percent by 2012 (compared to the base-year 1990).[24] The relevant Estonian legislation has no significant legal problems. Yet it should be noted that Estonia's historical and socio-economic context has created a situation, where presently the objective of attaining the stated target level of greenhouse gas emissions presents no actual motivation for the reduction of greenhouse gases. In the base-year, 1990, Estonia was a part of the Soviet Union, which was a country with an extremely unsustainable approach to environment and economy and whose technology was outdated. Estonia was also used as an industrial centre in this planned economy. Thus the rate of greenhouse gas emissions was so high that it would have been impossible to sustain it in an independent free-market economy, even if there would have been such a will. During the beginning of independence in 1991-1995, the level of greenhouse gas emissions fell by approximately fifty percent. This happened long before the ratification of the Kyoto Protocol.

From 1995-2006, the emissions level has stayed more or less unchanged, varying by 2-3% annually.[25] Therefore, Estonia will have no problems in reaching the targeted reduction level by 2012, even if no measures against greenhouse gas emissions would be taken. At the same time, the emission of CO2/per capita in Estonia is fourteenth in the world and second in the European Union – only after Luxembourg.[26] These high figures are caused by the continued and unsustainable use of oil-shale for the production of energy; where the energy sector amounts to 92% of Estonia's CO2 emissions[27].

In practice, Estonia is definitely still using the Kyoto Protocol mechanisms to reduce greenhouse gases.[28]. Considering that the average annual growth of GDP in 1995-2006 was six percent and the greenhouse gas emissions at the same period were mostly unchanged, Estonia has made progress in reduction of emissions. However, one of the main instruments of the Kyoto Protocol for the reduction of greenhouse gas emissions should be the national target levels, and for Estonia,

[22] Chapter 6 „Protection of Ozone Layer" and Chapter 7 „Greenhouse Gases and Climate Change".

[23] Most importantly Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

[24] Annex B of the Kyoto Protocol

[25] Data provided by European Environmental Agency, see: http://www.eea.europa.eu/themes/climate/ghg-country-profiles/tp-report-country-profiles/estonia-greenhouse-gas-profile-summary-1990-2020.pdf

[26] Data provided by United Nations Statistics Division, see: http://mdgs.un.org/unsd/mdg/Data.aspx

[27] Data provided by Estonian Green Movement, see: http://www.roheline.ee/content/view/281/7/lang,et/

[28] Specific information on the projects of Joint Implementation and practice of emissions trading can be found in : http://www.envir.ee/kliima/index.php . Another positive example of fulfillment of obligations under Kyoto Protocol is the presentations of National Inventory Reports (NIRs), into which Estonia has included data concerning sulphur dioxide (NO2), non-methane volatile organic compounds and some other substances not formally covered by the Kyoto Protocol, because „*Sulphur gases – primarily SO2 –are believed to contribute negatively to the greenhouse effect.*" See: http://unfccc.int/national_reports/initial_reports_under_the_kyoto_protocol/items/3765.php

this instrument does not give any incentive. Therefore the effectiveness of the Kyoto Protocol is probably lower, than it could be. This is a substantial legal problem, especially if we take into account Estonia's traditionally high CO_2 emission.[29]

(ii) As explained above, explicit climate protection legislation is generally restricted to the transposition of international and EU acts. Additionally, some policy measures – like strategies, programmes and development plans – concern explicitly the issue of climate protection. The main document incorporating the climate protection measures to be taken by Estonia is the National programme for the reduction of the emission of greenhouse gases 2003-2012. National Environmental Strategy 2030 is the underlying document for planning environmental policy and incorporates a separate chapter for climate change. The National Environmental Action Plan 2007-2013 already contains a list of specific activities for the reduction of climate change. As was covered in chapter 1 of this analysis, these policy documents are too general in their explanations, but are quite specific in the activities prescribed by them. Indeed we can find no legal analysis, to explain why the specific climate protection measures in them are proposed. Also, some fields are left out entirely – for example the question of adapting to climate change. We can only see, that in some of the covered fields policy measures are generally preferred to legislative measures. That is why in the climate protection laws the majority of the binding provisions are based on direct obligations given under international and EU legal acts. An analysis should be conducted, to determine, whether such an approach has been justified by experience, and if and how the legislation needs to be amended.

(iii) Currently, there are no maximum levels regarding the emission of methane (CH_4); although undertakings need environmental permits if their emission of methane surpasses 0.5 tonnes[30]. Methane is a volatile organic compound, however, the use of volatile organic compounds is mostly restricted only in connection to paints and lacquers. Methane is not part of the emission trading system. The absence of direct legal restrictions might be considered as a significant legal problem – notably methane makes up 14.2 % of all greenhouse gases emitted in Estonia.[31]. From the 1st of January 2010, section 1(1) of the Government of the Republic Regulation No 229 of 20 September 2004 The summated emission limit values of sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia released by stationary and mobile sources of pollution and terms for reaching such values will take effect; ensuring that the national yearly emission of all volatile organic compounds must not surpass 49,000 tonnes. It remains to be seen if this provision will reduce the emission rate of methane.

c) Suggestions

(i) A comprehensive analysis, which would involve scientific, economic, legal and other aspects, should be conducted in order to determine, if and how climate change should be approached in

[29] In the EU emissions trading system, the Estonian emission targets are more severe. The allocation of emission allowances is based on Commission Decision of 4 May 2007 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Estonia in accordance with Directive 2003/87/EC of the European Parliament and of the Council. In this decision, European Commission accepted only 52,3 % of the greenhouse gas emissions, that Estonia had applied for in the period of 2008-2012. Estonia has challenged the mentioned decision in the Court of First Instance.

[30] Section 3(5) of Regulation No 101 of the Minister of the Environment of 2 August 2004 „ Emission levels of pollutants and capacities of plants used beyond which an ambient air pollution permit and a special pollution permit is required".

[31] See the EEA report: http://www.eea.europa.eu/themes/climate/ghg-country-profiles/tp-report-country-profiles/estonia-greenhouse-gas-profile-summary-1990-2020.pdf

climate protection laws; besides the fulfilment of those direct obligations under international and EU acts.

(ii) Estonia should voluntarily consider increasing it's CO_2 emission target level under the Kyoto Protocol.

3. Environmental procedural laws

a) List of the analyzed laws and their climate protection relevance

Environmental Registry Act (Keskkonnaregistri seadus, RT I 2002, 58, 361).	This Act provides the system for inserting: natural resources, states of environment, and environmental factors into the national environmental register.
Public Information Act (Avaliku teabe seadus, RT I 2000, 92, 597).	Ensures the access of the public to official information.
Administrative Procedure Act (Haldusmenetluse seadus, RT I 2001, 58, 354).	This Act regulates the framework for administrative procedures.
Code of Administrative Court Procedure (Halduskohtumenetluse seadus, RT I 1999, 31, 425).	The act is regulating administrative court procedure.

b) Main problems of the analyzed laws in the branch

The Estonian system of environmental procedural laws is quite appropriate. Proceedings relevant for environment and/or climate change are carried out on the basis of the same procedural laws and by the same authorities as any other proceeding. The most significant procedural problems in environment-related questions are caused by the incorrect implementation of laws. It must be noted, though, that the "loser pays principle", which applies to all the administrative (and thus also environmental) court cases can sometimes restrict the access to justice. Potential claimants may decide against turning to court, since they fear, that in case they would lose the courtcase, they must compensate the lawyer fees of the respondent and/or the third person

c) Suggestions

We have no specific suggestions related to climate change and environmental procedural laws.

4. Laws on development planning, spatial planning and construction

4.1. Spatial planning law

a) List of the analyzed laws and their climate protection relevance

Spatial Planning Act (Planeerimisseadus, RT I 2002, 99, 579**).**	The Spatial Planning Act is the main piece of legislation regulating the compilation of- and relevant procedures for all types of land-use planning. It has climate change relevance, since spatial planning is one of the most important areas where the needs of adaptation to climate change should be considered[32].
Government of the Republic Regulation No 198 of 15th July 2003 List of objects of significant spatial impact (Vabariigi Valitsuse 15. juuli 2003. a määrus nr 198 "Olulise ruumilise mõjuga objektide nimekiri", RTI, 54, 369).	The reason for determining the objects of significant spatial impact, derives from the special requirement in the Spatial Planning Act that the location of these objects must be chosen through a special procedure in the form of the general land-use plan.

b) Main problems of the analyzed laws in the branch

It is evident from the Spatial planning Act and the explanatory letter to its draft, that no climate change aspects have been considered while creating this regulation. The aspects of land-use planning and climate change have also not been incorporated into any of the political documents (like National Environmental Action Plan 2007-2013). This lack of climate change consideration in policy-making and legislating is definitely in contradiction with article 3(3) of UNFCCC and specifically art. 10(b) of the Kyoto Protocol, which states that: "*Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change…".*

c) Suggestions

To adapt to the potential impacts of climate change those impacts should be appropriately considered in spatial plans. An analysis should be conducted to determine the need for amending the Spatial Planning Act due to the potential need to adapt to climate change.

32 See „Green Paper from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Adapting to climate change in Europe – options for EU action. Available: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0354:FIN:EN:PDF

4.2. Construction laws

a) List of the analyzed laws and their climate protection relevance

Building Act (Ehitusseadus, RT I 2002, 47, 297).	The Building Act provides mainly the requirements for construction works, building materials, construction products, building design documentation and the relevant procedures. It is potentially an important part of the climate change regulation, since it provides the basis for more efficient energy consumption by buildings. This includes the basis for the requirements and procedures of the energy certificate, the basis of minimum requirements for energy efficiency and the regulation regarding energy audits. These provisions mainly transpose Directives 2002/91/EC[33] and 2006/32/EC[34]
The District Heating Act (Kaugkütteseadus, RT I 2003, 25, 154).	This act regulates the activities related to heat production, distribution and sale in district heating networks and gives terms for connection to the network. With regards to heat planning, the act introduced the new principle of "zoning of district heating" and relevant planning activities. The act gives local governments the power to introduce zoning of heat supply based on analyses carried-out for alternative heat supply options during the planning phase. The act also provides that in order to increase energy efficiency, to preserve the quality of the environment and to use natural resources rationally, the Government has to approve an energy conservation research programme and an operational programme for the energy conservation research programme.
Regulation No 48 of Minister of Economic Affairs and Communication of 12 June 2008 Terms and conditions for providing aid for performing energy audit and expert's analysis of a building and - preparing a building design documentation (Majandus- ja kommunikatsiooniministri 12. juuni 2008.a. määrus nr 48 "Energiaauditi ja ehitise ekspertiisi tegemise ning ehitusprojekti koostamise toetamise tingimused ja kord", RTL, 50, 702).	This regulation's objective is to promote energy performance and energy efficiency of apartment buildings through a financial subsidy for covering up to 50% of the expenses of energy audits in apartment buildings; performance of expert's analyses of a home in apartment buildings and the preparation of building design documentations, necessary for reconstruction works in apartment buildings, which are recommended by energy audits.

[33] Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings

[34] DIRECTIVE 2006/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC

Regulation No 2 of the Minister of Economic Affairs and Communication of 2 January 2008 Requirements for classifying a building for significant- or other reconstruction (Majandus- ja kommunikatsiooniministri 11. jaanuari 2008. a määrus nr 2 "Ehitamise oluliseks või muuks rekonstrueerimiseks liigitamise kord", RTL, 6, 64).	The regulation provides the procedure for classifying the reconstruction of a building as a significant or other type of reconstruction. It provides, that if the price of reconstruction amounts to more than one-third of the price of reconstitution of the building, then it is classified as significant reconstruction and is subjected to the minimum requirements of energy efficiency. The regulation transposes mainly Directive 2002/91/EC.
Regulation No 107 of Minister of Economic Affairs and Communications of 17 December 2008 Form- and conditions of issuing of energy certificate (Majandus- ja kommunikatsiooniministri 17. detsembri 2008. a määrus nr 107 "Energiamärgise vorm ja väljastamise kord", RTL, 100, 1428).	This regulation, based on the Building Act, provides the forms of energy certificates, as well as methods for designating the information necessary for the energy certificate. The regulation transposes mainly Directive 2002/91/EC.
Government of the Republic Regulation No 258 of 20 December 2007 Minimum requirements for energy efficiency (Vabariigi Valitsuse 20. detsembri 2007. a määrus nr 258 "Energiatõhususe miinimumnõuded", RTI, 72, 445).	The regulation is sets down the minimum requirements for energy efficiency of buildings and the necessary data for proving that the requirements are met, as well as relevant calculation methods. The Regulation applies to residential as well as other buildings for human use, which are being constructed or significantly reconstructed. The regulation transposes mainly Directive 2002/91/EC.

b) Main problems of the analyzed laws in the branch

(i) The energy efficiency of buildings forms an integral part of the regulation of efficiency of energy consumption. The rest of the energy efficiency regulation concerns mainly energy efficiency of products and the regulation of both sectors essentially derives from Directive 93/76/EEC of 13th September 1993; to limit carbon dioxide emissions by improving energy efficiency (SAVE Directive). Regarding the energy efficiency of buildings, the main EU acts are Directives 2002/91 and 2003/96[35], which Estonia has transposed. Although the provisions can be found in several different national acts, the regulation of energy efficiency of buildings constitutes a basic, but integrated system. The energy certificate of a building verifies the meeting of the minimum requirements of energy efficiency. In order to produce the information necessary for the energy certificate one is usually required to conduct an energy audit. The transposition of this system is concluded by the requirement that the buildings and apartments – that are constructed, sold or rented - must have an energy certificate. This requirement[36] takes effect only on 1st January 2009, and thus the efficiency of its implementation remains to be seen. Currently, no significant flaws in the transposition of the EU energy efficiency of buildings regulation have appeared.

(ii) Different policy documents, for example the National Environmental Action Plan 2007-2013, provide that fiscal measures need to be worked out in order to enhance the use of energy efficient

[35] Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings and Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

[36] Article 3^1 of the Building Act

technologies by individuals and housing associations. The adoption of Regulation No 48 of Minister of Economic Affairs and Communication of 12 June 2008 – Terms and conditions for providing aid for performing energy audit and expert's analysis of a building and preparing building design documentation - is one of these fiscal measures.

(iii) The District Heating Act provides the necessary basis for national and local energy planning, which should - among other things - keep under control the spread of less efficient and more polluting, small heating plants.

(iv) The laws relating to construction and climate change have not left any significant topics unregulated. The regulation is in accordance with the principles of the Kyoto Protocol and the UNFCCC, EU legislation and different national development plans and programmes. It has no significant substantial or procedural legal problems.

c) Suggestions

As with other fields of law, that are covered by this analysis, the state has not comprehensively analysed, how climate change should be handled in construction laws. We find that in this particular area such an analysis is not strictly necessary at this time. The question of energy efficiency of buildings, which is the most important climate change related aspect in construction law, is covered in several freshly adopted provisions and separate acts. These acts are based on recent EU legislation. Therefore, we do not have any suggestions at this point, but after some time an analysis on how to further improve the construction laws - from the climate change perspective – should be conducted.

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HUNGARY

1. General environmental laws

1.1. General environmental laws (particularly air protection)

a) List of the analyzed laws and their climate protection relevance

Environmental Protection Act (Act No. 53 of 1995 on the general Rules of the Protection of the Environment, a környezet védelmének általános szabályairól szóló 1995. évi LIII. törvény).	The Environmental Code defines the basic environmental definitions and principles, determines the system of the national environmental administration and the most significant environmental administrative procedures, as well as it laying down those economic instruments used for environmental protection and rules on environmental information; furthermore it covers public participation and environmental liability systems.
Nature Protection Act (Act No. 53 of 1996 on the general Rules of the Nature Conservation, a természet védelméről szóló 1996. évi LIII. törvény).	This law is the basis of nature conservation in Hungary. It determines the system of the nature conservation, definitions and principles. This law lays down the administrative bodies responsible for nature protection and their procedural rules. Furthermore it assigns those economic instruments used for nature conservation.
Air Protection Decree (Government Decree No. 21 of 2001 (14 of February) on the General Rules of Air Protection, A levegő védelmével kapcsolatos egyes szabályokról szóló 21/2001. (II.14.) Kormányrendelet).	This is the principle piece of law in the field of air and climate protection, it transposes among others the NEC Directive (2001/81/EC).
Joint Decree of the ministers of the Environment Protection and Health Management (No. 14 of 2001 (9 of Mai) on the **Air Pollution Thresholds and Emissions Ceilings for Located Air Pollutant Point Sources.** (14/2001. (V. 9.) KöM-EüM-FVM együttes rendelet a légszennyezettségi határértékekről, a helyhez kötött légszennyező pontforrások kibocsátási határértékeiről)	This Decree transposes large parts of EC air quality law (Framework Directive 96/62/EC and its daughter directives) and sets different thresholds (sanitary, informative and alerting) for air pollutants and assigns as well the air protection zones.
Joint Decree of the ministers of Environment Protection and Economy No. 7 of 2003 (16 of Mai) on the **National Emissions Ceilings for particular Air Pollutants**. (7/2003. (V. 16.) KvVM-GKM együttes rendelet az egyes levegőszennyező anyagok összkibocsátási határértékeiről)	In accordance with the NEC Directive it determines emissions ceilings valid from 2010 onwards.

Decree of the Environmental Minister No. 17 of 2001 (3 of August) on the Provisions on **Analysis, Control and Assessment of Air Pollution and Emissions by Located Air Pollutant Point Sources.** (17/2001. (VIII. 3.) KöM rendelet a légszennyezettség és a helyhez kötött légszennyező források kibocsátásának vizsgálatával, ellenőrzésével, értékelésével kapcsolatos szabályokról)	Measurement provisions have significant climate relevance. The GHGs should be involved in the scope of the systematic administrative measuring duties.
Decree of the Environmental and Regional Development Minister No 9 of 1995 (31 of August) on the **Emissions Restriction of CO2 emitting by tankers , transport and storage of gasoline.** (9/1995. (VIII. 31.) KTM rendelet a motorbenzinek tárolásakor, töltésekor, szállításakor és áttöltésekor keletkező szénhidrogén-emisszió korlátozásáról)	This law directly aims at air and climate protection. The structure of sanctions is insufficient and therefore its implementation is not ensured.

b) Main problems of the analyzed laws in the branch

The role of the most important general rules of the overall environmental, air and climate protection laws is to determine the basic climate protection approaches and to lay down the policy to be followed and elaborated by the different lower level environmental laws and by related branches of law. In order to make it more efficient and to strengthen the connection with climate change issues, it would be necessary to include eligible references in the most important environmental and climate protection laws to the different related branches of law.

The Environmental Code and the Air Protection Decree are basically adequate in determining the definitions, principles and organizational and procedural issues of climate protection aspects. The following shortcomings should be remedied in order to enhance the efficiency of these laws.

- The principle of integration is not manifestly laid down in the Environmental Protection Act.
- Climate protection approaches are not included in the air protection, built environment protection and waste management chapters of the Environmental Code.
- Public participation rules (definitions, access to information and standing issues) are ambiguously determined in the analyzed pieces of law.
- According to the Air Protection Decree there is opportunity to site new pollutant sources even if basic air pollution thresholds have already been exceeded.
- According to the Air Protection Decree the air pollution thresholds may not to be taken by heavily used public roads or their protection zone, only out of the zone.
- The extraordinary measures constituted by the Air Protection Decree can not be applied in case of long-term negative environmental effects, so this impacts on their application in the case of adverse climate effects.

c) Suggestions

In accordance with the above mentioned shortcomings, we suggest the implementation of the following amendments in the analyzed laws.

- The integration principle should be determined among the principles of environment protection. Integration will have to be implemented on one hand in the environmental sector (as internal integration) and on the other in the related branches (as external integration).
- Climate should be included explicitly in the definition of environment.
- Detailed provisions of climate protection should be elaborated and integrated in the Environmental Code and the Air Protection Decree.
- The guarantees of access to information should be strengthen and in particular the operation of environmental databases should be improved. It is necessary to link the different databases (managed by Environmental Inspectorates, Municipalities, etc) and provide them with intelligent searchers.
- The above mentioned shortcomings of the Air Protection Decree should be remedied by long-term climate protection objectives and measures.

1.1. Environmental impact assessment regulation

a) List of the analyzed laws and their climate protection relevance

EIA Decree (Government Decree No. 314 of 2005 (25 of December) on the EIA and IPPC procedures, 314/2005. (XII. 25.) Korm. rendelet a környezeti hatásvizsgálati és az egységes környezethasználati engedélyezési eljárásról)	Besides the Environmental Code, this is the most significant environmental law; it involves public participation rules as well.
SEA Decree (Government Decree No. 2 of 2005 (11 of January) on the Environmental Assessment of Certain Plans and Programmes, 2/2005. (I.11.) Korm. rendelet egyes tervek, illetve programok környezeti vizsgálatáról).	The environmental impact assessment of certain plans and programmes ensures the opportunity for integration of environmental aspects into economic and political decisions at the early stage of planning and implementation.
EMAS Decree (Government Decree No. 214 of 2006 (31 of December) on the Registration of Organizations participating in EMAS system, 214/2006. (XII.31.) Korm. rendelet a környezetvédelmi vezetési és hitelesítési rendszerben (EMAS) részt vevő szervezetek nyilvántartásáról.)	The voluntary environmental systems give the opportunity for integration of climate protection aspects into economic decisions. These systems can ensure that polluters meet air and climate relevant requirements.
Small Industrial Site Permission Decree (Government Decree No. 80 of 1999 (11 of June) on the Activities bound to Small Industrial Site Permission and its permitting procedure, 80/1999. (VI.11.) Korm. rendelet a telepengedély alapján gyakorolható ipari és szolgáltató tevékenységekről, valamint a telepengedélyezés rendjéről).	This decree lays down the conditions of licensing activities which do not fall within the scope of the EIA procedure yet have significant environmental effects.

Environmental re-examination Decree (Decree of the Environmental and Regional Development Minister No. 12 of 1996 (4 of July) on the Professional criteria to perform an environmental re-examination and the content requirements of environmental re-examination documentation, 12/1996. (VII. 4.) KTM rendelet a környezetvédelmi felülvizsgálat végzéséhez szükséges szakmai feltételekről és a feljogosítás módjáról, valamint a felülvizsgálat dokumentációjának tartalmi követelményeiről).	This decree determines the basic professional criteria to perform an environmental re-examination and it lists the obligatory content elements of environmental re-examination documentation.

b) Main problems of the analyzed laws in the branch

In order to assess the environmental impacts there are different legal instruments in the Hungarian law that makes differences between plans and projects and their scope or capacities.

- The aspects of the National Climate Change Strategy are not integrated in the EIA Decree as a justification for rejection of the developer's application for an EIA permit.
- Climate protection aspects are not definitely integrated in the EIA and SEA Decrees. According to the SEA Decree the impacts on climate shall be presented in the environmental report, but on the whole climate protection is not emphasized in these decrees. Projects and activities involved in the impact assessment are not considered on the score of climate change. Climate aspects are not even listed in the Decrees as a compulsory elements of the EIA, SEA Statement or the Decision to be assessed.
- The omission of an SEA does not have any sanctions in the subsequent procedures. (The EIA permit is an obligatory element of the application documentation for a construction permit.)
- In the voluntary environmental systems public participation possibilities are ensured only on a lower level.

c) Suggestions

The environmental impact assessment of certain plans and programmes, as well as concrete project plans, gives the opportunity for integration of environmental aspects into economic and political decisions at the earliest stage of planning and implementation. The further integration of climate protection aspects into these impact assessment procedures could become an effective way of climate protection. In the case of the voluntary environmental systems (EMAS) the integration of climate protection aspects is of the same importance.

- Application for an EIA permit should be rejected if it does not meet with the requirements of the National Climate Change Strategy; justification has to be elaborated more deeply.
- Climate protection aspects should be integrated explicitely into the EIA and SEA Statements.
- It is necessary to include stronger provisions on climate relevance as an assessment criterion for alternatives, and for the permit itself, in the EIA and SEA provisions.
- If climate relevance prevails amongst the EMAS criteria its significance should be strengthened.

2. Climate protection laws

a) List of the analyzed laws and their climate protection relevance

Kyoto Act (Act No. 60 of 2007 on the Framework of UN Framework Convention on Climate Change and its Kyoto Protocol, 2007. évi LX. törvény az ENSZ Éghajlatváltozási Keretegyezménye és annak Kiotói Jegyzőkönyve végrehajtási keretrendszeréről).	This act determines – in accordance with the Convention – the most significant objectives and principles concerning GHGs and climate change and sets the institutional framework for implementation.
Act on Emissions Trading Scheme (ETS) (Act No. 15 of 2005 on the Emissions Trading Scheme of GHGs, 2005. évi XV. törvény az üvegházhatású gázok kibocsátási egységeinek kereskedelméről).	The act aims to mitigate the risk of climate change through economic instruments in accordance with the Kyoto standards.
ETS Fee Decree (Joint Decree of the Environmental and Financial Ministers No. 38 of 2006 (22 of August) on the Rules of the Payment of the Fee belonging to the Operation of ETS, 38/2006. (VIII.22.) KvVM-PM együttes rendelet az üvegházhatású gázok kibocsátási egységkereskedelmi rendszer működtetésével kapcsolatos felügyeleti díj megfizetésének részletes szabályairól).	The decree lays down procedural rules on the fees belonging to the operation of the ETS - paid by the emitter - and ensures the opportunity to enforce implementation.
Energy Tax Act (Act 88 of 2003 on the Energy Tax, 2003. évi LXXXVIII. törvény az energiaadóról).	The act constitutes the obligation of tax payment in case of electricity sales and purchase.
National Climate Change Strategy (Resolution of the Parliament No. 29 of 2008 (20 of March) on the National Climate Change Strategy, 29/2008. (III.20.) OGY határozat a Nemzeti Éghajlatváltozási Stratégiáról).	As a resolution of the Parliament it is not a law and accordingly it can not be directly enforced. It is obligatory only to the Parliament itself and its bodies. The strategy sets general long term (2008-2025) objectives and priorities and has to be implemented through National Climate Change Programmes.

b) Main problems of the analyzed laws in the branch

In 2006, total emissions of greenhouse gases in Hungary, were 78.6 million tonnes carbon dioxide equivalent. With less than 8 tonnes, the Hungarian per capita emissions are below the European average. By ratifying the Kyoto Protocol, Hungary committed to reducing its GHG emissions by six percent. Now emissions are thirty-two percent lower than in the base-year (average of 1985-87). However, this significant reduction is a consequence of the regime change in Hungary (1989-90) which brought about a radical decline in the output of the national economy. Production decreased in almost every economic sector, including also GHG relevant energy, industry and agriculture sectors.

Emissions decreased by two percent (reduction of 1.6 million tonnes) between 2005 and 2006. However, there is no significant trend in the emissions of the last 10 years, they fluctuate around 79 million tonnes mark. Nevertheless, the reduction between 2005 and 2006 is mainly due to process changes in the energy sector.[37]

[37] http://unfccc.int/national_reports/annex_i_ghg_inventories/national_inventories_submissions/items/4303.php

Even though the Kyoto targets have been easily reached the problem of climate change is extremely serious for Hungary, because, as the National Climate Change Strategy points out, global warming will affect the Carpathian Basin to a great extent. For every one degree Celsius increase in the world's average temperature an increase of one-and-a-half to two degress Celsius will be felt in Hungary. This holds the potential for devastating effects to biological diversity and agriculture.

The strategy includes both the possibility of slowing global warming and the potential ways to adapt to the inevitable changes. Hungary is responsible for only 0.05% of the world's greenhouse gas emissions, and the strategy stresses the importance of reducing it further. The rate of using renewable energy sources would be increased to thirteen percent from the current four-and-a-half percent. The energy sector would play a critical role in the reduction of the greenhouse effect because it is responsible for 75% of Hungary's greenhouse gas emissions.

The document defines the tasks necessary in order to adapt to unavoidable effects of climate change. The changes will affect the human healthcare sector, agriculture, water economics and environmental protection. The sooner society and government realizes the urgent need to prepare for these events, the lower the eventual costs will be.

The new strategy was prepared through a three-year research project called VAHAVA, (Változás-Hatás-Válaszadás, Change-Effect-Reaction), conducted by the Hungarian Academy of Sciences (MTA), with legal contributions from EMLA. The government promises to follow-up on the strategy though regular reviews. They will also adapt the National Climate Change Program (NÉP), which is a detailed action plan for two-years. Environmental organizations call the NÉS the best approach of the past seventeen years, however there are shortcomings evident.

Regarding the above listed pieces of law in our view they are not in themselves able to control emission of GHGs' effectively. As has already been mentioned in the general environmental laws chapter, it is necessary to establish legal connections of the climate protection provisions to the other related branches of law (e.g. construction, energy, transport sectors) in order to implement them in accordance with each other.

- Compared with other main objectives, such as prevention and adaptation to the impacts of the climate change, the rules and conditions of research activities concerning climate change are not suitably elaborated in the Kyoto Act.
- According to the Kyoto Act, smaller and the non-point source pollutants are not included in the National Registration System.
- The publicity of data included in the National Registration System is apparently not regulated.
- There are insufficient guarantees in the ETS Act to control the over-allocation of the units, plus the control of sectors not involved in the system at this time is not ensured.
- The provisions of sanctions are incomplete in this branch.
- The Energy Tax Act makes no distinction between the different sources of the electricity. More climate friendly ways of production should be preferred and represented in the amount of the tax to be paid.

c) Suggestions

In accordance with the legislative shortcomings listed above we would suggest the implementation of adequate modifications. However, it is still essential to the review laws in the environmental sector and the related branches of law in a comprehensive way. In our opinion climate change cannot be considered as an environmental problem alone and therefore it cannot be solved solely within the environmental sector. It is necessary to follow a more holistic approach, that encompasses the whole system of the relevant environmental and related laws, and accordingly to adapt the whole legal system to the changes and to their solutions.

The three main fields of climate protection (research activity, mitigation of emissions and adaptation to the changes) constitute a logical structure in the Kyoto Act, but the conditions of the research activity are not sufficiently elaborated. In our opinion this field should be more emphasized and detailed, particularly financial regulations and procedures.

In accordance with the objectives and priorities of the National Climate Change Strategy (2008-2025) the National Climate Change Programme should be elaborated every two-year period as a concrete action-plan, with sufficient guarantees towards effective implementation.

3. Environmental procedural laws

a) List of the analyzed laws and their climate protection relevance

Public participation laws	
Environmental Basic Registration System Decree (Government Decree No. 78 of 2007 (24 of April) on the Environmental Basic Registration System, 78/2007. (IV.24.) Korm. rendelet a környezeti alapnyilvántartásról)	The standardized registration of the polluters and their sites is a necessary precondition of the operation and inter-connection of environmental databases.
Act on **Priority of Certain National Projects** (Act No. 53 of 2006 on the Simplification and Acceleration of Project Realization having Special National Economic Importance, 2006. évi LIII. törvény a nemzetgazdasági szempontból kiemelt jelentőségű beruházások megvalósításának gyorsításáról és egyszerűsítéséről).	The most significant projects (costing more than EUR 200.000), which are always crucial regarding their impact on climate changes, have to be licensed in an accelerated procedure. As a result the public participation possibilities are limited by this special act compared to the general environmental permitting procedures.
Government Decree No. 184 of 1996 (11 of December) on the **Reconciliation and Approval Procedure of Regional Development Concepts and Programmes and Regional Plans**. (184/1996. (XII.11.) Korm. rendelet a területfejlesztési koncepciók és programok, valamint a területrendezési tervek egyeztetésének és elfogadásának rendjéről.)	These programmes and plans should be based on widespread social and professional accord and in such a way they could perfectly represent regional and local environmental interests and considerations.

1% Act (Act 126 of 1996 on the use of a fixed portion of the personal income tax under the disposal of the tax-payer, 1996. évi CXXVI. törvény a személyi jövedelemadó meghatározott részének az adózó rendelkezése szerinti felhasználásáról.)	The tax-payer is entitled to assign to one NGO 1% of the tax-payer's personal income tax, if it meets certain qualifying requirements. It is an important income of several small NGOs.
Duties Act (Act No. 93 of 1990 on the Duties, 1990. évi XCIII. törvény az illetékekről).	This act is important, because it determines the procedural duties to be paid by individuals and NGOs in different administrative and judicial procedures. It gives the opportunity to prefer projects, which are more energy efficient, through property tax to be paid by purchase time.
Laws on procedural expenses	
Environmental procedural fee decree (Decree of the Environmental Minister No. 33 of 2005 (27 of December) on the Administrative Procedural Fees in Environmental, Nature Protection and Water Management permission procedures, 33/2005 (XII.27.) KvVM rendelet a környezetvédelmi, természetvédelmi valamint a vízügyi hatósági eljárások igazgatási szolgáltatási díjairól).	The Decree determines the sum of the procedural fee in case of different activities, including climate relevant ones.
Government Decree No. 72 of 2007 (17 of April) on the **Further Procedural Expenses in Environmental and Water Management Administrative Permission Procedures**. (72/2007. (IV.17.) Korm. rendelet a környezetvédelmi és vízügyi hatósági eljárás során felmerülő egyéb eljárási költségekről)	The act sets out that the expenses of laboratory analyses and measurements have to be paid in accordance with the polluter pays principle.
Decree of the Economy and Transport Minister No. 129 of 2005 (29 of December) on the **Administrative Procedural Fees and Service Charges in Procedures of the Hungarian Commercial Licensing Authority.** (129/2005. (XII.29.) GKM rendelet a Magyar Kereskedelmi Engedélyezési Hivatal egyes műszaki biztonsági közigazgatási eljárásainak és igazgatási jellegű szolgáltatásainak díjairól.)	The decree gives the opportunity to promote the establishment of energy efficient facilities and plants.
Laws on environmental sanctions	
Government Decree No. 107 of 2007 (9 of May) on the **Fines referring to Activities carried out with Fluorous GHGs.** (107/2007. (V.9.) Korm. rendelet az egyes fluortartalmú üvegházhatású gázokkal kapcsolatos tevékenységekre vonatkozó bírságról)	This Decree constitutes sanctions (from round sum fines to prohibition of the activity) to be paid by the polluters if they breach Regulation EC No. 842/2006.

b) Main problems of the analyzed laws in the branch

In the group of the environmental procedural laws we analyzed those pieces of public participation laws and of the laws on procedural expenses and environmental sanctions that can directly effect the implementation of climate protection laws. The following problems were revealed:

- The polluter pays principle is not correctly integrated in the system of environmental procedural expenses. The expenses paid by polluters carrying on activities emitting GHGs do not cover the factual procedural costs. However the decree on the administrative procedural fee of environmental permitting procedures does make distinctions between the activities, yet the climate protection approaches are not considered in the determination of the amount of the fee.
- Based on the above listed laws in the public participation group, it is clear that the regulation of public participation is highly diversified in Hungarian law. There are many exceptions to the general public participation provisions and there are usually obstacles to public participation as well. These obstacles are in part direct provisions, as in case of the Act on Priority of Certain National Projects, and partly they are 'hidden' obstacles, which may oblige NGOs to pay extremely high procedural fees in the case of large projects. NGOs are generally exempt from duties, but the environmental procedural fee decree excempts the permitting procedures from following this general rule. The amount of the fee is in proportion to the size of the project. Accordingly in the case of the large, and therefore climate relevant projects, public participation of NGOs can be limited by financial barriers.
- Regarding the structure of sanctions in climate protection it is apparent that the system is incomplete, as there are special rules only in the case of Fluorine-based GHGs. There are not any provisions on clear criteria to support discretionary administrative decision-making through.

c) Suggestions

In accordance with the above mentioned shortcomings, we suggest the implementation of the following amendments in the analyzed laws.

- The amount of the procedural fee to be paid by the polluter should be determined based on the volume of the emissions having climate relevance. On the other hand, activities resulting in energy efficiencies should be preferred by the system of allowances. Through this system it is thus possible to promote the transfer of environment friendly technologies and devices.
- In our opinion it is necessary to make public participation regulations more detailed and clear and in addition to eliminate those obstacles to effective public participation.
- Elaboration of the structure of sanctions is essential. As such all priorities and aspects have to be laid down by the legislator in accordance with national climate protection objectives.

4. Laws on development planning, spatial planning and construction

4.1. Spatial planning law

a) List of the analyzed laws and their climate protection relevance

Regional development, development planning	
Act No. 21 of 1996 on the **Regional Development and Spatial Planning**. (1996. évi XXI. törvény a területfejlesztésről és a területrendezésről)	The act determines the basic frames, rules and instruments of development concepts, programmes and plans.
Act No. 26 of 2003 on the **National Spatial Plan**. (2003. évi XXVI. törvény az Országos Területrendezési Tervről)	The act determines the development opportunities of land-use and transport at national level.
Act No. 64 of 2005 on the **Spatial Plan of Budapest's Commuter Belt**. (2005. évi LXIV. törvény a Budapesti Agglomeráció Területrendezési Tervéről)	The act determines the development opportunities in the region regarding its transport and land use.
Decree of the Environmental and Regional Development Minister No. 18 of 1998 (25 of June) on the **Content Requirements of Regional Development Concepts, Programmes and Spatial Plans.** (18/1998. (VI.25.) KTM rendelet a területfejlesztési koncepciók, programok és a területrendezési tervek tartalmi követelményeiről.)	This decree ensures that relevant climate protection viewpoints are considered.
Government Decree No. 186 of 2005 (13 of September) on **'Industrial Park' Labelling and Operation of the System for industrial parks' development**. (186/2005. (IX.13.) Korm. rendelet az „Ipari Park" címről és az ipari parkok fejlesztését szolgáló rendszer működéséről)	The territorial limitation of local industry and services gives an opportunity to achieve a more advantageous environmental state.
Settlement development, spatial planning	
Act No. 78 of 1997 on the Built Environment and its Protection. (1997. évi LXXVIII. törvény az épített környezet alakításáról és védelméről)	The act lays down the requirements for spatial planning and construction activities. Its climate relevance is to stop the decrease of green areas, and to promote 'climate conscious' construction activity.
Government Decree No. 253 of 1997 (20 of December) on the **National Spatial Planning and Construction Requirements**. (253/1997. (XII.20.) Korm. rendelet az országos településrendezési és építési követelményekről)	This act contains provisions regarding land-use, green area protection and construction. Owing to its wide scope it gives the opportunity to raise efficiency in climate protection.
Decree of the Municipality and Regional Development Minister No. 9 of 2007 (3 of April) on the **Calculation of the Biological Activity Value of the Areas**. (9/2007. (IV.3.) ÖTM rendelet területek biológiai aktivitásértékének számításáról)	This decree determines the indicators for the biological activity value of certain areas. The lost (built-up) areas have to be supplied within the territory of the concerned municipality by replantation. Accordingly it can be considered that through this Decree certain areas obtain climate protection value .

Government Decree No. 252 of 2006 (7 of December) on the **Spatial Planning and Construction Planning Councils**. (252/2006. (XII.7.) Korm. rendelet a településrendezési és az építészeti-műszaki tervtanácsokról)	The participants of this Council are independent experts, who promote the preparation of spatial plans and construction licenses of certain special buildings. Thus the consideration of climate protection aspects can be ensured through this piece of law.
Decree of Agriculture and Rural Development Minister No. 40 of 1999 (23 of April) on the **Regional and Spatial Planning and Construction Planning Councils**. (40/1999. (IV.23.) FVM rendelet a területrendezési, a településrendezési és az építészeti-műszaki tervtanácsokról)	Similarly to the previous case, this decree can ensure the consideration of climate protection aspects.
Decree of Construction Management Minister No. 2 of 1976 (16 of January) on the **Use and Maintenance of Public Green Areas handled by Councils (former Municipalities)**. (2/1976. (I.16.) ÉVM rendelet a tanácsi szervek kezelésében levő közhasználatú zöldterületek fenntartásáról és használatáról)	This Decree focuses on the protection of small green areas within cities and towns. These may have less significance in climate protection than the large green surfaces, but have to be protected.

b) Main problems of the analyzed laws in the branch

What is apparent from the previous section, the structure of regional and settlement development planning and spatial planning is unnecessarily complicated in the Hungarian legal system. There are many overlaps and unclear definitions, so consequently the mass of laws does not furnish a logical and comprehensive structure.

- The different development and spatial plans can not impede the reduction in green areas, in particular in Budapest, other towns and in their commuter belts.
- In the spatial planning procedures, there are no legal guarantees that public comments are taken into account in the final decision-making. In the procedures of the different construction councils there are either no public participation provisions or very limited ones.
- The legal requirements of standing in the construction permission procedures are inconsistently laid down. Accordingly the practice of the administrative bodies is also inconsistent and often results in the restriction of public participation rights in several cases.
- In the construction law climate relevant connections with the related branches, such as environmental law, energy law or law of finance, are insufficient.
- The climate relevant provisions are generally lacking in the development and spatial planning laws. The environment protection, as an objective, is laid down, but climate protection not. There are not any guarantees to impede the loss of green areas and to promote environment and climate friendly developments in the industrial or transport sectors or to advance the increase of energy efficiency.
- As a positive example the Decree on the Calculation of the Biological Activity Value of the Areas can be supported. It is clear, according to the Decree, that the lost green areas have to be supplied. However, the legal and institutional guarantees are not laid down and so it is difficult to enforce implementation.

c) Suggestions

Following on from the presented shortcomings, we suggest a comprehensive amendment of the regional / settlement development and spatial planning laws. The legal review of these pieces of law should result in a less complicated structure of the branch, which could also raise the efficiency of public participation as well.

- Climate protection approaches should be integrated into the above laws. The priority of environment and climate protection should be laid down contrary to economic growth.
- The general legal framework for local climate protection should be determined, such as the necessity for local climate strategies and sustainable settlement structures.
- Financial resources of climate relevant provisions should be assigned, or at least their priority should be determined, to ensure their implementation.
- Public participation institutions should be strengthened on a legal and a practical level.
- The guarantees of the existing climate relevant provisions should be laid down.

4.2. Construction law

a) List of the analyzed laws and their climate protection relevance

Construction law	
Decree of the Municipality and Regional Development Minister No. 37 of 2007 (13 of December) on the **Administrative Construction Permission Procedures and the Content Requirements of Construction Plans**. (37/2007. (XII.13.) ÖTM rendelet az építésügyi hatósági eljárásokról, valamint a telekalakítási és az építészeti-műszaki dokumentációk tartalmáról)	This represnets the fundamental law of the construction permission procedures. Through this decree it can be ensured that the climate protection aspects are deeply considered in the planning of buildings. Energetic features have to be presented in the documentation.
Joint Decree of the Interior and Economy and Environmental Ministers No. 3 of 2003 (25 of January) on the **Use, Marketing, Compliance Certification and Technical Requirements of Building Products**. (3/2003. (I.25.) BM-GKM-KvVM együttes rendelet az építési termékek műszaki követelményeinek, megfelelőség igazolásának, valamint forgalomba hozatalának és felhasználásának részletes szabályairól)	The quality of building products is of great importance in climate protection, in particular in public (non industrial) GHG emissions.
Joint Decree of Construction Management and Industrial Ministers No. 11 of 1985 (22 of June) on the **Time Eligibility Criteria of Special Building Structures and their Components**. (11/1985. (VI. 22.) ÉVM-IpM-KM-MÉM-BkM együttes rendelet egyes épületszerkezetek és azok létrehozásánál felhasználásra kerülő termékek kötelező alkalmassági idejéről)	By this law the quality criteria of a building's isolation, its energy consumption and GHG emissions can be determined.

Ministry Decree No. 7 of 2006 (24 of Mai) on the **Determination of Buildings Energetic Features**. (7/2006. (V.24.) TNM rendelet az épületek energetikai jellemzőinek meghatározásáról)	This decree is explicitaly of climate protection relevance. It mainly transposes the Directive 2002/91/EC, as the designer is obliged to present a building's energetic features.
Government Decree No. 105 of 1996 (16 of July) on the **Support of Building Reconstruction resulting in Energy Efficiencies**. (105/1996. (VII.16.) Korm. rendelet az energiamegtakarítást eredményező épületfelújítások támogatásáról)	Similar to the previous one, the decree is of positive climate protection relevance. Building reconstruction, aiming at a rise in energy efficiency, are financially supported.
Joint Decree of the Interior and Environmental Ministers No. 45 of 2004 (26 of July) on the **Regulation of the Construction and Demolition Waste Treatment**. (45/2004. (VII.26.) BM-KvVM együttes rendelet az építési és bontási hulladék kezelésének részletes szabályairól)	The reuse of construction and demolition waste can result in energy consumption savings and accordingly is of climate protection relevance.
Laws on construction administration	
Government Decree No. 343 of 2006 (23 of December) on the **Assignment and Operation Requirements of Construction and Construction Supervision Authorities**. (343/2006. (XII.23.) Korm. rendelet az építésügyi és az építésfelügyeleti hatóságok kijelöléséről és működési feltételeiről)	Among others issues, the qualification criteria of the Construction Authorities' employees are laid down.
Decree of the Environmental and Regional Development Minister No 21 of 1992 (4 of December) on Regional Major Architects. (21/1992. (XII.4.) KTM rendelet a területi főépítészekről)	The decree determines the scope of the Regional Major Architects' duties.
Decree of the Environmental and Regional Development Minister No 9 of 1998 (3 of April) on the **Detailed Professional Rules and Requirements of the Position Municipality Major Architect**. (9/1998. (IV.3.) KTM rendelet az önkormányzati főépítészi tevékenység ellátásának részletes szakmai szabályairól és feltételeiről)	The decree determines the scope of the Local Major Architects' duties.
Decree of the Environmental and Regional Development Minister No 46 of 1997 (29 of December) on the **Administrative Construction Permission Procedures related to Certain Buildings and Construction Activities**. (46/1997. (XII.29.) KTM rendelet az egyes építményekkel, építési munkákkal és építési tevékenységekkel kapcsolatos építésügyi hatósági engedélyezési eljárásokról)	The decree lists the competent administrative authorities, which have to be involved in decision-making procedures for construction licensing.
Government Decree No. 181 of 2003 (5 of November) on the **Guarantee Commitments related to Apartment Building Activity**. (181/2003. (XI.5.) Korm. rendelet a lakásépítéssel kapcsolatos kötelező jótállásról)	The decree constitutes special guarantee provisions regarding newly built apartments and their components.

Government Decree No. 290 of 2007 (31 of December) on the **Construction Activity, Construction Book and the Content of Construction Documentation**. (290/2007. (XII.31.) Korm. rendelet az építőipari kivitelezési tevékenységről, az építési naplóról és a kivitelezési dokumentáció tartalmáról)	The decree determines the elements of construction agreements, the responsibilities of participants and the documentation connected with construction activities.
Government Decree No. 255 of 2007 (4 of December) on **Certain Administrative Registries in Construction Activities**. (255/2007. (XII.4.) Korm. rendelet az építésügy körébe tartozó egyes hatósági nyilvántartásokról)	The decree determines the content of certain administrative registries connected with construction activities, yet no climate relevant data emphasized.
Decree of the Environmental and Regional Development Minister No 47 of 1997 (29 of December) on the **Detailed Professional Rules of Construction and Monument Protection Administrative Supervision**. (47/1997. (XII.29.) KTM rendelet az építésügyi és a műemlékvédelmi hatósági ellenőrzés részletes szakmai szabályairól)	The decree lays down the detailed provisions of construction supervision and lists technological requirements.
Government Decree No. 245 of 2006 (5 of December) on the **Detailed Rules of the Imposition of Construction Fine**. (245/2006. (XII.5.) Korm. rendelet az építésügyi bírság megállapításának részletes szabályairól)	The decree determines construction fines and makes no distinctions between different ways of permission's ignorance.
Government Decree No. 238 of 2005 (25 of December) on the **Construction Supervision Fine.** (238/2005. (XII.25.) Korm. rendelet az építésfelügyeleti bírságról)	The ground, grade and other conditions of the fine are laid down in the decree.
Government Decree No. 162 of 2004 (21 of Mai) on the **Detailed Rules of Public Procurements of Construction Projects**. (162/2004. (V.21.) Korm. rendelet az építési beruházások közbeszerzésekkel kapcsolatos részletes szabályairól)	The decree lists the compulsory technological content of project documentation in case of the project falling within the scope of the Act on Public Procurements. It does not determine climate protection aspects.

b) Main problems of the analyzed laws in the branch

Based on the majority of the construction laws it is apparent that the climate protection is not a priority in the Hungarian legislation. On the other hand there are two pieces of law, the Decree on the Determination of Building's Energetic Features (transposes the relating Directive of the EU) and the Decree on the Support of Building Reconstructions resulting energy efficiencies, which serve directly climate protection aspect (or rather the improvement of energy efficiency). However these laws are effectively progressive ones, the conditions of their implementation are not elaborated in the law and they are not connected to other pieces of law either in the construction law, or in the related branches.

- Not all climate relevant data have to be presented in the construction plans. The energetic features to be presented according to the concerning decree are incomplete compared to other relevant laws; and are not generally obligatory.

- The climate relevance is not an assessment criterion in the construction permission procedure.
- The regulation on the building products and their time eligibility criteria has no climate relevance.
- There is lack of climate protection (or at least energy efficiency) approaches in the general procedural and registration rules as well as in the structure of controls and sanctions.
- In the local decision-making proecesses short-term economic interests are preferred contrary to long-term professional aspects of a project.

c) Suggestions

The necessity of complex legal review and integration of the climate relevant provisions in the construction law:

- Climate relevance as an assessment criterion should be integrated in the provisions of the building products requirements, the obligatory content of the construction plans and as a criterion for the construction permit itself.
- The legislator should promote climate conscious construction activity through a comprehensive system of preferences.
- The existing provisions aiming at energy efficiency improvements should be completed by sufficient procedural rules on legal consequences - namely fines and their application conditions.

Besides implementation of the above legislative suggestions in the construction law we recommend to establish connections to the related branches of law having climate relevance.

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SLOVENIA

1. General environmental laws

1.1 General environmental laws (particularly air protection)

a) List of the analyzed laws and their climate protection relevance

Environmental Protection Act (2006): Zakon o varstvu okolja; last amended in January 2009, available as an unofficial consolidated text.	This act is a general environmental act covering almost all sections of the environment. It regulates the protection of the environment against stresses, which is a basic condition for sustainable development, and within this framework lays down the basic environmental protection principles and measures; environmental monitoring and information; economic and financial instruments for environmental protection; public services for environmental protection and other issues related thereto.
Decree on environmental tax for the pollution of air with emission from carbon dioxide (2005): Uredba o okoljski dajatvi za onesnaževanje zraka z emisijo ogljikovega dioksida; last amendment published in Official Journal, Nr. 78/2008.	This decree determines rates for environmental pollution taxes for the pollution of the air with CO_2 related to the combustion of different fuels.
Decree on the emission of substances into the atmosphere from stationary sources of pollution (2007): Uredba o emisiji snovi v zrak iz nepremičnih virov onesnaževanja; last amendment in Official Journal, Nr. 70/2008.	This decree was first accepted in 1994 on the basis of the Council Directive 84/360/EEC and then amended several times. Its intention is to fight against indusrial air pollution. It sets measures and procedures for prevention and reduction of air pollution from industrial plants, and sets out measures for the protection of human health near polluting industrial plants.
Decree on emission limit values discharged into the atmosphere from large combustion plants (2005): Uredba o mejnih vrednostih emisije snovi v zrak iz velikih kurilnih naprav; last amendment in Official Journal, Nr. 92/2007.	This decree contains measures for the gradual decrease of annual emissions from large combustion plants. These measures are set into the operational programme for the protection of the environment.
Decree on national emission ceilings for atmospheric pollutants (2005); Uredba o nacionalnih zgornjih mejah emisij onesnaževal zunanjega zraka; last amendment in Official Journal, Nr. 92/2007.	This decree is used for setting the emission ceilings from all sources of air pollution, which are produced through human activities, in Slovenia. However, this decree does not include emissions, which are being produced by international maritime traffic or by aircraft, outside of take-off and landing.

Energy Act (2007): Energetski zakon; published in Official Journal, Nr. 27/2007.	This act determines energy policy, and includes measures for stimulating energy efficiency and renewable energy production with an intention to decrease greenhouse gas emissions and to decrease the emissions of sulphur dioxides, nitrogen oxides, carbon monoxides and particulates. It is determined through regulations for the protection of the environment and ratified international agreements. The Ministry of the economy also supports the development of environmental friendly energy production technology and promotes their usage for the energy supply chain.
Decree on the landfill of waste (2006): Uredba o odlaganju odpadkov na odlagališčih; last amendment in Official Journal, Nr. 62/2008.	This decree determines limit values for emissions into the environment through waste disposal. It includes: obligatory actions, conditions and measures regarding the planning, building, operation and closure of waste disposal sites. Regarding global environmental contamination, greenhouse gas emissions should be reduced and risks to human health prevented.
Decree on activities and installations causing large-scale environmental pollution (2004): Uredba o vrsti dejavnosti in naprav, ki lahko povzročajo onesnaževanje okolja večjega obsega; last amendment in Official Journal, Nr. 122/2007.	This decree sets out the types of activity and installations that could cause large-scale environmental pollution and for which their operators have to get an environmental permit (IPPC permit) in accordance with Environmental Protection Act (EPA) rules.
Operational programme on national emission ceilings for atmospheric pollutants in ambient air (2005): Operativni program doseganja nacionalnih zgornjih mej emisij onesnaževal zunanjega zraka; last revised in 2007.	This operational programme transposes the NEC Directive (2001/81/EC). Slovenia has to reduce the negative effects to the environment and reach its emission by 2010. This operational programme determines various sets of actions, through which emission limits will/should be reached.
Aviation Act (2001): Zakon o letalstvu; last amendment in Official Journal, Nr. 113/2006.	This act briefly determines environmental protection requirements regarding aircraft emissions in airport areas.

b) Main problems of the analyzed laws in the branch

Legislation covering climate protection issues in Slovenia is still developing. Quite some legislation was changed during 2008, especially during Slovenia's EU Presidency, when climate change issues were one of most important presidency goals.

Nevertheless there are still some very important sectors of legislation that need substantial changes, also on the European level. Slovenian legislation covering aviation and traffic have no provisions that would directly refer to the climate protection. The Aviation Act only determines environmental protection requirements regarding emissions of aircraft only in the airport area and they are mostly related to noise levels. However there are some measures that have to be fulfilled in the transport sector

by Slovenia[38] in order to reach Kyoto targets, but they are still not included in the relevant legislation. According to the operational programme for limiting greenhouse gas emissions until 2012, measures to be taken in the transport sector include:

- EU strategy for reduce CO2 emissions from cars;
- Promotion of public passenger transport;
- Implementation of the resolution of the Transport Policy for the transfer of traffic from roads to railways; and
- Substitution of fossil fuels with bio-fuels.

For fulfilling the obligations set within the UNFCCC, Slovenia also has a lot of educational programmes for raising public awareness in the transport sector (like "Slovenia is reducing CO_2", "Have impact on climate change"). Also it has implemented measures to prevent and mitigate emissions; carry-out research activity regarding energy efficiency (also in transport); given support to renewable technologies, planned adaptation approach for climate change and the usage of Kyoto flexible mechanisms. These are in case that the measures for reducing emissions from transport, set-out in the operational programme will not be efficient enough. However these above listed commitments are not all included in the Slovenian legislation that concerns climate change, but are more measurements that have to be taken in order to reach Kyoto targets.

Quite a lot has been done on the field of energy policy, where the new Energy Act has several new provisions that refer directly to climate protection. As such public service providers have to provide services, which include care for better energy efficiency and climate conditions. In addition, every five-years national goals on the field of energy policy are adopted, which have to take into account national obligations in the field of climate protection. Every two-years the energy agency makes a report rearding whether national goals for climate protection were reached. However if these climate conditions are not attained then no consequences are set out.

With the changes made to waste legislation there are some provisions regarding GHG emissions. There is a special requirement for the operator of the landfill, within the environmental permit, that he has to control the production of GHGs. If the installation is one for which an IPPC permit has to be gained, the operator of the landfill also has to ensure the assessment of the yearly GHG emissions. However there are no exact provisions on how to reduce GHG emissions, especially methane emissions.

c) Suggestions

Slovenia does not have a general National Climate Protection Strategy (in 2008 was accepted the development of a strategy for adaptation of Slovenian agriculture and forestry to climate changes, which includes most of the important CC principles), this will be prepared till the end of 2009 (according to the information from the Slovenian MoE). Further integration of climate protection aspects into legislation is needed.

There is a real need for a climate protection law, but in order to start the procedure of accepting it, political will is needed. Slovenian NGOs are starting alone to prepare a Climate Protection Act, but as already said, without political will and in time of recession it is very optimistic to think that such a law will be accepted.

[38] Under Kyoto protocol Slovenia has committed to reduce its GHG emissions by 8% as compared to the base year (1986).

1.2. Environmental impact assessment regulation

a) List of the analyzed laws and their climate protection relevance

Environmental protection Act (2006): Zakon o varstvu okolja; last amended in January 2009, available as unofficial consolidated text.	The act contains the basic provisions regarding SEA and EIA. If a project will have substantial impacts to the environment, also on climate and air, an SEA and EIA have to be carried out. The EPA also covers trans-boundary impacts and its consequences. There are special paragraphs regarding trading with greenhouse gas emissions when issuing environmental permit for the operation of an certain large-scalle polluters.
Decree on categories of projects for which an environmental impact assessment is mandatory (1996): Uredba o vrstah posegov v okolje, za katere je obvezna presoja vplivov na okolje; last amendment in Official Journal, Nr. 78/2006.	This decree determines for which activity an EIA is mandatory and those cases where an EIA is required only if the activity exceeds certain limits that could harm the environment.
Decree laying down the content of environmental report and on detailed procedure for the assessment of the effects on certain plans and programmes on the environment (2005): Uredba o okoljskem poročilu in podrobnejšem postopku celovite presoje vplivov izvedbe planov na okolje; published in Official Journal, Nr. 73/2005.	This decree transposes Directive 2001/42/EC (on the assessment of the effects of certain plans and programmes on the environment).

b) Main problems of the analyzed laws in the branch

Climate protection aspects are very briefly included in EIA and SEA procedures. Only in one article contained in the EPA it is determined that; an EIA shall comprise the identification, description and assessment of long-term, short-term, direct or indirect impacts of the planned activity on humans, land, water, air, biological diversity and valuable natural features, climate and landscape, and on the human immovable property and cultural heritage, and their interrelationships. Nevertheless climate protection issues are briefly included in both of the procedures (especially in the preparation of the environmental report) However, because most of the intended projects do not have a substantial impact to the climate, mitigation measures are not considered necessary.

c) Suggestions

Changes to the legislation are needed in order to make climate change assessment part of EIA. If EIA procedures do not include climate protection assessments, environmental protection consent should be rejected, even if the impact to the climate is considered minor many minor impacts will add up over time.

2. Climate protection laws

a) List of the analyzed laws and their climate protection relevance

Environmental Protection Act (2006): Zakon o varstvu okolja; last amended in January 2009, available as unofficial consolidated text.	For the transposition of the requirements set in the Directive 2004/101/EC, supplementing the Directive 2003/87/EC, this EPA act has been amended in 2008 As a result the Slovenian EPA has a special chapter "Trading in emission allowances" and more detailed provisions regarding flexible Kyoto mechanisms are now contained in the act. These changes adapted to the current experience gained after those provisions regarding emission trading were transposed into the EPA.
Operational programme for limiting greenhouse gas emissions until 2012 (2006): Operativni program zmanjševanja emisij toplogrednih plinov do leta 2012; accepted on the basis of Article 36 of EPA.	This operational programme sets measures for the development of environmental and transport infrastructure and contributes to the implementation of the State Development Programme. It also summarizes measures, set in the Resolution on National Development Projects, which are important for reduction of greenhouse gas emissions (sustainable mobility, modernization of railway infrastructure, development of sustainable energy and a hydrogen economy). It includes goals set in the Resolution on the National Energy Programme and also stimulates scientific and technological development in the field of production and energy use.
Decree on activities, greenhouse gases and installations for which a permit for greenhouse gas emissions is required (2004): Uredba o dejavnostih, toplogrednih plinih in napravah, za katere je treba pridobiti dovoljenje za izpuščanje toplogrednih plinov; last amendment on Official Journal, Nr. 58/2006.	This decree sets-out: activities, greenhouse gases and installations, for which GHG release permits are required according to the provisions set by the EPA.
Ordinance on the national plan for the allocation of emission coupons for the period 2008-2012 (2007): Odlok o državnem načrtu razdelitve emisijskih kuponov za obdobje 2008 do 2012; last amendment on Official Journal, Nr. 70/2007.	This ordinance determines the allocation of free emissions certificates for the period 2008–2012.
Act ratifying the Kyoto Protocol to the United Nations Framework Convention on Climate Change (2002): Zakon o ratifikaciji Kjotskega protokola k Okvirni konvenciji Združenih narodov o spremembi podnebja (MKPOKSP); published in Official Journal, Nr. 17/2002.	
Act ratifying the United Nations Framework Convention on Climate Change (1995): Zakon o ratifikaciji Okvirne konvencije Združenih narodov o spremembi podnebja (MOKSP); published in Official Journal, Nr. 13/1995.	

b) Main problems of the analyzed laws in the branch

Under the Kyoto Protocol Slovenia has committed to reduce its GHG emissions by eight percent compared to the base-year (1986). In 2006 Slovenia's emissions were one percent higher than the base-year level, well above its burden-sharing target of eight percent for the period 2008-2012. According to our projections, with the existing policies and measures, emissions will further increase to reach a level seven percent above base-year emissions by 2010. However, it is expected for Slovenia to achieve the target through emission reductions from the implementation of Kyoto flexible mechanisms and carbon sink activities (provided by increasing wood biomass in forests), thereby reaching a level thirteen percent below base-year levels. As such, Slovenia is the only EU-12 Member State projecting to meet its Kyoto target with a combination of domestic policies and measures and the use of Kyoto mechanisms and of carbon sinks39.

As it was clear that Slovenia will not reach its Kyoto targets without further measures, changes to the Slovenian EPA were made to include two more Kyoto flexible mechanisms into the already existing emission trading scheme – "joint implementation" and "clean development mechanism". The amendments to the EPA also include provisions that encourage Slovenian companies to use joint investments and become holders of project activities in the "joint investments host countries". Such provisons can only be used for co-financing joint investment project activities in the pre-investment phase. Despite the possibility to finance such projects and indirectly reduce GHG emissions, there is a serious doubt whether companies will use such an opportunity, because of the bureaucracy that is required in order to even start such a project[40].

Despite all the legal requirements that are set out in the legislation the problems are real, because of them Slovenian companies mostly do not participate in the European trading scheme. This means that each year they just have to either return all allocated emission allowances to the state or they buy extra (abroad or from Slovenian companies that have emitted less) if they emitted more GHG emissions that were allocated to them. The problem lies with the Slovenian state, because also the ordinance on the national plan for the allocation of emission coupons for the period 2008-2012 determined that all emission allowances for the period 2008-2012 were allocated to operators at no charge. This has meant that companies that have used and are using the allocated coupons are encouraged to build installations that are even more environmental unfriendly. It should be noted that this is a deeper problem coming from the EU, in that it allows member states to decide whether they will allocate coupons for free or emission coupons will be auctioned or sold in another way. Another problem with the free allocation of emission coupons is that every European country has the opportunity to determine, by itself, how many emission coupons will be allocated to each industrial sector – this is something that Slovenia is using in order not to burden its companies that are included into EU ETS.

The consequences will be seen in 2012. The preliminary estimates, on the basis of Operational program limiting greenhouse gas emissions until 2012 shows, that Slovenia will have to buy approximately

[39] EEA Report No. 5/2008:http://reports.eea.europa.eu/eea_report_2008_5/en

[40] Natural or legal person intending to implement a joint investment in another state party to the Kyoto Protocol and obtain ERU or CER, shall submit to the ministry an application containing:

1. a document in which the competent authority of the host State Party of joint investment confirms that the project contributes to sustainable development in its territory,

2. project documentation drawn up in accordance with the decisions of the body responsible for the Kyoto Protocol,

3. a statement on the fulfillment of conditions and procedures specified for implementation of joint investments in accordance with the decisions of the responsible body referred to in the preceding point, and

4. Other data required by the ministry for approval of joint investment.

800,000 tonnes of CO_2 to 1.000.000 tonnes of CO_2 annually. That comes to about 20,000,000 Euros (based on an average cost of 20 Euros per tonne ofCO_2). If there will be no sources in Slovenian budget, which could cover these costs, there is a chance that Slovenia will not be able to fulfil its obligations from Article 3 of the Kyoto protocol.

c) Suggestions

Despite the adoption of the European Unit Emission Scheme and despite the already ongoing emission trading, the legal nature of the right to emit greenhouse gases is still not determined. Directive 2003/87/EC namely defines only a loose definition of the right to emit and leaves its details to be determined by individual Member States. Slovenian legislation, that determines greenhouse gas emission trading, is similar to other Member States and defines the right to emit as an entitlement on which a certain amount of carbon dioxide equivalent may be emitted into the atmosphere. However, a more precise legal qualification is still needed. There should be a strong discussion in order to qualify emission allowances more precisely and to confer or seize some of the in praxis already established rights. In the trial emission trading period it was proved that trading with emission allowances can be performed no matter its legal nature. Nevertheless to increase a legal certainty on the market and to avoid possible problems in court trials (when the EU ETS will really start to work properly), a more precise and unified legal nature of allowances should be determined[41].

3. Environmental procedural laws

a) List of the analyzed laws and their climate protection relevance

General Administrative Procedure Act (1999): Zakon o splošnem upravnem postopku; last amended in July 2008, available as unofficial consolidated text.	
Act on the Access to Information of Public Character (2003): Zakon o dostopu do informacij javnega značaja; last amendment on Official Journal, Nr. 117/2006.	
Environmental Protection Act (2006): Zakon o varstvu okolja; last amended in January 2009, available as unofficial consolidated text.	This act also has a special provision regarding access to environmental data: national authorities, municipal authorities, public agencies, public trust funds and other bodies governed by public law, holders of public powers and providers of public services, must facilitate access to environmental data to all interested parties when that is prescribed by law or regulations governing access of the public to public information.

b) Main problems of the analyzed laws in the branch

All administrative procedures, that means also environmental procedures, in Slovenia are led according to the provisions set in the General Administrative Procedures Act. Note: it has no special provisions regarding climate protection.

[41] As an interesting example how to qualify the emission allowances, United States case law and definition could be used, where the allocation of the SO2 emission allowance does not constitute a property right.

The Act on the Access to Information of Public Character, accepted in 2006 in its first Article determines that with its adoption, Directive 2003/4/EC of the European Parliament and of the Council, of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC are implemented into Slovenian legal system. The same diction is used in the amendments to EPA made in 2008.

In none of the acts are there any exact provisions regarding climate protection. The problem however is mainly with regard to public participation, because there is no guarantee that suggestions and remarks made by the public will be considered or even accepted, even though they are referring to climate protection. As such, NGOs, and others that commented acts, are not informed, where and how much their comments and suggestions were accepted or included into the proposed act.

In Slovenia there is still a problem of gaining the status of an "NGO acting in public interest", even though there have been some changes to the EPA[42]. Still it is not determined, who (Ministry of the Environment or Environmental Agency) grants the status of "NGO acting in public interest." As such for that reason no NGO has received a status of acting in the public interest yet. Consequently the only subjects that can initiate, or appeal administrative proceedings or file lawsuits against the violators of environmental law, are those that are directly affected by the violation.

However data regarding climate is considered as environmental information and therefore is publicly accessible[43].

c) Suggestions

As explained before, the Directive 2003/4/EC was transposed to the Slovenian legal system twice – with the Act on the Access to Information of Public Character, accepted in 2006, and with the last amendments to the EPA, where there is a special chapter: Environmental monitoring and environmental information.

Provisions regarding public participation should be more detailed in order to make public participation more effective. It is essential that it is finally determined, which organ will grant the status of "NGO acting in public interest" in order to allow NGOs to take part in different environmental decision-making procedures.

[42] The main obstacle for NGOs to acquire such status is a financial audit which is required by ZVO (art 153) for NGO that applies for the status. Such financial audit can be costly and also quite unnecessary for NGOs (Slovenian legislation otherwise prescribes yearly financial audits only for commercial corporations that employ more that 50 people – there are no such or similarly big NGOs in Slovenia). The changes made to EPA now include provision, that there is no need for an NGO to provide an audited report on financial management, but in that case it will not be able to participate in the decision making procedures according to EPA (issuing environmental protection consent or IPPC permit, measures for remedying environmental damage).

[43] Environmental data is also data on emissions, waste and dangerous substances, including information on the relevant environmental burdening, and on environmental accidents.

4. Laws on development planning, spatial planning and construction

4.1. Spatial planning law

a) List of the analyzed laws and their climate protection relevance

Spatial Planning Act (2007): Zakon o prostorskem načrtovanju; last amended in July 2008, available as unofficial consolidated text.

Rules on the criteria for the planning of spatial arrangement and intervention into space on the best agricultural area outside the territory of s community (2008): Pravilnik o kriterijih za načrtovanje prostorskih ureditev in posegov v prostor na najboljših kmetijskih zemljiščih zunaj območij naselij; last amendment in Official Journal, Nr. 110/2008. [44]

b) Main problems of the analyzed laws in the branch

The Spatial Planning Act does not include any direct provisions regarding climate protection. There is only one article dealing with sustainable development, saying that with spatial planning the state and a self-governing local community must provide a quality, living environment, with a use of space which enables the needs of the current generation to be fulfilled and does not pose a threat to the needs of future generations, and by taking into consideration long-term environmental protection, nature conservation and the sustainable use of natural goods and other resources and overall preservation of cultural heritage.

In the report[45] on the impact of the national strategic spatial plan the part which relates to the environmental aspect, a description and assessment of the impact of the implementation of the national strategic spatial plan on the attainment of environmental objectives, in accordance with the Environment Protection Act should be carried out.

The problem of the Spatial Planning Act is the fact that, even though there are provisions that enable public participation by the preparation of national and municipal spatial plan, there are no penalty provisions if the right to participate is broken or comments of the public are not considered.

The rules on the 'criteria for the planning of spatial arrangements and intervention into space on the best agricultural areas outside the territory of a community' does have one article, by criterion, for planning. It says that the environmental aspect, especially climate change, should be considered in case of intervention into agricultural area. However it is not specified how these should be considered and what the consequences are if it is not.

c) Suggestions

Changes made to the SEA and EIA procedures, with the inclusion of climate protection provisions, would also mean the inclusion of climate protection issues into spatial planning procedures. Also the Spatial Planning Act itself must be changed in order to give penalty provisions, so that the public will

[44] There are quite some more acts, but do not have any relevance with climate change. There are quite some more acts, but do not have any relevance with climate change.

[45] Article 24 of the Spatial Planning Act determines that a special report on the impacts of the national strategic spatial plan should be carried out in order to get a description and assessment of the impacts of the implementation of the national strategic spatial plan on the economic and social development of the State and to achieve the environmental objectives.

have possibility, other than going to the administrative court, to obtain their rights and have them followed if their comments and suggestions are not considered appropriately.

4.2. Construction law

a) List of the analyzed laws and their climate protection relevance

Construction Act (2002): Zakon o graditvi objektov; last amended in March 2008, available as unofficial consolidated text.
Rules on efficient use of energy in buildings (2008): Pravilnik o učinkoviti rabi energije v stavbah; published in Official Journal, Nr. 93/2008.

b) Main problems of the analyzed laws in the branch

No special provisions regarding climate protection are included in the Construction Act. Similarly with the spatial planning chapter, changes made to EIA procedures, with the inclusion of climate protection provisions, would also mean the inclusion of climate protection issues into construction procedures.

Rules on efficient use of energy in buildings include provisions that are indirectly connected to climate protection, as these rules determine which technical requirements have to be fulfilled for the efficient use of energy in buildings. Fields covered include: heat protection, heating, ventilation, cooling, air conditioning, and lightning of the building. These are in accordance with the Directive 2002/91/EC and are used in the design and construction of new buildings and renovation of existing buildings.

c) Suggestions

Connection to those laws which have climate change relevance should be made. Relevant legislation should be changed so that it is obligatory for investors (and not only for big infrastructure projects, but also for smaller individual houses) that climate protection issues are included in the relevant permits. Only if these requirements are fulfilled, then can an operating permit be issued by the competent body. Additionally the Slovenian government should also promote climate protection issues more, especially by: issuing construction permits, stimulating energy efficient buildings and more educational programmes for consumers (such as how to be more energy efficient, how to contribute to the reduction of GHG as individuals,…).

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CZECH REPUBLIC

1. General environmental laws

1.1. General environmental laws (particularly air protection)

a) List of the analyzed laws and their climate protection relevance

Environmental Protection Act (*Act No. 17/1992 Coll., on the Environment).* (z.č. 17/1992 Sb., o životním prostředí)	In the area of protection of the environment the act defines the basic principles and definitions, obligations and liabilities of individuals and corporations, as well as certain sanction mechanisms.
Nature and Landscape Conservation Act (*Act No. 114/1992 Coll., on the Conservation of Nature and Landscape).* (z.č. 114/1992 Sb., o ochraně přírody a krajiny)	The act deals with landscape and biodiversity protection. Namely defines the forms and rules for Natural Protected Areas, implementation of NATURA 2000 and basic administrative rules; including rules on public participation in nature protection. This law is relevant to climate protection with regard to the protection and enhancement of carbon sinks through proper landscape management.
Air Act (*Act No. 86/2002 Coll., on the Protection of Air and the Amendment of Certain Other Acts).* (z.č. 86/2002 Sb., o ochraně ovzduší a o změně některých dalších zákonů)	The Act sets targets, principles and tools for air pollution protection.
Integrated Pollution, Prevention and Control Act *(Act No. 76/2002 Coll., on integrated pollution prevention and control, on the integrated pollution register and on amendments to some Acts).* (z.č. 76/2002 Sb., o integrované prevenci a omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci))	The Act sets-out the rules for integrated permit proceeding.

b) Main problems of the analyzed laws in the branch

The Environmental Protection Act (hereinafter EPA) defines the basic principles and definitions in the area of environmental protection. As it provides the general framework for environmental protection, it is generally relevant for the interpretation and application of the lower level of (specific) environmental law. According to the EPA the environment is "*[…] everything creating natural conditions for the existence of living organisms, including human being […]*", specifically mentioning the air, water, rocks, soil etc – but not mentioning the climate. This makes the text of the EPA ambiguous in this respect.

Nevertheless climate protection could be arguably interpreted within the general definition of the environment.

The Nature and Landscape Conservation Act (hereinafter "NLCA") contains a number of elements highly relevant to climate change mitigation, as well as adaptation (protection of the wetlands, integrated approach on creation and protection of "areas of ecological stability", protection of native species). It also provides rules on the participation of non-governmental organizations in nature protection relevant proceedings. However, similarly to the EPA, all these climate relevant effects are not explicitly envisaged in the text of NLCA within the terms of climate protection. Although the assessment of such effects cannot easily be simplified, and should be based on a clear scientific basis, this gives no obstacle to introduce climate protection as one of those interests to be taken into consideration under the NLCA procedures.

According to the Air Act, emissions of greenhouse gases are generally included in the scope of the regulated activities. However the Air Act, nor it's implementing executive regulations, does not refer to climate protection. Thus the possible involvement of climate protection considerations into the application of, even general, air protection measures is not based on solid and unambiguous legal foundations. There is a specific loophole missing under general emission limits for methane. Although methane is the only GHG mentioned in the list of pollutants with general emission limits, the limit still has not been set! Yet regards environmental charges, methane is the only GHG which has a charge rate for emissions.

Similarly the Integrated Pollution, Prevention and Control Act (hereinafter IPPC) does not address climate protection directly. Although IPPC applies to the biggest industrial pollution sources, on one side the law does not explicitly oblige operators to consider climate protection in the application for permit. On the other, the IPPC restrictively empowers the authority to set emission limits for GHGs, as only in the case there is a significant local impact of such emissions.

c) Suggestions

- Climate should be included explicitly in the definition of environment under EPA.
- Climate protection should be listed as one of the general goals to be considered in the nature and landscape protection.
- The Air Act should be amended with the clear reference to climate protection goals and principles.
- The opportunity for adoption of the general emission limits for the all GHGs from the Kyoto GHG basket should be considered.
- General emission limits for methane should be adopted.
- Climate protection should be included as one of the goals to be considered during the IPPC permitting procedure.

1.2. Environmental impact assessment regulation

a) List of the analyzed laws and their climate protection relevance

The EIA Act *(Act No. 100/2001 Coll., on environmental impact assessment and amending some related Laws (the Law on environmental impact assessment).* (z.č. 100/2001 Sb., o posuzování vlivů na životní prostředí a o změně některých souvisejících zákonů (zákon o posuzování vlivů na životní prostředí))	The act sets-out the targets, principles and rules of Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA). Both proceedings are potentially very relevant for the enforcement of climate protection goals, since they should ideally provide a detailed assessment of the environmental impacts of certain investment or strategy prior to its realisation.

b) Main problems of the analyzed laws in the branch

Although "impacts on climate" are included within the general scope of the assessment under the EIA Act, actual enforcement of climate protection considerations within the environmental impact assessment and strategic environmental impact assessment procedure in the Czech Republic is weak. One of the reasons is a lack of specification of climate protection principles and targets to be pursued (actually the lack of a binding general climate protection framework). This means that there can hardly be found any relevant climate protection criteria to which the subjects of EIA/SEA procedure (including public) can refer.

In case the EIA proceeding is conducted, the result has the form of non-binding opinion. As a consequence this situation severely undermines opportunities for the enforcment of environmental considerations during the subsequent permit proceedings. Other identified problems are connected mainly to the erroneous transposition of EU directives 85/337 and 2001/42:

- There is no legal definition of "public concerned" in the Czech legal system which, contrary to EU directive 85/337 (EIA directive),[46] restricts the scope of subjects that can participate in the EIA proceeding as well as to initiate its judicial review.
- Art. 6 par. 2 of the EIA directive is not transposed properly – the EIA Act does not require certain procedural information to be published (e.g. a list of subsequent permitting proceedings and list of responsible public authorities, details on public participation etc.).

c) Suggestions

- Incorporation of climate protection aspects into the EIA/SEA procedure should be strengthened either by reference to or inclusion of criteria for the assessment of project impacts on climate.
- Results of the EIA proceedings should be binding for the subsequent permit proceedings.
- The definition of the term "public concerned" should be amended to the text of the EIA Act.
- EIA Act should be amended so that it would be in accordance with the Art. 6 para. 2 of the EIA directive.

[46] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

2. Climate protection laws

a) List of the analyzed laws and their climate protection relevance

National Programme to Abate the Climate Change Impacts in the Czech Republic *(2004, hereinafter "the National Programme").* (Národní program na zmírnění dopadů změny klimatu v České republice)	Non-binding strategic document of the Czech government for identifying the climate protection goals of the Czech Republic and the measures to be realized to achieve them.
ETS Act *(Act No. 695/2004 Coll., on the conditions of greenhouse gas emission allowance trading and amending certain laws).* (z.č. 695/2004 S., o podmínkách obchodování s povolenkami na emise skleníkových plynů a o změně některých zákonů)	The act implements the EU Emission Allowances Trading Scheme in the Czech Republic.
Air Act *(Act No. 86/2002 Coll., on the Protection of Air and the Amendment of Certain Other Acts).* (z.č. 86/2002 Sb., o ochraně ovzduší a o změně některých dalších zákonů)	The act implements the EU Regulation No 842/2006 on certain fluorinated greenhouse gases.

b) Main problems of the analyzed laws in the branch

The Czech Republic emits about 25% less GHG than in the base year (1990), and thus it will have no problem with fulfilment of its eight percent Kyoto emission reduction target. Similarly to other CEE countries, this situation appeared mainly as consequence of the collapse of heavy industry after 1990. Although other indicators do not show such optimistic results, for example the Czech Republic is still approximately twenty percent above the EU average on CO_2 per capita and there are serious problems related with also heavy increases of GHG emissions from transport[47]. However, the fact that the Czech Republic's international climate protection commitments are already met – even exceeded - has reduced legislator's ambitions in the area of the legislative measures.

There is no general "climate protection" law in the Czech Republic, which would set binding targets and fundamental principles for climate protection measures, and the climate protection topic is not even fully integrated into texts of the general environmental laws (see above). The basic document in this respect is thus the National Programme. Although the National Programme sets, in some respects, ambitious[48] GHG reduction targets, these are in reality weak since they have a non-binding nature.

In the area of measures to achieve the climate protection objectives the National Programme emphasizes mostly non-legislative measures. Only a limited number of legislative measures are

[47] The GHG emissions in 2006 increased in comparison with 1993 by 114 % for CO_2 and 121 % for N_2O.

[48] The first target is to reduce GHG emissions per capita by 30 % comparing to 2000 before 2020, which would practically mean achieving the current EU average. The second target is to reduce aggregate CO2 emissions by 25% comparing to 2000 after the end of Kyoto period. This target is partly ambiguous since it does not provide a clear timeframe after 2020.

mentioned there; for example the Air Act, IPPC and the integration of climate protection tools into the Czech Law are rather connected to the transposition of the relevant EU legislation.

The European Union's Emission Trading Scheme is a tool with the highest relevance to mitigation efforts in the Czech Republic. However during the first trading period (2005-2008) the effect of the ETS was watered down by a massive over-allocation of emission allowances to operators.[49] One of the biggest deficits of the ETS Act was the fact, that the procedure of National Allocation Plan (NAP) preparation did not allow effective public participation. The members of public and NGOs were only entitled to send comments to the NAP draft and they were not entitled to participate in the NAP consultation procedure, nor to initiate any review procedure. Similarly participation in the procedure of obtaining an operator's permit is strictly limited to the applicant (operator); thereby excluding the public from decision-making, although the ETS Directive[50] envisages the integration of the procedure with IPPC permits.

c) Suggestions

After adoption of the EU Energy Climate Package in December 2008 there will be no NAPs and the allocation will be partly based on the values from the NAP 2008 – 2013. However the experience with the NAP preparations emphasize the need for effective public control of the EU ETS:

- Public participation rights within the EU ETS related procedures should be strengthened (i.e. the ETS permit procedure should be integrated within the IPPC).

3. Environmental procedural laws

a) List of the analyzed laws and their climate protection relevance

Administrative Code *(Act. No. 500/2004 Coll., Code of Administrative Procedure).* (z.č. 500/2004 Sb., správní řád)	General law on administrative procedures, which is applied in most of the environmental protection related proceedings.
Code of Administrative Justice *(Act No.150/2002 Coll., Code of Administrative Justice).* (z.č. 150/2002 Sb., soudní řád správní)	The act sets conditions and rules for challenging the administrative decisions in front of the court.
Access to Information Act *(Act. No. 106/1999 Coll., on Free Access to Information).* (z.č. 106/1999 Sb., o svobodném přístupu k informacím)	The general law on rules and conditions for public access to information.

[49] The first NAP allowed installations to emit 97.6 million tonnes of CO2 per year. The real amount of emitted CO2 was around 83 million tonnes peryear.

[50] Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version),

Act on Access to Information on the Environment *(Act. No. 123/1998 Coll., on Access to Information on the Environment).* (z.č. 123/1998 Sb., o právu na informace o životním prostředí)	The act sets rules for access to information on the environment special to the general rules under the Access to Information Act.
Integrated Pollution Registry Act *(Act. No. 25/2008 Coll., on Integrated Register of Pollution and integrated Reporting System in the area of environmental protection and amending certain laws).* (z.č. 25/2008 Sb., o integrovaném registru znečišťování životního prostředí a integrovaném systému plnění ohlašovacích povinností v oblasti životního prostředí a o změně některých zákonů)	The Integrated Registry provides publicly accessible information on yearly emissions of various pollutants sorted by their sources, including GHG.
Environmental Inspection Act *(Act. No. 282/1991 Coll., on the Czech Environmental Inspection and its functions in forest protection.)* (z.č. 282/1991 Sb., o České inspekci životního prostředí a její působnosti v ochraně lesa)	This general act defines the powers and responsibilities of the Czech Environmental Inspection, which has a crucial role in controlling the proper implementation of most of the environmental laws.

b) Main problems of the analyzed laws in the branch

There is no specific climate reference in the texts of the analyzed general procedural law, even though the application of general procedural laws may significantly affect the application of the climate protection measures. The identified loopholes potentially diminish the effective protection of the rights of the affected public or other public interests (including the climate protection) as there are relatively high criteria for awarding preliminary measures (injunctions) and in cases challenging unlawfully issued permits in front of the administrative court. Even when suits have been submitted by the affected public, judges have rarely ruled for preliminary measures, injunctions or similar measures. Thus, court rulings are often being delivered at a moment when the investment is already complete (often months or years after the cases in question were submitted).

c) Suggestions

- The criteria for awarding preliminary measures (injunctions) and similar measures should be lower in cases where an affected public is suing to challenge permits related to implementation of an investment project.

4. Laws on development planning, spatial planning and construction

4.1 Spatial planning law

a) List of the analyzed laws and their climate protection relevance

Building Code (*Act. No. 183/2006 Coll., on town and country planning and building code).* (z.č. 183/2006 Sb., o územním plánování a stavebním řádu (stavební zákon))	This is the fundamental, comprehensive law that sets the objectives, principles and rules on procedure of all spatial planning proceedings. Certain elements of planning proceedings are further specified by the set of executive regulations (listed below).
Regulation No. 500/2006 Coll., on the planning analytical materials, planning documentation and planning record. (vyhl. č. 500/2006 Sb., o územně analytických podkladech, územně plánovací dokumentaci a způsobu evidence územně plánovací činnosti)	--
Regulation No. 503/2006 Coll., on planning permission proceeding, public law contracts and planning measure. (vyhl. č. 503/2006 Sb., o podrobnější úpravě územního řízení, veřejnoprávní smlouvy a územního opatření)	--

b) Main problems of the analyzed laws in the branch

The Building Act which came into force in the middle of 2006, reformed the structure of spatial planning tools in the Czech Republic. Relatively new tools were introduced and have the most relevance to the climate protection, they include the: Spatial Planning Politics (SPP – which is setting general strategic objectives and principles of spatial planning on the national level) and Principles of Spatial Planning (PSP – regional strategic spatial planning document), but are still in the process of their adoption.

As a part of the process of adoption or amendment of these strategic documents, the specific procedure, replacing the SEA procedure, was introduced by the Building Act. From the point of view of presence of the climate protection approach, there is only a general reference to climate in the scope of those impacts that should be assessed under this procedure. Similarly to the EIA Act analyzed above, such reference without clearly stated climate protection targets and principles cannot ensure that a climate protection approach will or can be applied. Still compared to the 'classical' SEA procedure the procedures under the Building Act also contain a number of other restrictions with potentially significant and negative impacts on the quality of environmental impact assessments of strategic spatial planning documents.

- Compared to the EIA Act, the Building Act contains only a restricted number of procedural rules for impact assessment of SPP and PSPs, which means there is inadequate public control of the public administration.
- The impact assessment opinion issued under the Building Act is not automatically binding for the final decision, as the law only requires it to be considered during the process.
- There are no consolidated rules on the publishing of information during the SPP, PSPs and spatial plans adoption procedure. The rules vary for each type of the document and the level of providing information to public is insufficient, namely with regard to the EIA Act standards.
- Opportunities for public participation in the SPP and PSPs adoption procedure are very restricted. Core agreements are usually achieved only on the ministerial/regional government level and thus are very difficult to be influenced by the members of public.
- SPP is adopted by a decision of the Government, which means that there is almost no opportunity for initiating of judicial review of the process.
- The Ministry for Regional Development fails in its role of supervisor of the legality of spatial planning procedures mainly in terms of defending of public interests related to protection of the environment.

c) Suggestions

- Climate protection references should be integrated into the text of the Building Act.
- The missing general rules for SEA, laid down in the EIA Act, should be integrated into the text of the Building Act.
- The rules on publishing documents during the spatial planning procedures should be changed according to the rules in the EIA Activities.
- The decision on the necessity for a spatial plan environmental impact assessment should not be left to the exclusive discretion of the public authority; an inquiry procedure, similar to the inquiry procedure under SEA, should be adopted.
- Environmental impact assessments should be obligatory during the preparation of PSPs and spatial plan drafts.
- Jurisdiction in spatial planning procedures should be transferred to the Ministry of Environment.

4.2 Construction law

a) List of the analyzed laws and their climate protection relevance

Building Code (*Act. No. 183/2006 Coll., on town and country planning and building code).* (z.č. 183/2006 Sb., o územním plánování a stavebním řádu (stavební zákon))	This is the fundamental, comprehensive law setting the objectives, principles and rules on procedure of construction permit proceeding.

Energy Act *(Act No. 406/2000 Coll., on energy management).* (z.č. 406/2000 Sb., o hospodaření energií)	This act transposed the general requirements of EU Directive 2002/91/EC on the energy performance of buildings into Czech law.
Regulation No. 137/1998 Coll., on general technical requirements of construction. (vyhl.č. 137/1998 Sb. o obecných technických požadavcích na výstavbu)	--
Regulation No. 498/2006 Coll., on authorized inspectors. (vyhl.č. 498/2006 Sb., o autorizovaných inspektorech)	--
Regulation No. 499/2006 Coll., on documentation of constructions. (vyhl.č. 499/2006 Sb., o dokumentaci staveb)	--
Regulation No. 526/2006 Coll., by which certain provisions of the Building Act are enforced. (vyhl.č. 526/2006 Sb., kterou se provádějí některá ustanovení stavebního zákona ve věcech stavebního řádu)	--
Regulation No. 148/2007 Coll., on energy performance of buildings. (vyhl.č. 526/2006 Sb., o energetické náročnosti budov)	This regulation provides a detailed methodology for preparation of Energy Performance Certificates for Buildings, as well as setting binding requirements for energy performance of newly constructed or re-constructed buildings.

b) Main problems of the analyzed laws in the branch

The Czech Republic has a huge potential for energy savings in administrative builings and public housing. Almost 60% of all energy consumed every year for heating, electricity and warming of water could theoretically be saved if effective energy saving measures would be adopted.[51] Therefore, in the Czech Republic the construction law has a significant potential in climate protection. The Building Act introduces only a general and vague duty to consider protection of the environment during the preparation of documentation for construction, as well as during construction works. However, it does not contain any reference to climate protection; not even an indirect one, since the climate protection approaches are not sufficiently integrated in the relevant general environmental laws.

[51] The expert studies on this issue may be found at: www.hnutiduha.cz/potencial_uspor.

The Czech Republic has transposed the Directive 2002/91 that provides the framework for adoption of energy performance requirements for new constructed or re-constructed buildings. It also introduces Energy Performance Certificates (EPC) for buildings. The fulfilment of the energy performance requirements, which should be proved by an EPC, will be one of the conditions for acquiring the construction permit. However, the following aspects will undermine the effects of the measure:

- Insufficiently rigorous level of energy performance requirements.
- An ambiguous methodology for the preparation of an EPC, which can allow artificially positive energy performance characteristic of the surveyed building.

c) Suggestions

- Climate protection should be introduced, on the general level, as one of the public interest and be considered under construction law procedures.
- The effectiveness of implementation of energy performance requirements, in terms of climate protection, should be reviewed after a certain period (particularly in terms of the actual level of sufficiency as well as potential misfires in EPC elaboration procedures).