

Avosetta Meeting, Fribourg, 23-24 November 2012

CZECH REPUBLIC NATIONAL REPORT:

RECENT DEVELOPMENTS IN ENVIRONMENTAL LAW

A. Legislation

Air Protection Act No. 201/2012 Coll.

This act abolished former Air Protection Act No. 86/2002 Coll., as amended.

- different categorization of sources of pollution
- low level emission zones
- compensatory measures to permit new development in heavily polluted areas
- sustainability criteria for biofuels
- duty to reduce greenhouse gases emissions of fuels
- intermediate national plan for combustion sources (larger than 50 MW)

Act No. 73/2012 Coll., on ozone depleting substances and fluoride greenhouse gases

This act implements EU Regulations 105/2009 and 842/2006.

Act No. 85/2012 Coll. on the geological storage of carbon dioxide

Transposition of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide

Act No. 350/2011 Coll., on chemical substances and chemical mixtures

This act came into effect on 1.1.2012 and abolished former Act No. 356/3003 Coll., as amended.

- changes in penalties
- end of catch-all-provisions regarding to REACH.

Act No. 100/201 Coll., on environmental impact assessment - Amendments No. 38/2012, 85/2012 and 167/2012 Coll.

- correction of provisions enabling public participation and access to courts based on previous infringement procedure.

Act No. 40/2009 Coll., Criminal Code - Amendment No. 330/2011, 357/2011, 420/2011 Coll.

The amendment came into effect 1.1.2012. Provisions relating to environmental crimes were reformulated.

Act No. 418/2011 Coll., on the criminal liability of legal persons

Before this act came into effect (1.1.2012), only physical persons could be liable for a criminal offence according to the Czech legal order. Up to 2012, offences of legal persons were subject to administrative sanctions which were usually imposed in the administrative procedure.

Act. No 359/2012 Coll., on animal abuse

Act No. 359/2012 Coll. replaced former Act No. 246/1992 Coll., on animal abuse. The main reason for this legislative change was, as usually, adaptation of the Czech legal order to EU Regulation 1099/2009 and transposition of Directive 2010/63/EU.

Beside the new legislation mentioned above, the Parliament is about to adopt changes to the Act on the greenhouse gases emissions trading, waste law, Act on the nature protection and to mining law. Construction Code will be substantially amended as well.

B/ Judicial decisions

Supreme Administrative Court

21.6.2012 (1 Ao 7/2011-526)

The court abolished the planning documentation for South Moravia region (Principals of territorial development) because in the land-use planning procedure the cumulative and convergent impacts of traffic has not been taken into consideration.

19.5.2011 (2 As 9/2011-154)

The court ruled that the only participant in the procedure permitting to operate nuclear facility is the applicant.

27.4.2012 (7 As 25/2012-21)

The court ruled that NGO is entitled to participate in the decision-making procedure even though it was established after the procedure was opened, if this would not result in unbearable lengthening of the procedure.

22.7.2011 (7 As 26/2011)

This decision is linked to the previous one (6 Ao 5/2010) in which the court admitted direct effect of Art. 10a of Directive 85/337/EC as amended, referring to CJEU decision C-263/08. In its later decision, Supreme Administrative Court ruled that NGOs have the same procedural rights as the other participants and that the courts review the substantive conditions of the administrative acts and their discrepancy with substantive rules, to a certain level.

29.6.2011 (9 As 7/2011)

The court was dealing with interpretation of EU Regulation 2204/90.

Constitutional Court

Case No. I.ÚS 451/11 of 11.1.2012 was related to private nuisance coming from road traffic at Street 5. května in Prague. In this locality, traffic noise permanently exceeded legally set limitations for noise from the public health point of view. The Constitutional Court abolished prior decisions of Regional Court (Municipal Court in Prague) and the Supreme Court of Czech Republic. These courts imposed the duty on the City of Prague to stop the nuisance, based on the proof of increased level of noise which permanently exceeded the limitations set by the public law and, at the same time, was beyond acceptable level of noise from the private law point of view. The Constitutional Court held that those decisions did not respect the basic constitutional right of the City of Prague (Art. 11.1 of the Constitution).