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The International Comparative Legal Guide to:

Environment Law 2009

A practical insight to cross-border Environment Law

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in the Czech Republic and which agencies/bodies administer and enforce environmental law?

Environmental protection is one of the basic constitutional principles in the Czech Republic. All action must be taken and all rights exercised in a manner not affecting the environment beyond the level stipulated by law. Everybody has the right to a favourable environment and the right to obtain timely and complete information on the environment. Rules for environmental protection are stipulated by numerous legal acts depending on the relevant part of the environment being protected. Within these legal limits, as well as implementation of the *acquis communautaire*, the government of the Czech Republic defines environmental priorities in the State Environmental Policy that stipulates various levels of detail for various periods.

There are many authorities holding powers over different areas of environmental protection. The central authority is the Ministry of the Environment, but certain powers are distributed to other central bodies active in the relevant area of environmental protection - for example, the Ministry for Regional Development, the Ministry of Agriculture, etc. Further, there are certain highly specialised central authorities with very narrow scopes of activities - for example the Office for Nuclear Safety, the Czech Environmental Inspectorate (with its decentralised agencies), the Czech Mining Authority and State Environmental Fund of the Czech Republic.

The regions and municipalities are authorities that ensure environmental protection at regional and municipal levels, usually having departments of environmental protection.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

The limits of relevant authorities' scope of activities are strictly set by law. On the other hand the law cannot govern in detail all situations arising through its application and therefore a significant margin of discretion in the decision-making process is conferred to relevant authorities. General procedural rules are stipulated in the Administrative Code, but many special environmental protection laws specifically stipulate which authorities can enforce these laws, what tools to be used for their enforcement, and what sanctions may be imposed for their breach, including maximum amounts of financial penalties.

Binding opinions of relevant environmental authorities play an important role. By issuing these opinions, specialised environmental authorities influence the decisions of other authorities in procedures where an environmental element is present. In cases where an environmental issue arises, the relevant authority must ask the environmental authority for its opinion, which should be respected within the original proceedings.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

In general, anybody has the right to request information from state authorities within their area of activity (freedom of information). This right is naturally limited by the protection of classified, personal or sensitive information as well as business secrets, etc. Environmental information is deemed highly important for the public and therefore a special legal regulation was adopted to secure a public right of access to such information - the Act on the Right to Information about the Environment, which has the character of *lex specialis* in respect of the Act on the Right to Information (*lex generalis*). If the administrative body does not, or refuses, to provide requested information, the applicant may appeal and, as a last resort, seek enforcement in court proceedings. Certain information is also freely available to the public through the internet.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

Only in certain cases is an environment authority decision (issuance of a permit) required. Permits for special uses of surface and underground waters (i.e. for industrial use) or permits for operating stationary sources of air pollution, etc. can be pointed out in this context. In more complex cases where the environmental issue is only of minor importance in relation to other issues addressed within administrative proceedings, usually only the binding opinion dealing with the possible impacts of the project on the environment (and stipulating conditions for the project's implementation) is required from the relevant environmental authority.

In general, environmental permits are not transferable to the third parties. In some cases, the environmental permit relates to the respective facility and not the applicant and therefore is transferrable simultaneously with a relevant transfer of assets - for example, in the case of permits for use of surface and underground waters. Further, certain permits may pass to the legal successor of

an undertaking - for example, in the case of mergers; a typical example of such permit-passing to a legal successor is a so-called IPPC permit.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

Any administrative decision may be subject to an appeal of the participant to the proceedings for whom the decision is unfavourable. An appeal against a decision has a suspensory effect. An unfavourable binding opinion may not be challenged itself, but only by an appeal against the decision within the process of adoption of which it was issued.

Even if the decision of the appeal authority is final, it may be challenged by means of an administrative action within regular judicial proceedings and decided upon by an independent court if the rights of the participant to the proceedings are breached. The action does not automatically have a suspensory effect, but it may be granted depending on the grounds of the request.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

The Act on Environmental Impact Assessment contains an exhaustive list of installations/projects requiring EIA analysis before their construction. Such an analysis is a prerequisite for the further development of the installation/project.

Certain installations also require the ongoing monitoring of their impact on the environment (air and water polluting facilities) to demonstrate that their activity (i.e. the scope of pollution) complies with the relevant permission.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Relevant authorities may, in certain cases where serious damage to the environment threatens or such damage has already occurred, decide on a temporary suspension or restriction of the (potentially) harmful activity. In such cases these authorities may impose protective or remedial measures. In other cases of breach of a relevant environmental law the relevant authority may decide on the imposition of a financial penalty or withdrawal of the environmental permit. In each case the penalty should correspond to the gravity of the violation of the relevant environmental law. In cases of the most serious intentional breaches, the relevant authorities may initiate criminal proceedings.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

Pursuant to Czech law, waste is defined as any movable thing that a person discards or intends or is obliged to discard. Particular categories of waste are defined in the annex to the Waste Act. Pursuant to the Waste Act certain categories of products benefit from special treatment - PCBs, waste oils, batteries and accumulators, sedimentation from water plants, waste from titanium dioxide production, asbestos, end-of-life vehicles and waste electric / electronic equipment.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

Only a person authorised to operate a facility for the recovery, disposal, collection or purchase of waste is entitled to store and/or dispose of waste. A waste producer wishing to store and/or dispose of waste on the site where it was produced must apply for such authorisation and prove that they fulfil all necessary requirements.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Only an authorised person is entitled to take over ownership of waste. In case the producer transfers the waste to such an operator and fulfils all statutory obligations connected therewith, he does not retain any residual liability after the moment of transfer - the liability being transferred together with the ownership of the waste. On the other hand the producers remain liable should their obligations not be fulfilled – for example in the case of a cross-border transfer.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Pursuant to the Waste Act, producers, importers and/or sellers of certain products such as oils, accumulators, batteries, fluorescent tubes, tires, electric and electronic equipment and vehicles are obliged to ensure take-back and recovery of products and to inform consumers of the possibilities in respect of such take-back. Particular treatment for packages is set forth in the Packaging Act.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Depending on the nature of the breached obligation, the degree of intentionality and necessity of proving fault, several types of liability may arise.

(a) Criminal liability

Criminal prosecution of legal entities is not currently possible under Czech law. But any natural person who intentionally pollutes or otherwise damages (fails to prevent or increases damage) soil, water, air, woodland or other components of the environment may be sentenced up to 3 years or, should certain aggravating circumstances be fulfilled, up to 8 years of imprisonment, prohibition of activity or financial penalisation. Should the breach be committed negligently it is still deemed a criminal offence but with lower penalties. Cases are dealt with within standard penal procedure.

(b) Administrative liability

Following the scope of environmental protection by public law, it is practically impossible to enumerate all breaches and resulting sanctions. In case of breach of a relevant law the relevant authority (which differs depending on the act breached) may conduct administrative proceedings with the goal of ensuring cessation of the breach and eventually sanctioning the offender. In general the Administrative Code governs the procedure with the possibility of appeal and subsequent judicial review.

(c) Competition issues

Any conduct of a competitor that distorts conditions of economic

competition by endangering the health of others or the environment in order to acquire benefits for himself or another person at the expense of other competitors or consumers is deemed undesirable. Anybody (competitors and/or consumers) who proves that their rights have been violated or jeopardised as a result of such conduct can demand that the offender desists from such conduct and eliminate the improper state of affairs resulting from it. They can also demand appropriate satisfaction, which may be rendered in money, compensation for damage and the surrender of any unjust enrichment. These demands are dealt with within standard civil law procedure.

(d) General private law

In general, everyone is liable for damage caused by violating their obligations (statutory or contractual) provided they cannot prove their non-liability for such damage. Special cases of liability are more strict, such as liability for damages caused by operating a business, particularly hazardous operations, or operation means of transport, and do not require causality between the damage incurred in relation to such operations and relevant activity. Exculpation is possible only provided the operator proves that the damage was caused by an inevitable event not originating in the operation, or through the conduct, of the damaged person (damages caused by operating a business) or proves that the damages could not have been prevented despite exercising all reasonable efforts. Such damages should be requested within standard civil law procedure.

(e) Environmental detriment liability

The operators of listed operational activities are liable for so-called environmental detriment. In case of defined deterioration of certain environmental values (for example, protected species, protected natural areas, etc.), such operator is obliged to remedy the respective environmental detriment even in the event that he did not breach any law (only causality has to be proven); such operator is also obliged to adopt relevant preventive measures so that such deterioration will not occur in the future.

(f) Historic contamination liability

In certain cases environmental damage originates from the era prior to 1989 and it would be extremely difficult (if not entirely impossible) to point out the subject responsible for removal of such historic environmental contamination (especially after the privatisation of property burdened with such historic environmental contamination). However, as it is in the public interest that even such damage is remedied, the state and the damaged property owner usually share some proportion of the costs of decontamination.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Should an operator conduct its activity within relevant (permit or statutory) limits, they are safe from fines / criminal sanctions imposed by the relevant authority. However, the Czech Civil Code stipulates a special kind of liability for damage caused by so-called operational activities. In such cases (i.e. operation of power plants, chemical plants, etc.) the operator is liable for damages caused by its activities even when these activities are within the limits stipulated by relevant statutory clauses.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

The consequences of the action are attributed to the person who committed the action. In all other cases (administrative liability / civil liability) the person (whether natural or legal) who committed the offence would be liable in respect of it. Such liability is not transferable to another entity. The only exception is the criminal procedure because only natural persons may be held liable for criminal acts. Therefore liability would be attributable directly to the natural person who in fact conducted such activity and/or to the relevant person deciding on the activity.

A legal person may assert its right of regress and claim the payment of damages (i.e. sums paid to the sufferers) from its employees, as limited under to labour law and/or from its statutory bodies, in an unlimited fashion, should they have exceeded their powers.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In case of a transfer of shares, the legal entity remains the same and therefore no reason exists for changes in the attribution of liability. The legal entity remains the subject of its original rights and obligations regardless of the fact that a part or all of the shares in the legal entity have been sold.

In case of a transfer of assets, the liability for environmental damages occurring before the transfer generally does not pass from the seller to the acquirer. Concerning environmental damages occurring after the transfer, third parties should claim their compensation from the acquirer, but the internal relationship between the seller and the acquirer may be arranged in the contract so that the seller compensates the acquirer for certain damages (under relevant representations and warranties).

A special institute exists in Czech law called the sale of an enterprise (or its part). In such case all existing rights and obligations pertaining to the enterprise pass to the acquirer. Administrative and criminal liabilities, however, do not generally pass to the acquirer, and nor do the vast majority of the relevant environmental permits.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Creditors are not liable for the environmental wrongdoings of their debtors as liability lies with persons committing the act that causes damage. However, should a loan be provided intentionally with the goal of polluting or otherwise damaging the environment, the natural person having this intention within the procedure of granting the loan may be found guilty of a criminal offence.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Everybody has the obligation to prevent environmental contamination. Generally the principle that the "polluter pays" applies in Czech law in relation to contamination. The relevant administrative authority may impose preventive or, in cases of failure, remedial measures on undertakings in the case of impending contamination. In specific cases of historic contamination the state and the damaged property owner usually share some proportion of the costs of decontamination.

5.2 How is liability allocated where more than one person is responsible for the contamination?

In civil law polluters are jointly and severally liable for damages originating from contamination towards third parties. Their mutual liability is settled among them in proportion to the level of their actual responsibility. In certain circumstances the court may decide that the polluters are responsible individually in proportion to their actual responsibility for damage. In the case of criminal or administrative liability every polluter breaching the relevant act may be sanctioned to the full extent.

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

The goal and scope of environmental remediation are defined in relevant competent authority's decision imposed on a polluter in the form of a remedial measure. This scope is usually modified within the proceedings preceding the adoption of the decision. A change of decision is possible in cases only where an important modification of circumstances, assessed within the procedure of adopting the decision, occurs.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

Generally the acquirer may claim remedies if he was not informed or was misinformed by the seller as to the existence of contamination (under standard representations and warranties). The criminal or administrative liability of the seller as the polluter remains unaffected, i.e. it cannot be transferred from the respective seller to the respective acquirer.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g., rivers?

The aesthetic value, namely the natural, cultural and historical characteristics of a certain place or area, is expressly protected only by the Act on the Protection of the Environment and Landscape. Generally it is forbidden to harm such aesthetic value, but exceptions are granted in exceptional circumstances based on an affirmative decision of the relevant authority. In case of unauthorised harm, the relevant authority may impose an obligation to restore the original condition or, if restoration is impossible, to adopt adequate remedial measures.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

The Administrative Code sets forth the general scope of powers of relevant authorities within proceedings. The administrative authority may:

(a) request the submission of a document held by a person possessing such document;

(b) request the presentation of an object or allow an examination at the site of the object;

(c) request anybody who is not a participant to the proceedings to testify as a witness;

(d) call a person whose presence at an act in the proceedings is indispensable for the performance of such act; and/or

(e) order a preliminary ruling if it is necessary to temporarily regulate the circumstances of the participants or if there is a concern that the performance of the execution upon a decision could be jeopardised (it is possible to order someone to perform something, abstain from doing something, to be subject to something or to secure an object that may serve as a means of proof or an object which may be an object of an execution).

Certain relevant authorities (such as the Czech Environmental Inspectorate) in some areas of environmental protection may be authorised to carry out inspections, including the right of the inspectors to enter the land and buildings of the entities under review and to require documents and data, to interview the staff and to take samples.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Everyone has an obligation to act in a way that prevents or decreases damage to health, property or the environment. Should anybody not meet this obligation, they would be responsible for any damage caused by their inaction. In case an environmental threat or damage is discovered, all individuals must act to avert or decrease the (threatening) damage in a manner appropriate to the circumstances. The respective authority must be informed of any such impending or actual damage to the environment without undue delay.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

Anyone whose activities cause contamination or damage to the environment or who makes use of natural resources must ensure appropriate monitoring of the impact of such activities on the environment.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

There is no general obligation concerning the disclosure of environmental problems within a merger, takeover or similar transaction. Eventual disclosure is purely a contractual matter. A wide range of representations and warranties on the absence of environmental and other burdens on the company's property (being an object of a transaction) is used in common transactions. Breach of such representations and warranties may lead to claims for contractual penalties, discounts from the purchase price and/or rescission of the agreement.

Should the object of a transaction not be the company but real property itself, the seller has the obligation to inform the acquirer in

respect of all defects of the transferred real property. If the purchaser discovers after the purchase a defect (environmental burden) that it was not informed of, the purchaser has the right to a reduction in the purchase price or to rescind from the purchase contract.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

The liability of an undertaking (even for environmental damages) may be contractually limited, but this limitation is applicable only towards its contractual partners. Otherwise damages shall be payable to the full extent. Moreover any payment made to the sufferer does not discharge the liable person from the obligation to compensate any other subject that suffered damage. Public law liability is not affected by any settlement between private parties.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

The scope of the obligations evidenced in the balance sheet is stipulated by law. Existing obligations (already having arisen from environmental liabilities) are a part of the company's debts, which cannot be sheltered from the balance sheet. On the other hand, the prospective obligations (arising from environmental liabilities in the future) shall not be evidenced in the balance sheet (in certain sectors, companies are obliged to create reserves to cover potential environmental liabilities; these reserves must be evidenced in the balance sheet).

In theory, it is not possible to dissolve a company for the purpose of escaping its debts. Before the company is dissolved, its existing rights, obligations and liabilities should be settled in the process of liquidation, but should the company's debts exceeds its assets, not all claims can be settled within the procedure of liquidation.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

For purposes of civil and administrative law, the company is an independent entity wholly liable for its acts. However, for purposes of the criminal proceedings only a natural person may be liable for breaches of the Criminal Code. Should the company "commit" a crime, a liable natural person has to be found. This would, however, generally be a person in the position of a statutory body and not in the position of a shareholder. The shareholders shall generally not be liable for breaches of environmental law and/or pollution caused by their company.

In case it is proven that a certain undertaking adopted acts breaching environmental laws under the influence of a controlling person (typically its management or a parent company) the controlling person is liable for damages occurred to the controlled person (i.e. the monetary loss triggered by following their instructions).

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

There is no specific regulation on the protection of persons reporting environmental violations in the Czech Republic. General legal provisions on the protection of individuals apply.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

Czech law does not recognise "class" actions. The institute closest to "class" actions is an action of competitors and/or consumers against unfair competitive behaviour. In this case the decision on all subsequent actions of other competitors and/or consumers is postponed until the decision on the first such action becomes final and other actions are subject to the outcome of the ruling.

Under the Czech law damages are only payable up to their real value (damages or lost profit). No penal effect (or exemplary effect) is linked with the payment of damages. However in case of damages originating from a breach of law, the damaging conduct may be punished by way of public law (i.e. penalties in administrative proceedings or financial sanctions in criminal proceedings).

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in the Czech Republic and how is the emissions trading market developing there?

The EU emissions trading scheme is in operation in the Czech Republic. The allowances are actually allocated to the relevant polluters in accordance with the national allocation plan for 2008-2012. The trading is done through the Czech Registry for National Allowances Trading, which is part of the European emissions trading scheme.

10 Asbestos

10.1 Is the Czech Republic likely to follow the experience of the US in terms of asbestos litigation?

The US experience would most likely not be followed in the Czech Republic for the following reasons: the evidence should be very straightforward to allow the conclusion that the damage to health was caused directly by asbestos, moreover the amount of compensation for damage to health is set in exact values by law and are quite low in the Czech Republic compared to individually assessed damages in the US.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

Asbestos is regarded as a special waste category under the Waste Act with specific conditions relating to its storage and disposal. Concerning possible damage to health, the owners and/or occupiers are liable pursuant to the general provisions of the Civil Code and public health legislation. No explicit regulation exists that oblige owners or occupiers to remove asbestos from buildings.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in the Czech Republic?

Environmental insurance is still not widely used in the Czech Republic. It is rarely offered separately and usually forms a complement to another kind of insurance. Environmental insurance is generally optional. The obligation to conclude insurance contracts applies only in some cases of the risk of extensive environmental damage to certain persons (operators of nuclear facilities and nuclear material transport providers, operators of certain dangerous chemicals). The obvious prerequisite for insurance payments is that the relevant person complied with legal regulations on environmental protection.

11.2 What is the environmental insurance claims experience in the Czech Republic?

Experience of environmental insurance claims in the Czech Republic has been, to our knowledge, fairly insignificant, especially due to the undeveloped market in the area. Moreover any information on environmental insurance claims is considered private and confidential and therefore reliable, publicly available data on the amount and success of environmental insurance claims does not exist.

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in the Czech Republic.

A current environmental issue is a tender being held for removal of environmental historical damage which occurred prior to 1989. Most of the state property, often burdened with environmental damages, was privatised after the revolution in 1989. To expedite the privatisation process certain state property was sold along with any environmental damage, along with a guarantee from the state to ensure the removal of the damage and to bear the costs of the same.

The Czech Ministry of Finance recently analysed the situation and came up with a solution to initiate a complex selection procedure for a general supplier who would, by way of a concession, undertake responsibility for removal of all historical environmental damage. This option was assessed as the most advantageous since there would be only one operating entity chosen on the basis of the lowest (fixed) price principle, bearing all risks related to decontamination.

The total estimated costs of decontamination and all related works amount to CZK 101,163,454,000 (i.e. approx. EUR 3,746,794,593). Six bidders have applied in the tender announced at the end of 2008. Presently the selection of the most advantageous bid is underway with the main criterion being the lowest price. The contract with the selected candidate is to be concluded for a period of 30 years.

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