

The level of protection of forests in EU law in relation to climate change issues

Position Paper

Justice and Environment 2012

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Introduction

J&E is a European Network of NGOs working on environmental law issues. We are developing our work based on NGOs experiences in national law and promote them at international level. Working in climate change area as well on EIA matters, we found that there is a big gap in EU legislation regarding the protection of forests.

Forests are seen mostly as a source of biofuel and are valued for the production of timber. Such approach is valid, but if in the same time there is no provision concerning protection of forests then there is a great danger concerning the future of climate change. Climate change policies are focused more toward reduction of emissions, but not to protecting the forests as the most important and largest natural carbon storage facility. This should be the principal function of the forests considered and protected at EU level. Documents like Green Paper on forests are misleading and creating the feeling the forests in Europe do not need special protection. However from our experience we learned that this might not be the case. We learned that although there is some legislation enforced at national level for protection of forests, there are not enough protection measures.

In Romania a Greenpeace report showed that the level of illegal logging is very high – 3 ha per hour. Between 2000 and 2011, 280.108 ha were cut and degraded. Out of these, 48,95% were inside a protected area (most of the natural parks, scientific reservations, etc. became Natura 2000 sites after Romania's accession to EU)¹. Forests are regulated by The Code of Forests² that provides a certain level of protection. However recent proposals to modify the code were criticized by NGOs, Greenpeace but also the Environmental Coalition of NGOs from Romania for allowing massive clear cuttings on large areas. The Environmental Coalition of NGOs from Romania argued that the recent proposed modifications of the Code are responding to the increasing demand of timber on the market (sustained also by EU view on forests as timber resource over forests as CO2 storage facility), lack of criteria for preserving the biodiversity and for management of private forests that will increase due to the proposed modifications. The proposal is still pending at the Parliament but NGOs arguments were not considered during the debates until now. The code has no provisions regarding the protection of forests undisturbed by man that are about 218500 ha according to recent Greenpeace studies and almost nonexistent in other MS. In the code there is no provision regarding the protection against climate change by preserving forests.

In Slovakia protection of forests falls in the scope of Forest Protection Law and Nature Protection Law, however application of these laws does not provide for their sufficient protection. For example the Forest Protection Association Wolf issued a report³, which concluded that illegal logging is often justified and explained by nature protection authorities as “calamity cutting”. Despite general rule provided by law that that no

¹ <http://www.greenpeace.org/romania/ro/campaigns/schimbari-climaticie-energie/paduri/activitati/Romania-cuts-down-3-hectares-of-forest-per-hour/>; https://mail-attachment.googleusercontent.com/attachment/u/0/?ui=2&ik=7ae5710920&view=att&th=13bae6e25403990c&attid=0.1&disp=inline&safe=1&zw&saduie=AG9B_P8Djqbd9pf4hHff-FYRNsjN&sadet=1355842261347&sads=stXz-8aLm0e0DhPNZg26NTH6jz8

² Law no 46/2008

³ <http://www.wolf.sk/sk/lesy/zasahy-v-rezervaciach>

clearcutting of forests may be allowed, large scale logging is permitted due to the very general wording of exceptions provided by the Nature Protection Law⁴. General wording and wrong application of forest protection provisions may result in logging even the most precious forests in Slovakia.

Regarding the relation between forests and climate change, in general, in all MS analyzed, (Slovenia, Slovakia, Austria, Hungary and Romania), the relation between climate change and forests is hardly reflected in the law or in the EIA procedures. Cutting down forests leads to climate change due to CO₂ release, and desertification. The use of timber and conversion of forests to other land use for activities is likely to produce GHG together with the disappearance of large areas of forests is not regulated in national or EU law. In two case studies in Romania large areas of forests were cut down to develop a lignite mine and a national road. In Rovinari case the deforestation was considered a project and no cumulative effects were analyzed considering the potential of climate change of disappearing of over 50 ha, together with the mining activity and with the energy produced from biofuels. In DN 66 case a national road is built through Natura 2000 Site and protected forests are supposed to be cut. Parts of them are *forests untouched by man*. To the NGOs arguments that such forests should be preserved, the answer of the authorities was that there are no legal provisions regarding the protection of such forests.

In Slovakia forests in “Tichá” and “Kôprová” valleys may be considered undisturbed forests. However, two former Ministers of Environment who did not allow calamity cutting in mentioned valleys (did not permit issuance of exception from nature protection regime) are facing criminal charges for “threatening environment by leaving the dead wood on the ground thus allowing pests, especially bark beetle to spread and cause damage”.

The conflict between preserving forest and so called threats caused by the dead wood in untouched sites – as well as conflict between forest management and nature conservation - are present in Slovakia as well in Romania. However the forests managed to survive such “calamities” for centuries until the industry was developed increasing the anthropic impact. We think that the very few undisturbed forests sites remaining in Europe should be protected by European law and not being exploited for collecting the so called dead wood that is in fact used as biofuel, thus generating more GHG from burning.

Compensation measures regarding afforestation should also be regulated at EU level. In several cases compensation measures were not afforestation but paying money to the state budget representing the economic value of the forests, or they were not done properly as the trees planted were from different species or were all the same species, so that the forest that will result will not be as strong in adapting and resisting to climate changes nor to function as CO₂ natural storage facility as a natural forest would be. Deforestation (clear cuts) shouldn't be allowed in exchange of any compensation measures.

⁴ Law No 543/2002 C.c. on Nature Protection allows authorities to issue exception in case:

- *activities are related to state control;*
- *activities concern management of protected area – in compliance with nature protection documentation;*
- *it is determined in writing that such activity is proved to be inevitable for providing management of protected area;*

of an imminent danger of safety to Slovakia by foreign power or if activities are related to protection of state borders

If such location, inside a forest, would be absolutely necessary for a project then first the amount of GHG produced as a result of the project and as a result of CC produces by cutting down the forest on the project location and what the CC consequences will be until the moment when the new planted forests will really function as CO₂ storage should be assessed, as it is well known that a forest takes decades until it reaches maturity and can fulfill such functions.

Regarding the forest management plans, they should be subject of SEA and of public participation procedure. According to our studies (Slovakia, Romania, Hungary, Austria) only in Romania and Slovakia such plans would be subjects to these procedures. Even in Romania and Slovakia there still are problems related to applying SEA and public participation procedure to the forest management plans. **In Romania** Greenpeace requested such acts from the central administration – Minister of Environment and Forests and Romsilva – The National Administration of Forests, but they just refused to communicate the information stating that they are not public, without providing an answer. Greenpeace sued them and the case⁵ is still ongoing since 2010. **In Slovakia** the forest management plans became subject of SEA recently as a result of modification of legislation. Until now the participants to the proceedings were only individuals and legal entities that were directly affected by the plans. We consider that a clear relation between forest management and SEA procedure should be made by amending the SEA Directive and also in future regulations regarding forest that should be adopted at EU level.

We ask the European Commission to act now and provide real protection for forests against illegal logging and against deforestation that would destroy the most effective and environmental friendly carbon storage facility, before the increase of forests area signaled at EU level will stop and eventually start to decrease as a result of a legislation encouraging the economic exploitation and no real protection of forest.

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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.



The Position Paper of J&E is supported by Greenpeace.



⁵ File no 67942/3/2011, Bucharest Tribunal