

Climate change as justification of projects harmful to the environment

Position Paper

Justice and Environment 2012

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Introduction

Since 2008, Association of Justice and Environment (J&E) as a European Network of Environmental Law Organizations studies the legal questions of fighting against climate change on national as well as on EU level. Based on the surveys of J&E's lawyers, analyses and studies collecting, comparing the national legal responses to climate change, and presenting the climate relevant legislations of MSs had been prepared during the past four years. Concluding from its researches, J&E criticized that EIA and SEA do not keep pace with the development of certain real processes and they do not incorporate the assessment of climate related impacts.

The survey

This year – aiming to contribute to the EU policy and legislation on climate change – J&E was working on the question how deeply and to what extent climate change considerations are taken into account in the environmental assessment procedures.

The EU legislation on EIA procedures requires assessing the given project's impacts on climate¹, and the SEA Directive² also contains references to climate change; however – in J&E's point of view - these are far from being proportionate to the gravity of the problem. To evaluate the assessment of climate change aspects in practice, case studies on EIA and SEA proceedings of climate relevant projects were elaborated. On the other hand, EIA and SEA cases where climate change aspects earned special attention from the decision-makers were studied by J&E as well.

The focus - and therefore also the result - of the survey were double. On one hand assessment of climate relevant impacts of plans falling under the scope of EIA/SEA legislation was found by J&E to be very formal without deeper evaluation³ - authorities even pointing out that climate change needs to be tackled by national and international political action and not within an EIA of single projects.- On the other hand, however, it was found that arguments referring to the problem of climate change are often used to justify projects having harmful impact to the environment (e.g. planning and building wind – or hydro power plants in special protection areas).

- *Examples*

As the Austrian case⁴ on the EIA procedure of two run-of-river hydro plants at the Mur River - Gössendorf and Kalsdorf - presents, the national authorities brought out climate change as one of the main arguments contributing the project in the EIA procedure.

¹ 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;

² 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 programs on the environment

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<http://www.justiceandenvironment.org/files/file/2012/CC%20in%20EIA%20analysis%202012.pdf>

⁴
<http://www.justiceandenvironment.org/files/file/2012/CC%20case%20study%20Austria.pdf>

Since two thermic power plants are operating within the immediate surroundings of the project sites, no superior interests for the construction of the respective power plants could be shown, and the Mur floodplains are counted among the biggest connected floodplains in Austria and conservation-worthy. Although the given project will probably endanger the nature conservation area on which it will be carried out and the authorization according to the national Water Management Act (exception of the prevention of deterioration) was not justified, the authorities consequently pointed out that a general public interest exists for the use and expansion of hydropower and tackling climate change and therefore also actions contributing to this aim, are of a particularly important public interest. This argument was the principal justification that was not based on any real assessment of the project's impact on lowering the current GHG emissions.

In the Hungarian case⁵ about the extension of the lifetime of the Paks Nuclear Power Plant the expert opinion prepared to the EIA report expressed that *“nuclear power plants do not emit greenhouse gases, nor any other conventional depleting resources.”* Furthermore, it was also stated that *“Nuclear energy is environmentally more beneficial than other conventional energy producing methods, because with safe operation it does not encumber the environment on a short term.”* Thus, while ignoring the long term impacts of producing nuclear energy, authorities used climate change considerations to approve the development of nuclear energy.

Beside the extension of the life-cycle, establishment of new blocks are also planned in Hungary. The National Energy Strategy indicates that nuclear power is considered as a mean of reducing CO2 emission, thus meeting the challenges of climate change. In justification of nuclear energy producing and the extension thereof, the challenge of climate change is referred as basic argument on governmental, as well as on public authority level

Conclusions and recommendations

This paper – based on its reference documents - is dedicated to present the hypocrite approach followed by decision-makers in permitting projects causing threat to the environment or destruction therein.

It is not rationally comprehensible why on the one hand environmental authorities use climate change as a superior public interest to justify the construction of hydroelectric power plants in nature protection areas and leaving aside all other relevant negative impacts on the environment and on the other hand do not consider climate change at all in such climate relevant sectors as e.g. the transport sector.

The expansion of renewable energies is not to be considered as an end to itself and climate change cannot justify threat or destruction to the environment. J&E has the firm belief that in EIA/SEA processes it is to be examined and identified that climate change aspects and the interests of environmental values (e.g. nature/water protection) - assessed regarding to the related substantive

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<http://www.justiceandenvironment.org/files/file/2012/CC%20case%20study%20Hungary.pdf>

EU legislation - are balanced and climate change is not used as an excuse for establishing projects destructing nature or water resources or resulting in threat to the environment.

Based on our conclusions – in accordance with the preliminary results already published⁶ - we recommend:

- to amend the EIA and SEA legislation on EU level in order to clarify how climate change considerations shall be assessed in these procedures in merit
- guidelines to be prepared on EU level in order to ensure balance between the interests of tackling climate change and other environmental values in environmental permitting procedures.⁷

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The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.



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<http://www.justiceandenvironment.org/files/file/2012/CC%20in%20EIA%20analysis%202012.pdf>

⁷ As an existing solution to the problem, the Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions (February 18, 2010) might be mentioned, which document provides guidance on how the authorities should analyse the environmental effects of GHG emissions and climate change when they describe the environmental effects of a proposed action.

http://ceq.hss.doe.gov/nepa/regs/Consideration_of_Effects_of_GHG_Draft_NEPA_Guidance_FINAL_02182010.pdf