

Climate change aspects in environmental impact assessment procedures

EIA and Climate Change

Legal Analysis

Justice and Environment 2012

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Introduction

In 2012, lawyers of the Association of Justice and Environment (J&E) have been studying the problem of evaluation climate change aspects in environmental assessment procedures. Following a dual approach, J&E aims to present that - on the one hand assessment of climate relevant impacts of plans falling under the scope of EIA/SEA legislation is very limited and formal without deeper evaluation; on the other hand however, J&E is aiming to study the problem, that arguments referring to the problem of climate change often are used to justify projects causing environmental destruction, e.g. in planning and building wind – or hydro power plants in special protection areas or having critical water impacts.

Preliminary results

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.

In order to show the depth - or rather the shallowness - of assessment of climate change aspects in impact assessment procedures, case studies on EIA/SEA proceedings of climate relevant projects are being prepared and will be published by J&E.

Concluding from more than half of the case studies already finalized, as preliminary result of the survey, J&E states that - in spite of that the EU legislation includes provisions on taking climate aspects into account – the authorities only formally mention climate change aspects in practice of EIA proceedings.

As the **Austrian case** on the EIA proceeding for the construction of the A5 Northern Motorway describes, the project were split in several parts – and thereby subjected to separate EIA procedures. By this method an overall assessment of environmental impacts for the whole motorway project is hardly possible – especially considering that the impact assessment for the northern part - which started already in 2006 - has still not been finished. Particularly with regard to climate relevant emissions, which according to the Austrian EIA Act need to be taken into account, the whole motorway project with all its implications has to be examined on climate change relevant factors.

The transport sector is responsible for about 60% of the whole Austrian NO_x emissions. In spite of this, the authority did not evaluate the likely impacts of the project on climate in an adequate way by providing only superficial and inconsistent assessments like "*climate change effects remain low*" or "*limited climatic impacts are restricted to the area around the traces*".

The Estonian case also demonstrates clearly, that even though impact of a project on climate should be analysed in its environmental impact assessment, this legal requirement is not fulfilled. The developer wishing to extract peat from the Raudsaare site had applied for an extraction permit. Direct greenhouse gas emissions resulting from the use of peat in combustion plants and further emissions from the extraction and drainage area could be identified as the project's harmful impacts on climate.

Although the project was known to have a considerable effect on climate, the relevant impacts were not assessed. In the given case, even local residents brought out in the EIA program phase that the project might have climate-relevant impacts. The supervisor of the EIA proceedings failed to pay due attention to the argument and it was not properly responded to by the developer or EIA experts.

The Czech case presents the EIA procedure of the Prunéřov power plants that was proposed to replace three existing blocks in the Prunéřov II and to prolong its life-time for another twenty-five years. The plan involves use of an out-dated technology that would fail to reach the required level of "Best Available Techniques" (BAT) as set out by the EU and Czech IPPC legislation. This legislation requires a minimum of 42 % net energy efficiency for the new power plant, while - resulting in additional and unnecessary CO₂ emissions – the operator proposes only about 38 %.

A separate expert report stated that GHG emissions of the plant are marginal and not able to cause serious environmental impacts such as rising sea level or melting glaciers. This conclusion was accepted by the decision-makers as well. The expert's conclusion was based on a comparison of the isolated GHG emissions of the single plant to global GHG emissions.

The other relevant side of evaluation of climate change aspects is being also studied by J&E via cases in two countries (*Austria and Hungary*) aiming to show that climate change arguments are indeed assessed and **used as justification to authorize projects resulting in negative impacts on other environmental factors.**

In the Austrian case analysing the EIA procedure of two run-of-river hydroelectric power plants at the Mur River - Gössendorf and Kalsdorf the assumption arose that climate change was used as strategic instrument to the pursuance of economic interests. Although the given project will endanger the nature conservation area on that 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 climate change and therefore also actions contributing to this aim, state a particularly important public interest.

In the Hungarian case about the extension of the lifetime of the Paks Nuclear Power Plant the expert opinion - that was prepared to the EIA report - expressed that "*nuclear power plants do not emit greenhouse gases, nor any other conventional depleting substances.*" Furthermore, it was also stated by the expert opinion 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.*"

While risks of producing nuclear energy have been clearly shown already¹, climate change considerations are used to contribute the development of nuclear energy.

Preliminary conclusions and recommendations

The ignorance of climate relevant factors within individual EIAs will definitely thwart the attainment of climate protection aims in the long run.

The cases studied have also shown the practical problem of how to approach the climate impact of large GHG emission sources in the assessment as required by the EIA Directive and the national EIA laws. Neither the analysed national nor EU laws provide clear guidance on the GHG emission threshold that should trigger an analysis of an individual project's impact on the climate. Such a threshold should however be based on a comparison of the size of the GHG source relative to other sources rather than to global GHG emissions. To do otherwise would lead to the absurd conclusion that there is no reason to reduce the GHG emissions of any single source of GHG emissions because of its "low level" or its "marginality."

The competent authorities would have to put more emphasis on the design alternative scenarios supporting the reduction of emissions and fostering climate protection. The assessment of climate impacts cannot be excluded by indicating that this is a political responsibility on national and international level. Climate relevant factors need to be given more importance in relation to economic, strategic and political aspects of not just infrastructure, rather climate relevant projects in general.

Referring to the results of preparatory works of J&E's survey from the other approach that in certain other EIA procedures climate change arguments are indeed assessed but used as justification by the authorities to authorize projects with huge negative impacts on other environmental factors, it also can be concluded that climate change is used as strategic instrument to the pursuance of economic interests - in some cases serving as thought-terminating cliché and in others left completely aside with the argument "this global phenomenon" is not to be combated on the project level within single EIAs.

Consequently, J&E has found it necessary that the EIA legislation with details on climate aspects shall be amended and - in order to clarify how climate change considerations shall be assessed in the EIA procedures in merit - guidelines shall be prepared on EU level.

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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¹ As regards the problem how climate change is referred as argument in the permitting procedures of projects having harmful impacts to the environment also will be published by J&E in details.