

***Legal aspects of climate change.***  
***Hungarian perspectives***

**List of questions to be addressed**

1. Council Decision 2002/358 introduced, among others, a compulsory burden sharing for EC Member States as regards the commitments under the Kyoto Protocol (annex II). Was there any legal discussion in your country as regards the method of calculation of this burden sharing, and its fairness; was there any participation of the public as regards the opportunity to accept the political burden sharing of 1997 and its legal fixation of 2002?.

Hungary was not a member of the EC, thus this question could not arise during this dates.

2. Directive 2003/87 (OJ L 275/203 p. 32) introduces a system of how emission rights shall be allocated and how they can be traded.

a) Was there any legal discussion of the major elements of this directive in your country? Was the basic approach – i.e. tradable emission allowances – easily accepted? Were frictions discussed in relation to BAT-approaches, voluntary commitments, or emission charges/taxes schemes?

There was a very limited legal discussion related to these issues. The approach of tradable emission rights has already been introduced in the 2001 regulations on air pollution, but without any real dispute. Thus the answers are mostly negative.

b) Have there been considerations in your country whether there was an EC competence in this matter; whether Article 175(1) was the right legal basis, instead of Article 175(2)?

Not such discussions at all. We did not question EC competences up till now.

c) Were there any considerations in your country to recur to Article 176 and to include other sources of climate gases into the emission trading system than those listed in Directive 2003/87? Has there been any thinking, whether Article 24 of Directive 2003/87 is not compatible with Article 176? What do *you* think of this argument?

See above

d) When and by what legal act (if at all) was the Directive transposed into national law? Was it transposed in due time? What kind of public attention was given to the performance of the country in the transposition of the Directive?

The transposition is on the way – see attached summary. Most probably the act is going to enter into force within some weeks, and after that date, the implementing regulations shall be adopted soon.

3. According to Article 9 of the Directive national allocation plans have to be established.

a) Do they have to be *national* or could they also be regional? Compatibility with Article 175/176 (interference with rights of the regions)? Are there *regional* plans in your country? Please provide exact dates of the approval/publication of the plan or plans

The National Plan is ready – see the summary attached and there is no idea of having regional plans. The Draft Plan was ready by the end of 2004, but the transposition act is needed in order to be adopted.

- b) Was the public informed of the draft national allocation plans (NAC)? Was there a possibility to comment or to rectify the original data? Or was the content of the plan discussed with affected industries only? Was there a publication of the plan in draft form?

In the attachment I refer to the public discussion which has not been a real public debate, but instead of it a short discussion with the involved companies. The time open for public debate was very limited and it was open at the end of summer, when everybody is on holiday.

- c) What allocation criteria were followed in your country? Or does the plan just mirror political power play? What kind of empirical information was used in order to draft the plan? Was it really accurate/updated?

See attachment for details. Thus it is better to say, that there has not been a real discussion on the problems of allocation criteria, the best was to copy most of the things from the EC law.

- d) What happens if the Commission exceeds the three months attributed to it under Article 9(3)? What is the situation in your country in similar legislative cases?

It is only the Constitutional Court which may decide in case of legislative delays or mistakes

- e) Would Article 10 allow Member States to recur to Article 176 EC Treaty? If so, did your state allocate lower percentages?

No debates on that.

- f) What is the weight of Clean Development Mechanisms as compared with pure „reductions“ in emissions?

These issues are not really taken separately.

4. Article 11(1) provides that before 1 October 2004 Member States shall decide on the total number of allowances and their repartition on each installation, "taking due account of comments from the public".

- a) Did the public have the opportunity to make comments? How did this procedure develop? Was the draft decision published? Was it transparent?

See the above remarks on public debates.

- b) What distributional choices were involved in the repartition on the single installations?

No real choices have been discussed, the whole was taken relatively mechanically.

5. Art. 12 provides that the trading of emission allowances shall be possible.

- a) How is trading supervised in your country?

- b) Is trading also possible for other bodies than installations, such as a fund, a charity, a millionaire who has an interest in preventing climate change?
- c) To which extent is transparency for the public ensured?

(knowledge of trading transactions, etc)

The answer to the above three questions is simple, the supervision and other details has not been developed yet, it will come after the entry into force of our act on such schemes.

- d) How as „allowance“ been *translated* in your country? Does your national linguistic version of the term „allowance“ convey the idea of a „right“ (subjective/objective) to pollute? (like the Spanish does)

Interestingly enough, the specific research project which is on its way in connection with these mechanisms, but the legal elements are restricted to the general and traditional air pollution measures. This problem has not been touched at all.

Thus, if we look carefully at the Hungarian version, the emission unit is a part of the material assets of the company, and the Act directly speaks about a “must”, that means these units should be distributed. This may refer to a ‘right to pollute’.

The emission unit is a state property at the beginning, which belongs to the Treasury. But after – having received the permit – it becomes a property of the operator, free of charge. Later this may become subject of a purchase agreement.

All these elements may lead to a conclusion, that the idea of the ‘right to pollute’ is not so much far away, although this has never been claimed by the operators or addressed in any discussion.

If we examine the linguistics, then the problem may be addressed in relatively similar way. On the one hand, the definition – “emission unit” – seems to neutral, having no reference to rights or ownership. On the other hand, when the draft explains the definition, it says: a right which is a movable material assets, allowing the emission of pollutants in a given period of time. This is very close to the present Spanish terms.

- e) What is the legal nature of the „trading“? Is there any doctrinal controversy about the possibility of „trading“ on „rights“? (provided the question to „d“ was positive)

See above, the answer has already been given – movable material asset.

- f) Has there been much discussion about other areas of law that might be relevant to this dogmatic issues (eg. property rights, tax law, administrative law, etc.)

The answer is no.

6. Arts. 14 – 16 provide guidance for monitoring, verification and penalties.

- a) How is monitoring and verification organised in your country?

The National Inspectorate is obliged to monitor. The means and methods are still under formulation.

- b) What about the penalties that were fixed according to Article 16? Are they effective, proportionate and dissuasive? Are they of criminal, administrative or civil law nature? Are they comparable to national sanctions in similar, comparable cases? Is there any fear that penalties might be too divergent from one country to the other?

Environmental fine is the basic sanction as usual. Next it the suspension, limitation of activities or withdrawal of the authorisation. There is also a possibility to suspend the right to sell the emission units – under certain conditions. Publicity is also taken as a kind of legal consequence, but there is nothing about other kinds of sanctions. Of course, the civil or criminal law may also be used, if necessary. As the details are still not given, we may not answer whether is it efficient or not.

- c) How is transparency of monitoring and verification results ensured?

Transparency is regulated, the registers are publicly available and the minimum content of public data are given.

7. The emission allowance scheme and traditional BAT approach under the IPPC Directive 96/61 somewhat conflict with each other.

- a) Is there a discussion in your country on whether there are vested rights and permits of industry disallowing to turn them into allowances which must finally be purchased.

Negative

- b) Inversely, Article 26 provides that permits under Directive 96/61 shall not contain emission limit values for greenhouse gases, when the installation participates in emission trading. Is there any discussion in your country, whether this is a departure from the concept of "best available technology"? May countries not provide for this derogation (under Article 176 EC)?

Negative

8. Directive 2004/101 (OJ 338/2004 p. 18) provides a framework for joint implementation („JI“) (see Art. 6 Kyoto Protocol) and the clean development mechanism („CDM“)(see. Art. 12 Kyoto Protocol).

- a) Is there a discussion in your country about whether JI and CDM will be used?
- b) What will be the organisational devices in your country ensuring the requirements of a fair use of JI and CDM, and in particular its additionality, truthfulness and transparency?

Again, we may not provide the answers, due to the lack of clear regulatory picture at the moment.

9. Could or should emission trading be introduced in other sectors (water, waste)?

No discussion on that up till now, but generally it is taken as something relevant to air pollution only. In case of Hungary, water may not be a good example, as we are in the bottom of a basin. In case of waste, we did not have any discussion up till now.

10. To which extent emissions trading has been discussed so far in your national legal literature?

Very limited touch upon the problem. It is rather the environmental economy which has some discussion continuously.

**11.** Besides emissions trading and national plans, does your national legislation create other kinds of devices, such as a specific permit for releasing greenhouse gases emissions? If this is the case, what is the relation between the plan, the trading mechanism and the permit? What body/level of Administration is responsible for performing the respective duties and responsibilities?

See the attached summary for details. We have a permit related to greenhous gas emissions, based upon the plan. It is the national level environmental authority which is responsible