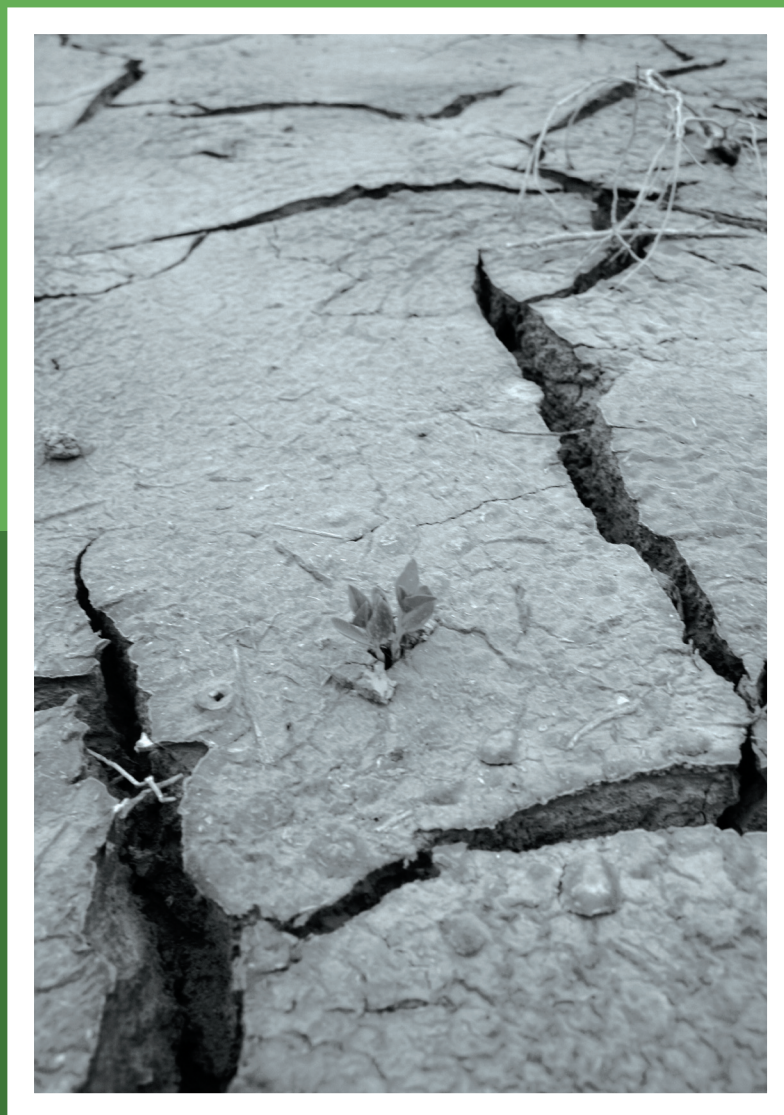


Justice & Environment Position Paper

CLIMATE CHANGE – 2008



Justice & Environment

Justice & Environment (J&E) is a European network of environmental law organisations. J&E is a non-profit association with a mission that *aims for better legislation and implementation of environmental law on the national and European Union (EU) level to protect the environment, people and nature*. J&E fulfils this mission by ensuring the enforcement of EU legislation through the use of European law and exchange of information.

J&E was created in January 2003 and founded as a non-profit association in September 2004. J&E currently comprises six full-member organisations: Environmental Law Service, Czech Republic (EPS); Estonian Environmental Law Centre, Estonia (EELC); Environmental Management and Law Association, Hungary (EMLA); ÖKOBURO – Coordination Office of Austrian Environmental Organisations, Austria; Legal-Informational Centre for NGOs, Slovenia (PIC); and the Centre for Public Advocacy, Slovakia (VIA IURIS). J&E also has six associate members: Environmental Justice Association, Spain (AJA); Centre for Legal Resources, Romania (CRJ); Front 21/42 Citizens' Association, Macedonia (Front 21/42); MilieuKontakt International, the Netherlands (MKI); Independent Institute of Environmental Concerns, Germany (UfU); and Green Action – Friends of the Earth Croatia, Croatia (ZA).

All J&E activities are based on the expertise, knowledge and experience of its member organisations. The members contribute their legal know-how and are instrumental in the initiation, design and implementation of the J&E work programme. The strong grassroots contacts of the members enable J&E to concentrate on Europe-wide legal issues and horizontal legislation, notably the: Aarhus Convention, environmental impact assessment, environmental liability, pollution, Natura 2000, transport and the building of legal capacity. Within these fields J&E: carries out analysis, compiles case studies and joint position papers; formulates strategic complaints, encourages discussion and legal education; and conducts outreach activities. Thus J&E provides added value from civil society to legislators and adds tangible benefits by broadening public knowledge of EU law and legislation.

To carry out its programme of work J&E relies on a number of donors and supporters. First and foremost the members themselves financially contribute to the network. However J&E has been supported by: the European Commission through the LIFE+ programme, the International Visegrad Fund (IVF), The Ministry of Housing, Spatial Planning and the Environment of The Netherlands (VROM), the Sigrid Rausing Trust and its own member organisations

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1. Background

Justice & Environment (J&E) is a European association of public interest environmental law organizations. J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the implementation and enforcement of the European Union (EU) legislation through the use of European law and exchange of information about its use.

In 2008, Climate Change was chosen by J&E as one of our main topics of concern. Based on previous and indepth professional deliberation, we decided to focus on the emission mitigation approaches and direct or indirect provisions which have legislative shortcomings or impacts on GHG emissions. J&E members from Austria (Ökobüro), the Czech Republic (Environmental Law Service), Estonia (Estonian Environmental Law Center), Hungary (Environmental Management and Law Association) and Slovenia (Legal informational Centre for NGOs – PIC) were involved in putting together a collection of climate relevant laws and legal analyses.

J&E members initially monitored the changes in national legislation regarding climate change. On the basis of these observations each member compiled a national list of the existing climate relevant laws. Each list contains between 25 and 75 pieces of law, as such within the comparative study there more than 200 have been analysed. However despite the fact that most of the analysed acts, regulations lack any direct reference to climate change they can contribute to the prevention of or protection against it.

Accordingly the national analyses and the comparative analysis encompass several pieces of law having direct or indirect climate relevance. We have followed a holistic approach based on the firm belief that climate change considerations should be integrated into all environmental and spatial planning concerns, including transport, housing, economic growth, water supply and waste management, and

should not be considered separately. In J&E's view climate change cannot be managed solely as an environmental problem, accordingly the environmental law can not tackle this problem in itself. There is the necessity for a collective, targeted, coordinated and consistent approach. This holistic approach should be followed by legislation aiming at reduction of emissions and stabilization of climate change (mitigation) as well as adaptation to the changes.

Based on this one-year comparative research, J&E members summarized the most pressing issues and outlined specific recommendations to be presented to governments of concerned countries, the European Commission (EC) and other interested stakeholders.

2. Findings and Conclusions

The comparative study has revealed the following shortcomings in the climate relevant legislation in the branches of law that were analysed.

1. In order to attain the Kyoto targets and to fulfil the related legal commitments deriving from international agreements and/or the membership of European Union different policy documents have been issued, usually called National Climate Strategy in the member states. There is no general act on climate protection ensuring "climate mainstreaming", neither in the legislative process nor in the interpretation and implementation of the laws. Even general environmental laws in all cases do not contain direct reference to the climate issue. Accordingly, political measures are preferred to legislative measures at the present time.
2. The assessment of plans, programmes and projects regarding their impacts on climate change – based on the European and national provisions on Environmental Impact Assessment (EIA) and Strategic Environmental Impact Assessment (SEA) – is very limited, both on the legal and practical levels.

3. Basically all explicit climate protection legislation is restricted to the transposition of international and EU acts, primarily on emission allowance trading systems in the member states. In our view these laws in themselves are not able to control the GHGs' emissions effectively.
 4. The imperfections in the environmental procedural legal provisions are undermining existing climate protection laws and their application. The 'polluter pays principle' has not been adequately integrated in the climate relevant laws in several member states.
 5. A key finding of the comparative research in the branch of spatial planning law is that climate change aspects have not at all been integrated in spatial and development plans. At the most there are provisions aiming at air protection or sustainable development.
 6. Climate protection in the construction law is restricted to the regulation of efficiency of energy consumption only.
2. The object of the main overall environmental, air and climate protection laws is to determine the basic climate protection approaches, to lay down the policy to be followed and elaborated by the different lower level environmental laws and by related branches of law. In order to make it more efficient and to strengthen the connection, it would be necessary to include eligible references in the most important environmental and climate protection laws to the different related branches of laws.
 3. The environmental impact assessment of certain plans and programmes, as well as concrete project plans, gives the opportunity for the integration of environmental aspects into economic and political decisions at the early stage of planning and implementation. The inclusion of a stronger provision on climate relevance, as an assessment criterion for alternatives and for the permit itself, as well as the obligation to introduce compensatory measures in case of negative impacts on climate, is necessary.
 4. Environmental procedural laws should be incorporated into the suggested comprehensive legal analysis on integration of climate change considerations. In particular the polluter pays principle should prevail in climate relevant laws. Additionally a comprehensive review of public participation issues and the structure of sanctions is necessary.
 5. Effective spatial planning is one of the many elements required in a successful response to climate change. All local and regional governments should be supported to demonstrate significant and measurable improvements in their response to climate change with regard to both mitigation and adaptation.
 6. Besides energy efficiency savings targets it is necessary to integrate climate change considerations in construction laws more comprehensively.

3. Recommendations

Our work has led us to the following recommendations to be considered both nationally and at the EC level.

1. In order to take "comprehensive precautionary measures and policies to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects"¹, the possible need for legislative measures in the scope of all general environmental acts should be studied. A comprehensive analysis, which would involve scientific, economic, legal and other aspects, should be conducted in order to determine, if and how climate change should be approached in general environmental laws.

¹ See more detailed Article 3(3) of UNFCCC and the Estonian national chapter of the comparative analysis issued by J&E 2008.

