

Climate change aspects within EIA proceedings

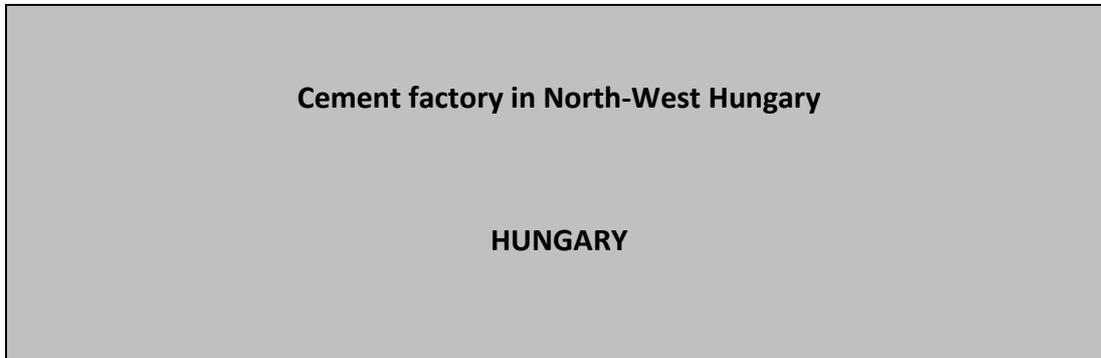
Hungary: Cement factory in North-West
Hungary

Case Study

Justice and Environment 2012

Climate change aspects within EIA proceedings

Case study



Art. 3 (b) and Annex No. IV. of the Directive of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (EIA Directive - 2011/92/EU) laid down that environmental impact assessments shall identify, describe and assess in an appropriate manner direct and indirect effects on climate, and shall include a description of the aspects of the environment likely to be significantly affected by the proposed project, in particular – and inter alia - climatic factors, and the inter-relationship between all the factors mentioned therein. Climate relevant impact of a plan should be assessed but in practice it is very limited and formal without deeper evaluation.

1. Title of the case

New cement factory near to the Danube

2. Description of the project

2.1. Features of the project, location, likely environmental impacts etc.

Holcim Hungary plans to build a new cement plant in Nyergesújfalu, near to the Danube, in North-West Hungary. The company already has a cement factory not far from there, in Lábatlan. Based on their explanation after having the new factory (which actually would have a capacity four times larger than the already existing one) they will close the old and outdated one. There are no facts about that issue, no time limits for the closure procedure and it is just mentioned even in the EIA.

Increase of air pollution and destruction of nature protection areas are the most significant environmental problems of realization of the project.

2.2. Does the project have likely harmful impacts on the environment, especially on climate?

The global cement industry contributes around 6% of all man-made CO₂ emissions and is consequently responsible for around 4% of man-made global warming.¹

The cement industry has four major emissions which have effect on climate change. These emissions are dust emissions, sulphur, NO_x and CO₂. The contribution to global warming by the cement industry of the first three is not significant. However, in contrast to dust, sulphur and NO_x emissions, CO₂ emissions from the global cement industry are significant - and they are increasing. Global cement production is currently around 1.6Bt/y, and through the calcination of limestone to produce calcium oxide and carbon dioxide, approximately 0.97t of CO₂ is produced for each tonne of clinker produced. The contribution of the global cement industry to worldwide man-made CO₂ emission is about 6%. Cement has no viable recycling potential; each new road and building needs new cement.

(<http://www.nytimes.com/2007/10/26/business/worldbusiness/26cement.html>)

¹http://www.ecocem.fr/bibliotheque/bibliographie/ecologie/33_le_changement_climatique_et_l_industrie_du_ciment_royaume_uni_en.pdf 12.11.2012

In Hungary, the CO₂ emission arising from cement production is around 2 million tons/y, which is 4% of the total national emissions of CO₂. The given project would result in further 1,5 million ton/y emission².

3. Applicable national regulation

3.1. Which are the main national provisions transposing the EIA Directive?

Act LIII of 1995 on the general rules of environmental protection (“EPA”) and Government Decree No. 314/2005 (“Government Decree”) together regulate the procedure of the environmental impact assessment. The Environmental Act contains general rules, while the Government Decree transposes the rules of the EIA Directive into the Hungarian legal system.

3.2. Does the national regulation on EIA demand taking climate change aspects into consideration in the procedure?

Article 6 (1)(b) of the Government Decree provides that the environmental impact assessment should identify the probable impact of the project on the climate. Annex 6 of the Government Decree contains detailed rules on what the environmental impact study supplied by the developer should contain. Section 3 of Annex 6 provides that the study should assess the impact of the project factors on the climate as well.

4. Description of the impact assessment procedure

4.1. Type of procedure, competent authorities, claimants and other participants involved

The Environmental Impact Assessment (EIA) procedure took place - on the first instance - at the North-Transdanubian Inspectorate for Environmental Protection, Nature Conservation and Water Management. The investor, the Holcim Hungary Ltd. submitted the preliminary environmental impact study to the (KTVF) in 2004.

² <http://legszennyvezes.hu/component/content/article/45-iparagak-terhelese/62-klimagyilkos-cementgyartas> 12.11.2012.

The EIA process is already finished; after the decision was appealed, the company got the IPPC permit on the second instance from the National Inspectorate for Environment, Nature and Water (National Inspectorate), which is the licensing authority on the second instance.

Several neighboring municipalities and NGOs working at the local and national level - as claimants in the lawsuit - appealed at the court against the decision of the National Inspectorate, and - based on the rules of the Hungarian court proceedings - the National Inspectorate is the respondent and Holcim Hungary Ltd. is interferer on the Inspectorate's side.

The aim of the court procedure is to decide, if the decision (and the proceeding) of the inspectorate regarding the environmental authorization procedure (EIA and IPPC) was in line with the legal provisions or not. The procedure at the court is still pending.

In the procedure environmental NGOs and individuals having their residence in the impacted area are also participating.

4.2. Does the project have likely harmful impacts on climate?

Taken the technology into account, the project likely will have harmful impacts on climate as mentioned above (see points 2.1-2.).

4.3. Did the assessment meaningfully evaluate the likely impacts of the project on climate?

The claimants have several arguments in the case, but the two most important which need scientific considerations as well are the air pollution and the nature protection issues.

As regards the air pollution, the debate is about how far the polluting components from the factory will spread, and if this pollution can be allowed in the given area. There were prepared different calculations on the spreading of the polluting components, especially on PM10 and based on these calculations the claimants have 5 different affected areas calculated which range from 1600 meters to 4700 meters.

This is a very important question actually, because based on the national law, in the affected area there are several restrictions, for example it is not allowed to have residential houses and the EIA documentation should have analyze all of these issues. The largest affected area is based on the calculations of the National Weather Service, which is the main institute of pollution control and meteorology in Hungary, not an authority in the procedure however.

The opinion of the National Weather Service has been prepared on our client's request in the EIA procedure.

The main problem regarding the air pollution and the calculations of the area affected by the pollution is that the Hungarian regulations do not require one special standard on those calculations; there are several standards which can be used and it is up to the investor to choose from those approved standards.

The EIA study calculated with the affected area of the smallest range and climate issues were not mentioned in the authorities' decisions at all.

- 4.4. Had the claimant or other participants stressed the priority of preventing climate change? If yes, had been these arguments taken into account?

During the EIA procedure the likely harmful environmental effects of the project were stressed by the clients. In their submissions the problem of climate change was also tackled throughout mentioning the problems of air pollution and increase of emissions. The environmental authority did not evaluate the climate change considerations in merit.

5. Outcome of the proceedings / content of the final decision

This is a case of an environmental impact assessment procedure (EIA) started at 2004, finished in 2008 and still under decision at court. The court has ordered a court expert in the proceeding who finally stated that some of the relevant regulations have been not fulfilled.

The method followed by the Holcim Ltd. when the basic and already existent pollution of the affected area were measured was found questionable. The court expert prepared a different calculation on the affected area than the calculation used in the EIA; it was mentioned that there are some data and calculations which are missing from the EIA study, so it is a question, how the inspectorate could properly control the EIA study etc.; however, at the end the expert made a finding, that the EIA study can be accepted regarding air pollution issues.

Following this first expert opinion, the court decided, to order a second court expert on the air pollution issues. The task of the second expert was to decide on the relevant calculations of the extent of affected areas and if the calculation of the EIA study, the calculation of the first expert, or the calculation of the National Weather Service is correct. Finally, this second expert prepared very detailed calculations and determined that the calculation of the National Weather Service shall be accepted.

6. Obstacles/Challenges generated in this case

Regarding cement production, in Hungary there is also a big debate about the likely effects of this activity (and all the connecting activities) on the environment. Making cement means making pollution, in the form of carbon dioxide emissions. The present study is aimed to show how the authorities ignore climate change aspects when assessing the possible environmental effects of several projects.

„It can also be noted that the ten companies experiencing the highest surplus of EU allowances in 2009 belong to the steel and cement sectors (six steel producers and four cement companies - the full list of these companies is included in our EU ETS Companies database).”³

Although the CO₂ emissions of cement factories - and thereby the adverse effects on the atmosphere and climate - are recognized by the European Union⁴, and in spite of the national regulation which demands to take climate considerations also into account, the environmental authorities did not evaluate the effects of the projects on climate change in merit.

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³<http://www.carbonmarketdata.com/cmd/publications/EU%20ETS%202009%20Company%20Rankings%20-%20June%202010.pdf> 12.11.2012

⁴<http://www.cemnet.com/Articles/story/39871/cement-under-the-eu-ets.html> 12.11.2012