

Summary of climate change relevant legislation and climate change acts

Monitoring Report

Justice and Environment 2012

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Introduction

Association of Justice and Environment (J&E) as European Network of Environmental Law Organizations has studied the legal questions of fighting against climate change on national as well as on EU level for four years. In 2012 J&E aimed to have climate change aspects in environmental assessment procedures better and more effectively integrated, to have climate change and other environmental protection aspects assessed in a more balanced way, and to contribute to ceasing projects having harmful effects on climate¹.

J&E has always looked at the problem of climate change as something that requires a complex solution, including regulatory measures and legal tools. Most of the Member States of the EU have National Climate Strategies with either narrower or general scope; however, these policy documents have no immediate legal relevance and comprehensive legislative regulation on climate change is lacking or those are not sufficiently effective.

The Climate Change Act of the United Kingdom from 2008 inspired the legislative efforts taken in some EU Member States. These steps were followed-up by J&E and beside collecting and assessing laws relevant to climate change, it broadened its analysing focus to the drafts and bills prepared that time.

Surveys of J&E in the area of climate change legislation

Both in 2008 and 2009, J&E has examined the relevant regulation on climate change, and in 2010 a larger project was developed focusing on direct legislative efforts to tackle climate change, its causes and effects.

J&E has followed a holistic approach that climate change considerations should not be considered separately, as the problem includes energy, transport, housing, economic growth, water supply and water management issues as well.

These analyses collected, presented, assessed and compared legal provisions having climate relevancy in five EU Member States (Hungary, Austria, Estonia, Czech Republic, Slovenia) and consisted also overview of common problems.

The analyses pointed out the climate relevance of the listed laws, highlighted problems, missing topics and provided recommendations to solve the problems found.

Each report presented the provisions on emission mitigation, adaptation to the impacts of climate change and research activity of the existing legal documents and of the published drafts and concept papers of the future national climate change acts.

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<http://www.justiceandenvironment.org/files/file/2012/CC%20Position%20Paper%202012.pdf>;
<http://www.justiceandenvironment.org/files/file/2012/CC%20in%20EIA%20analysis%202012.pdf> 20.11.2012

Based on the analyses of 2008 it could be said that the countries had formed strategies and programmes setting out objectives, yet guarantees that they will be achieved have not integrated in the legislation.

In 2009, lawyers of J&E had monitored the legislative development in climate change topic. Primarily, J&E planned to study and analyse the climate change acts of MSs and to held by a model framework act or even official drafts in 2009.

By that time the legislation procedures were underway in Austria, Hungary, the Czech Republic and Slovenia. Most of the states were planning to integrate the results of the Copenhagen Climate Conference (2009) in their drafts.

Concluding from the former surveys, it could be said that general environmental law and air protection law are very complex branches of law and there are great number of different legal acts which have relevance to climate protection; even if they are not addressed as climate protection laws.

Although the regulation on EIA and SEA procedures requires that the climate relevant impact of a plan shall also be assessed, in practice this obligation is quite superficially fulfilled by the authorities.²

The Austrian analysis in 2009 mentioned that *“assessment is confined usually to the involvement of the sentence – compared to the total Austrian emissions the increase caused by the concrete project is irrelevant.”*³

J&E also stated that explicit climate protection legislation was often limited and established a scheme for greenhouse gas emission allowance trading. The crucial points in these regulations was that these were not exhaustive and precise enough, there were problems with the legal definition and legal nature of „right to emit GHG’s”, with lack of control for emission allowances and with over-allocation.

Climate aspects were not integrated into spatial planning and development plans. In these plans there are air protection and sustainable development objectives at most, but not any climate relevant provisions. In 2009, by monitoring the climate relevant legislative development, it was found that there is no direct or systematic legal approach to adaptation, public awareness and research activity issues.

In 2010, the main goal was to achieve that an effective and enforceable climate change act will be advocated and adopted in certain EU Member States through The Big Ask Campaign. The most typical legal obstacles in the process of the preparation of a draft CC Act were identified by J&E through analysing the following aspects:

² In 2012, focusing on this problem, J&E prepared case studies and summarized its findings in its publications published on

<http://www.justiceandenvironment.org/publications/climatechange2012>

³ <http://www.justiceandenvironment.org/files/file/2010/03/JE-Climate-change-study-2008-greenblocks.pdf> 16.p.

- legal coherence
- relationship of a national CC Act to international legal framework
- potential conflicts with existing rules on international trade
- relationship of a national CC Act to Community Climate Change legal framework
- potential conflicts with the EU competition rules
- relationship to other national energy, climate related legislation
- scope of a CC Act
- emission trading schemes
- energy efficiency and use of renewable energy sources
- waste management
- adaptation to the impacts of climate change
- public awareness and education
- implementation and enforcement of a CC Act
- standard tools
- fixed emission reduction targets
- corresponding limitation on carbon use
- periodic and final reporting
- policies and proposals for meeting the targets

The study presented the best practices as well as the flaws in the schemes. Conclusions and recommendations of the analysis carried out in 2010 stated that a national legislation on climate change, a national CC Act:

- ✓ can be stricter than the EU law based on environmental policy competence (Art. 192 of TFEU);
- ✓ cannot be stricter than the EU law based on energy policy competence (Art. 194 of TFEU);
- ✓ does not generally contradict to freedom of trade;
- ✓ can regulate emission trading if not conflict with the EU legal framework;
- ✓ can incorporate waste prevention targets;
- ✓ should contain provisions on adaptation and regulate public awareness, education and research activity;
- ✓ is advised to contain annual targets, annual statement of emissions;
- ✓ should be prepared through involving multi-stakeholder bodies;
- ✓ should be enforced by government mechanisms and the public should be provided the opportunity to use direct enforcement tools.

In 2012, J&E monitored the process and outcomes of adopted CC Acts and existing drafts in the following countries: Austria, Czech Republic, Estonia, Germany, Hungary, Slovenia, Spain, Romania and Croatia.

Provisions on fighting against climate change are found in several pieces of environmental legislation in most of the countries; for example, in **Estonia**, provisions that are necessary to fulfil international/EU level obligations (e.g. provisions on emissions trading) are mostly found in the Ambient Air Protection Act. Other acts, such as Environmental Impact Assessment and Environmental Management Systems Act contain only a few isolated references to the climate change.

Having comprehensive regulation on climate change is however more less common. In **Austria**, the competent legislator has already adopted the „*Bundesgesetz zur Einhaltung von Höchstmengen von Treibhausgasemissionen und zur Erarbeitung von wirksamen Maßnahmen zum Klimaschutz (Klimaschutzgesetz – KSG)*“⁴ proclaimed by Federal Law Gazette I Nr. 106/2011 and which is in effect since the 22nd of November, 2011.

In **Spain**, the Autonomous Community of the Basque Country prepared a bill which was under discussion at the Basque Parliament but during fall of 2012, the Basque government called for elections and the Parliament was dissolved.

In **Slovenia** the Climate Change Strategy has been already prepared but not adopted by this time. Under the time of the former government, the draft of CC act was prepared and there was intention of its adoption; however the new Slovenian government has not clear position regarding the adoption of a comprehensive climate change regulation.

Hamburg is the only federal state having a CC Act in **Germany**⁵; in the federal States North Rhine Westphalia (NRW) and Baden Württemberg there have been CC acts already drafted⁶. In NRW the first parliamentary reading took place on the 5th of July, 2012 and the draft was transferred to the parliamentary commissions. Baden Württemberg is currently drafting a climate change act and Berlin was close to adopting one, but due to problems in the coalition governing the federal state, the initiative failed.

Closing remarks

There are Climate Change Acts in effect only in Austria and in one of the federal states of Germany, Hamburg; however, there is not any act providing comprehensive regulation on climate change in Estonia, Czech Republic, Hungary, Slovenia, Spain, Romania and Croatia.

Five countries or federal states (Hungary, Slovenia, the Autonomous Community of the Basque Country, and three federal states of Germany: North Rhine Westphalia, Baden Württemberg and Berlin) have already drafted bills on climate protection, but these have not been adopted yet.

Based on its surveys, J&E has the firm belief that to reach emission targets of EU there is a need to have effective and comprehensive national legislation on climate change.

⁴ http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01255/fname_222951.pdf

⁵ http://www.umwelt-online.de/recht/energie/laender/hh/klig_ges.htm

⁶ <http://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMD16-127.pdf>, http://www.um.baden-wuerttemberg.de/servlet/is/90866/Gesetz_mit_Begruendung.pdf

However, adoption of a Climate Change Act – without obligation arising from EU law - depends mostly on the political will of the governing bodies. In J&E's view, strong EU policy on having comprehensive climate change regulation in the Member States would significantly contribute to the efforts against this global challenge.

Contact information:

name: dr. Ágnes Gajdics
organization: J&E
address: 1076 Budapest, Garay u. 29-31.
tel/fax: 36 1 3228462/36 1 4130300
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org

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