

Findings and Conclusions, Concepts and Directions of Climate Legislation

Progress and New Challenges

in Austria, Czech Republic, Germany, Hungary
and Romania

Position Paper

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This Paper shows a **comparative outline** on the legal framework and progress with regard to climate protection in **Austria**, the **Czech Republic**, **Germany**, **Hungary** and **Romania**. The national reports are available here: <http://justiceandenvironment.org/publications/climate-change>

Introduction

As all **climate change considerations should be integrated** into all environmental and spatial planning concerns the outline focuses on different sectors of interest, legislation aiming at reduction of emissions and stabilization of climate change (**mitigation**) as well as the adaptation to the changes. Beneath others, these countries joined an international treaty, the **United Nations Framework Convention on Climate Change** (UNFCCC), to cooperatively consider what they could do to limit average global temperature increases and the resulting climate change, and to cope with whatever impacts were, by then, inevitable. By the adaptation of the **Kyoto Protocol** in 1995 the parties committed themselves to legally binding emission reduction targets. The Protocol's first commitment period started in 2008 and ends in 2012. As members of the European Union mentioned states have to conform to the Union's legal framework regarding climate change – in particular to the so called EU **Climate Change and Energy Package** of December 2008.

Attainment of the Kyoto Targets

The individual emission reduction targets of the Kyoto Protocol have been only partly fulfilled. Only **Hungary** (2009: 32%) and the **Czech Republic** (21,5%) were able to comply with their obligations taking into account that these significant reductions are a consequence of the industrial and economical changes in the aftermath of the cold war, when the production of GHG emissions decreased in almost every economic sector including industry and agriculture. They are unrepeatable – this is proved by the fact that in the Czech Republic in comparison with 2002 GHG emissions increased about 8 %. Meanwhile the Austrian and German emission reduction targets were not achieved.

In achievement of the targets set by the Kyoto Protocol various legislative measures have been taken by the states. Both the Czech Republic and Hungary promulgated the UNFCCC and the Kyoto Protocol in their national law. Acts on the establishment of **Emission Trading Systems** have been issued in Austria, the Czech Republic, Hungary and Germany – partly in implementation of the EU Emission Allowances Trading Scheme.¹ The Romanian legal framework does not provide a unified law on the trade of emission certificates, but disposes of several provisions and governmental decisions regarding the establishment and the

¹ Austria elaborated a Bill for a new Act on a System for Trade of Emission (EZG 2011) – still not in force

methodology of a trading scheme for emissions of green house gas certificates. Both Hungary and Austria established a monitoring and report system regarding the trade of emission certificates.

Support of Renewable Energy Sources

The support of the use of renewable energies is fostered by all 5 states using different regulative instruments. The **Austrian** Green Electricity Act² aims at an increase of the production of electricity from renewable energy sources and the promotion of new technologies. With the Act on the Climate- and Energy Fund³ support mechanisms for research and development regarding sustainable energy technology in the areas of public transport, environmentally sound goods transport and the promotion of sustainable energy technology on the market have been established. A Federal Agreement tends to ensure the establishment of funding models for eco-friendly construction techniques.

Germany adopted a broad variety of regulations in promotion of the use of renewable energies in the last few years. In June 2011 the Government decided on an 'Energy Transition' legislative package in order to reorganize Germany's energy production (shift from nuclear power to renewable energy). This package contains a Grid Expansion Acceleration Act (NABEG) which should foster the faster development of the energy supply grid to be ready for the growing sources of renewable energies and contains an Amendment of the Nuclear Energies Act re-establishing the exit out of nuclear energy until 2022. Expansion targets in the energy concept were established by an amendment of the Renewable Energies Act (REA).⁴ A draft for climate friendly development of cities and towns implies changes in construction and planning law which is mainly directed on supporting the repowering/retrofitting of wind power plants, besides it encourages neighbourhood specific solutions for climate protection.

The **Hungarian** Electricity Act promotes the use of renewable energies. The use of renewable energy and mitigation of GHGs in transport is promoted by the Act on Biofuels⁵. By the Energy Tax Act⁶ the creation of energy for personal use is exempted from taxation. By the new Hungarian Development Plan financial support by the European Structural Funds is to be used amongst others for the increase of the use of renewable energy sources and the promotion of sustainable production and consumption patterns. The Act on the Natural Gas Supply ensures same conditions in the generation of biogas and natural gas. Several Government Decrees tend to transpose EU Directives on renewable energies into national law – as there are the Directive 2001/77/EC on Electricity Production from Renewable Energy Sources, the Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market, the Directive 2002/91/EC on the Energy Performance of Buildings, the Directive 2002/91/EC and the Directive 2006/32/EC on energy end-use efficiency and energy services.

²Green Electricity Act 2012:Ökostromgesetz 2012; published in Official Journal I No. 75/2011

³ Act on the Climate- and Energy fund (of 2007): Klima- und Energiefondsgesetz; published in Official Journal I No. 40/2007.

⁴35% RE until 2020, 50% until 2030, 65% until 2050 and 80% until 2080.

⁵ Act No. 117 of 2010

⁶ Act No. 88 of 2003

Within its State Energy Policy and the National Program for Energy Management and the Use of Renewable Energies the **Czech Republic** stipulates goals regarding the increase of renewable energies and energy effectiveness. In implementation of these goals the Czech legal framework regulates the management, methods and promotion for the use of renewable energies, it provides support for the electricity generation from biomass and sets a basic framework for the use of biofuels, which contains specific emission reduction targets.

In **Romania**, on political level a plan has been approved in 2010 regarding the establishment and development of a green investment scheme. Likewise political commitments concerning the promotion of energy efficiency of residential buildings have been made. In addition a financial guide concerning the promotion of renewable energies has been approved on governmental level (MoE).

Climate Change Strategies and Adaption Measures

In the light of climate protection political strategies have been elaborated in all five countries. The **most far reaching strategy** is found in **Germany** where a conceptual framework for legal regulations for matters of climate protection exists and is implemented since 2007. In September 2010 an energy concept was presented by the German Government where first commitments for a voluntary agreement to reduce greenhouse gases after 2020 were made. The targets are a reduction of 55% until 2030, of 70% until 2040 and 80-95 % until 2050.

The **Hungarian** Climate Change Strategy sets general long term objectives and priorities which have to be implemented by National Climate Change Programs. Furthermore it contains adaption policies. The strategy sets strategic targets, listing the tools by which these targets can be reached. The first National Climate Change Program for the years 2009-2010 contains the measurements to be taken in order to mitigate GHG-emission in the sectors of energy, transport, agriculture, and waste- and sewerage management.

In the **Czech Republic** the National Programme to Abate the Climate Change Impacts identifies climate protection goals, fields and procedures of adaption as well as the respective measures to be set. A draft "Climate Change Policy" of the MoE defines six basic fields of adaption, but a strategic valid document concerning the climate change adaptation does not exist in the Czech Republic so far.

Quite short term orientated is the **Austrian** Climate Strategy, which just embraces the Kyoto targets for the period 2008 to 2012 (contains information on measures to support the use of renewable energy sources as well). Adaption measures in Austria are quite "individual and reactive" and no systematic legal approach on this issue has existed so far. With the establishment of a national climate protection committee by the new Austrian Climate Protection Act actual strategies and principles will be subjected to permanent discussion processes.

The **Romanian** Climate Change Strategy ended with the year 2007, this strategy has not been renewed since then. In Romania no global Climate Change Strategy exists anymore (last period 2005 – 2007) but during the last years certain National Plans regarding the

allocation of GHG certificates or the reduction of GHG emissions in civil aviation have been approved.

Climate Change Acts

Even though in **Germany** quite far reaching strategies and sectoral regulations exist in the combat of climate change, no specific Climate Change Act has been issued so far. In Germany main attention is paid on regulations on environmental energy.⁷ Some federal states have initiated or already enacted Climate Protection Laws (e.g. Hamburg in 2010). A federal state working group on Climate, Energy and Mobility – Sustainable Development ensures discussion and better cooperation in this matter.

Austria's Climate Protection Act was issued on 22nd November 2011 and its goal is to enable a coordinated realisation of effective measures to protect the climate, as there are the reduction of GHG emissions and the enforcement of carbonate reductions. A climate protection committee and advisory board has been established, as well as report obligations and Responsibilities in case of exceeding maximum amounts of greenhouse gas emissions have to be determined. Critical points of the acts are that

- no legal obligation to meet climate protection targets based on various obligations under international law as well as European law were determined
- long term goals in connection with reduction obligations and furthermore enforcing measures were left out, and
- effective coordination between the federal state and the Länder was not stipulated

In **Hungary** the National Council for Sustainable Development elaborated a technical draft for a Framework Act on Climate Change. This Bill contains long- and short-term emission mitigation targets, adaptation strategies, it provides for a separate economic and financial basis for climate protection. Furthermore it establishes ways for public awareness rising and participation in decision-making processes, includes research and assessment activities for climate protection and the design of an institutional framework on climate protection. The mentioned bill counted with a broad support of civil society. However, the Hungarian Parliament (the bill was submitted in January 2010) did not vote for the bill. Since the new Hungarian government is in place the bill was not taken on the agenda again.

In 2009 a proposal of a Climate Change Act as an amendment of the ETS Act incorporating just a few CC Act principles was submitted to the **Czech** Parliament. The draft contains a basic mitigation target but was of very vague wording, providing insufficient scope as well as an insufficient enforcement framework. This draft was not supported by the Parliament and since then no other draft of a Climate Change Act has been presented.

Romania does not dispose of a separate Climate Change Act, but has adopted several Governmental Decisions and Programs since 2009.

⁷Acts on renewable energy, on the use of biofuels, biogas and so on.

Public Awareness Raising

The **Austrian** law hardly provides provisions on awareness raising regarding climate change – on strategic level the topic is taken up, and it is planned to create a “national communication concept” which should contain target-group oriented awareness raising measures.

Ultimately with the Register on the Release and Transfer of Pollutants opened the possibility for the public to access environmental data of factories and other enterprises. The only obligation by law regards consumer information regarding fuel consumption and CO₂ emission of cars (Austria, **Hungary**). Acts on Environmental Information ensure the access to information on environmental topics and provides for systematic distribution and availability of these information (Austria, **Czech Republic**) – these acts transpose the EU Directive on public access to environmental information (2003/4/EC) into national law. Furthermore does a State Programme of Environmental Education exist in the Czech Republic, stipulating basic principles of state environmental education. Germany moderately improved public participation in the energy infrastructure development.

No broad **participation** of civil society in the elaboration processes of legislative measures, strategies or programmes can be observed so far.

Research Activities

Research activities on the topic of climate change are determined primarily on political level by programs and strategies – proper legal instruments for the promotion of research activities are scarce. Not even most of the (drafted) Climate Change Acts cover this issue. Solely the Hungarian bill covers the issue on research and development.

Recommendations

1. The political commitment to the combat of climate changes should be declared by **comprehensive national long-term strategies** – including measures and areas of adaptation as well as the relevant legal measures to be taken within this framework. Modes of **public participation and awareness raising** on climate protection should be included, as well as a reference to the EU Energy and Climate Change Package. A **systematic legal approach** in the elaboration of such strategic programs would be desirable and an assessment of existing programs recommendable.
2. To address the measures to be taken against climate change **the need for a systematic legal framework** is still existent. An assessment of, and a harmonization with existing regulations, plans and strategies should be carried out. Currently most of the legal documents or documents in process **do not include long-term goals**, legal obligations to meet climate protection targets, effective coordinative measures and **do not establish effective mechanisms of sanction**.
3. Furthermore a **broader involvement of the public** into the decision making process ensures the effectiveness and sustainability of environmental plans and legal measures, and would be recommendable. The establishment of an **institutional body** assigned to the situation assessment and the elaboration of environmental plans and principles in strong cooperation with the public would be advisable in this respect.

4. An analysis and inclusion of **environmental procedural laws** into the focus of legal measures on climate change could lead to effective and positive impacts.
5. In promotion of **renewable energies** more attention could be paid on the **construction** sector – implying renewable energies into construction and planning law. Equally the support mechanisms for **research and development** regarding sustainable energy technology should be extended. In this area the cooperation with the federal states should be strengthened.
6. In order to raise public awareness on climate protection – the elaboration of **educational programs** as well as **binding legal provisions** on the public information within the sectoral regulations are recommendable.
7. **Research activities** should receive bigger support – e.g. by establishment of special funds and respective provisions on the funding schemes.

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