COUNTRY REPORT: CZECH REPUBLIC

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Introduction

In 2015, only a few new laws or amendments in the environmental field were adopted in the Czech Republic. Parliament is still approving the drafts of new legislation after the Parliamentary elections in autumn 2013.

In this article, therefore, we introduce a few minor amendments of several laws, namely the Act on the Protection of Agricultural Land, the Waste Act, the Energy Act and the Act on Public Health Protection. The remainder of the article we devote to the absolutely crucial amendments to the regulation of public participation and access to courts, which entered into force in 2015.

Recent Statutory Developments

In the Czech Republic, approximately 15 hectares of agricultural land are put to non-agricultural use (e.g. buildings) every day 2015 was declared by the UN as the 'International Year of Soils'. The amendment to the Act on the Protection of Agricultural Land (Act No. 41/2015 Coll.) sets out the new conditions for the use of agricultural land for growing plantation trees; for the use of sediments on agricultural land; and for granting consent to the use of this land for the construction of transport and technical infrastructure. It also reduced the fees for usage of agricultural land for non-agricultural purposes, and therefore reduced the protection of the land because the fees are considered insufficient as an economic incentive to preserve agricultural land.

The technical amendments to the Waste Act (Act No. 223/2015 Coll.) harmonise the European and Czech legislation on waste. The amendment, for example, extends and amends the definition of the waste management hierarchy, alters the concept of selective collection of waste and waste prevention; and expands the definition of waste management to include commercial waste trading. The amendment abolishes the exemption from the Waste Act for sediments extracted from water reservoirs and riverbeds and waste from precious metals. The obligation to accept returned goods will no longer apply to mineral oils. Among other changes, the reporting of hazardous waste was changed so that it is easier

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and does not involve unnecessary administrative burdens. The amendment also introduces an entirely new system of collective return of goods for car tyres in order to increase the number of collection points throughout the country. The Ministry of the Environment prepared the implementing decree for these changes. In addition, previously commercial collection of metallic waste was subject to petty theft of metal objects which were collected for money as a waste. This problem was solved by a ban on cash payments such that the only permissable forms of payment have become cashless transfers from one account to another or postal orders.

The amendment to the Energy Act (Act No. 131/2015 Coll.) brings about comprehensive changes to the business environment for the operators of renewable energy systems. The amendments allow, for example, for households to install, without a license, photovoltaic roof panels with an output up to 10 kilowatts. On the other hand, such households will have to pay a tax on electricity produced for their own use.

Thanks to the efforts of a coalition of local NGOs, the noise limits set out in the Act on Public Health Protection (Act No. 267/2015 Coll.) were maintained. The process was changed however for granting noise exceptions that allow operators (e.g. operators of transport infrastructure) not to comply with noise limits, a process which has been heavily criticised.

One of the biggest losses of environmental protection this year was the abolition of territorial limits of brown coal mining in northern Bohemia. The territorial limits of brown coal mining are regulated in the binding Government Resolution No. 444 of 30 October 1991 which defines the boundaries of brown coal available for mining with the rest of such coal bein unavailable. These limits were confirmed by the government in 2008. The main reason for establishing limits was the protection of the environment and landscape in northern Bohemia. The limits served as a government guarantee to North Bohemian municipalities that ecosystems in their region will not be degraded, nor the existence or protection of natural habitats threatened. From the beginning of the 21st century, there have been many attempts to revise the government resolution of 1992. In October 2015, these attempts were successful and the limits were changed to allow the mining of more brown coal. The government unanimously decided to shift the mining limits in the state-owned organization CEZ.

The protected landscape area of Brdy was established on 1 January 2016 by the Governmental Decree No. 292/2015 Coll. on the territory of the former military area Brdy and several existing nature parks. The object of protection is the natural wealth of the various valuable forests, meadows, wetlands, heaths and dozens of streams. The protected landscape area has an area of 330 square kilometres. The establishment of a protected

area on the site of the former military reservation demonstrates the favourable impacts of strict protection of military areas and prohibition of entry and all tourist activities.

EIA Act

The amendments to the Act on Environmental Impact Assessment (Act No. 39/2015 Coll.) came into the force on the 1 April 2015. These amendments regulate not only the process of environmental impact assessment, but also many other aspects of the proceedings under the Building Act and other decisions concerning environmental protection.

The original Act on EIA has been broadly discussed in the country report for 2014.[1] Therefore we focused only on the changes in the new legislation. The first part of this discussion will focus on the EIA process; the second part on the subsequent, related procedures (such as land-use and building permits).

The amendments are based on the requirements of the European Commission, and there are very strict transitional provisions whose purpose is to apply the amendments immediately after the coming into force date. The amendment has no general transitional provisions. After 1 April, all EIA proceedings have to follow the amended EIA Act.

There are four major changes in the EIA process. The first change is the revocation of § 23 para. 14 Act on EIA, which precludes the use of the Administrative Code. Due to the lack of transitional provisions, all EIA processes and assessments become, from April onwards, 'administrative proceedings' pursuant to the Administrative Code with all the rights and obligations arising therefrom thus imposed onto the process.

The second change is an entirely new legal form of decisions from screening procedures. In cases of a positive finding arising from a screening procedure (ie. A finding that the project ought to be subject to the EIA process), the decision must take the form of a reasoned written statement (not an administrative decision). It must then be published on the internet and the official notice board. The amendment of the EIA Act requires the publication of information about the project (name of project, capacity, location, characteristics including the possibility of cumulative effects with other projects, and a brief description of the technical and technological solutions) and of the considerations made by the public authority when evaluating the project (description and location plan, impacts on people and the environment). A decision that a full EIA process is required cannot be appealed.

Negative findings from a screening procedure have now been granted the legal status of an administrative decision, against which it is possible to apply for both ordinary and extraordinary remedies (appeals, review procedures, etc.) and for legal action before

[1] Damohorsky, M., Humlickova, P.: Country report – Recent statutory developments, IUCN Academy of Environmental Law E Journal Issue 5: 2014.

the administrative courts. Finally, a negative finding from a screening procedure should now contain the basic characteristics of the project, in order to assess any changes in the project during its realisation as well as short comments as to the criteria set out in Annex no. 2 of the EIA Act (description and location of the project, impacts on the public health and the environment). The right to appeal is expressly granted to the notifier and those representing the public interest (NGOs). Such bodies are entitled to challenge both the substantive and procedural legality of the decision. The *locus standi* of NGOs is not based on the specific right of the NGOs to a favourable environment or to life and health, but on the assumption of possible effects on NGOs. The deadline for issuing a court decision against a negative finding from a screening procedure is 90 days. The amendment does not expressly cover the issue of suspensory effect of this action. Such suspensory effect is therefore regulated by art. 73 para. 2 of the Administrative Procedure Code and can be included in the action, where execution of the decision means, for the plaintiffs, greater harm than the granting of suspensory effect may cause to others, as long as it does not interfere with the public interest.

There are two more changes in the screening procedure. The first one is an extension of the deadline for completion of the screening procedure from 30 to 45 days (see § 7 para. 4 EIA Act). The second partial change is a change in the concept of the likelihood of significant effects on the environment. Instead of the original 'should' the EIA Act now states 'may have' (see § 7 para. 2 and 3 EIA Act).

The third major change is the new legal form of the EIA statement, which is now a binding opinion (pursuant to § 149 of the Administrative Code). Compared to the previous situation, the statement is binding also in its content without the possibility of discretion by public authority. The EIA statement has to fulfil the requirements for an administrative decision (such as reasoning, etc.). Review of the EIA statement will be provided in two ways. Firstly, it is provided for by the review of decisions by a superior administrative authority in review proceedings (see art. 149 para. 5 of the Administrative Code). The 'public concerned' is not entitled to start or demand a review procedure (unlike appeal procedure). Secondly, the 'public concerned' has the right to appeal against the decision in subsequent proceedings (such as the grant of a land-use permit) and within this appeal argue both procedural and substantial illegality.

The fourth change is the change in the definition (limits) of assessed projects. The amendments significantly (usually by several times) increase the limits for construction of commercial complexes, industrial parks or residential buildings connected by a park (see section 10.6 and 10.13 Attachment no. 1 of EIA Act). These projects are very common (about 23% of all assessed projects) and very controversial, mainly in urban areas. The size of assessed projects in the past was often modified so as to avoid the limits for obligatory

assessment. Raising the thresholds will very probably lead to the situation when the vast majority of these projects fall under the relevant limits.

The Czech system of permitting projects relevant to the EIA Directive is composed of several successive phases (the so-called multi-layer permitting process), which the European Court of Justice has assessed as being harmonious with the requirements of the EIA Directive. The multi-layer permitting process led to problems in practice however, because the Czech Republic granted 'public concerned' rights only in the EIA procedure itself, and not in subsequent procedures, while the EIA Directive covers the rights of the 'public concerned' at both stages.

Because of the need to comply with the requirements of the EIA Directive, the EIA amendment introduces the definition of a follow-up, subsequent procedure. According to the definition, the follow-up decisions are those issued under special laws (eg. the Building Act, Water Act, IPPC, Mining Act and others) and those which allow development or implementation of the project assessed under the EIA Act.

The amendment of EIA Act redefines the 'public' and the 'public concerned'. The definition of the public is merely a formal step when it means one or more persons (legal and natural). The public has a right to participate in the EIA process and now also in subsequent procedures. In such subsequent procedures, the public have only a consultative role (i.e. the right to information, to make a comments, but not the right to administrative or judicial review of the decision). The 'public concerned' is entitled to participate in the subsequent procedures (typically land-use and building permit). The public concerned is defined as:

> *- those whose rights are affected by the decision (i.e. mostly the owners of land or buildings in the neighbourhood of project); and*
> *- environmental NGOs (including "established" NGOs (i.e. those which have existed for more than three years and "ad hoc" environmental NGOs, whose legitimacy to challenge the decisions is declared by a supporting signature list (200 unverified signatures). For each assessed project, the NGO need only have one signature list, which is applicable to all partial subsequent procedures for a given project (e.g. land-use and building permit).*

The rights of environmental NGOs as the 'public concerned' under the EIA Directive are guaranteed through 'full participation' in subsequent proceedings. These entities become parties to the proceedings, which means they have the same rights as a developer or as neighbouring owners. Such NGOs have the right to appeal against the decision regardless of previous participation in the proceedings. NGOs also have the right to access to courts. The 'public concerned' is able to challenge the substantive and procedural legality of decisions (until now NGOs could only challenge the procedural legality of the decision,

because they do not have a substantive right to a favourable environment). Privileged NGOs are entitled to bring an action to protect the public interest.

Actions against decisions now always have a suspensory effect on that decision. Until a final court decision, the decision in a subsequent procedure cannot be issued or executed. The new amendments therefore fulfil the requirements of EU law in relation to timely and effective judicial protection in national law.

Finally, the identity of projects assessed through the EIA process and the project as realized is verified through a binding verification opinion (the so-called 'coherence stamp'). The public authority responsible for the EIA confirms that there are no changes to the project or plan (especially in its scope, capacity, technology, etc.) which could have a significant negative impact on the environment (see art. 9a par. 4 of the amended Act EIA). The aim of the amendment is therefore to guarantee that the assessed and realized projects are identical or have only minor changes which will not cause any new negative effects on the environment. In cases when the competent EIA authority finds that changes with possible significant negative impact occurred in the project, the authority will adopt a negative binding opinion, which prevents the further realization of the project. The applicant must either modify the project or reassess the project in the EIA process. The identity of the project and the conditions in the affected area are also checked by the extending the validity of the EIA statement. The validity of statements is 5 years from the date of its issuance. The validity may be extended at the request of the developer by 5 years, and even repeatedly. The developer must demonstrate that there were no significant changes in project implementation, the conditions in the affected area or new knowledge related to the content of documentation and development of new technologies applicable in project.