
ENVIRONMENTAL ENFORCEMENT IN THE CZECH REPUBLIC: THE EU PRE-ACCESSION PHASE

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SUMMARY

Environmental enforcement problems are always difficult, but their importance becomes much greater in the European Union (EU) candidate countries. Based on a description of their historical background and development (including the legal and institutional framework of environmental protection and environmental enforcement), the most significant environmental enforcement problems in the Czech Republic are defined also with respect to the EU accession. The current approach to solving these problems is highlighted, with emphasis given to legislative activities and to institutional and human resources capacity building.

1 INTRODUCTION

In 1995, the European Agreement was signed and the Czech Republic (as well as other 9 countries from the Central and Eastern European Countries and Cyprus) started its long-term preparation process for the European Union (EU) membership. The basic conditions for joining the EU were clearly defined by the European Commission (EC):

- the national legislation must be fully harmonized with the EU laws (*acquis communautaire*);
- the institutional and procedural settings should be adjusted to implement and enforce the harmonized legislation efficiently;
- the general public is supposed to be aware of all these changes.

In the Czech Republic (similarly as in the other EU candidate countries), the preparatory work was started by evaluating the national legislative system with respect to EU *acquis communautaire* (EU AC). The process resulted to identification of gaps and to decisions on steps which must be taken to meet the EU requirements. It is obvious that the environmental part of this exercise are among the most difficult ones. Despite many pieces of legislation which have been already updated or replaced by new acts compatible with the EU AC, there is still much to do. But writing and adopting a legal act is only the beginning of the more complicated phase tied with enforcement of this legislation. All the involved institutions and procedures must be revised and - if necessary - rebuilt and strengthened

to reach the desirable effect in practice. The paper is trying to identify (based on their historical background) the main problems dealing with environmental enforcement problems in the Czech Republic and propose some perspectives on how they should/could be solved.

2 DEVELOPMENT OF LEGAL AND INSTITUTIONAL FRAMEWORK OF ENVIRONMENTAL ENFORCEMENT IN THE CZECH REPUBLIC

The ground-stones of the present environmental legislation in the Czech Republic were implemented at the beginning of the nineties, within the former Czech and Slovak Federal Republic (Czechoslovakia). The main, framework law – Act No. 17/1991, on the Environment - adopted in 1991, fixed the basic principles and rules for environmental protection. Within the period 1990-1992, all the main environmental legislation was adopted, as described in Mezricky (1994). However, the traditional sectoral approach was again preserved. During the same period, Czechoslovakia became a party to several important international agreements (as e.g. Basel or Washington Conventions).

In January 1, 1993, Czechoslovakia was split into two independent states: the Czech Republic and the Slovak Republic. The new Czech Republic adopted the entire set of environmental laws of the predecessor. Management and also enforcement of environmental law is thus partly depending on several more or less independent acts (e.g. Clean Air Act No. 309/1991, the Act No. 238/1991 - now replaced by the new Act 125/1997 - on Waste Management, the Act No. 114/1992, on Nature and Landscape Protection etc.). On the other hand, some horizontal legislation also exists. The most important are the Act No. 244/1992, on Environmental Impact Assessment, the Act No. 388/1991, on State Environmental Fund and the completely new Act No. 123/1998, on Public Access to Environmental Information.

Enforcement of environmental law was (and still is) traditionally distributed among several institutions. The position of the main enforcement body at the subregional level is taken by Environmental Departments within the District Offices (72 in the area of Czech Republic). Some of the enforcement competences are also given to municipalities. The supervision (compliance monitoring) is generally performed by the Ministry of the Environment. However, some specific enforcement organization was also needed. In 1991, the new Czech Environmental Inspectorate (CEI) was created by the Act No. 282/1991, as a nationwide specialized enforcement body. In the time when the independent Czech Republic was created, the Czech Environmental Inspectorate consisted of five more-less independent divisions (air pollution control, water pollution control, waste management, nature and landscape protection and forest protection), managed by one Directorate, but each headed by one Chief Inspector.

During the year 1993, important organizational changes occurred within the Czech Environmental Inspectorate. To ensure a more integrated approach to inspections and closer contact with industry and areas of interests, the regional principle of administration was adopted. 9 regional offices of Czech Environmental Inspectorate (called Regional Inspectorates) were formed; another one was added later. Each of the Regional Inspectorates consists of 5 specialized departments (the same as the former divisions mentioned above) and headed by one regional Chief Inspector. The structure of Czech Environmental Inspectorate headquarters was also changed to 5 departments; their role changed from direct control and commanding more to providing methodical guidelines and coordination. The national range of inspection was preserved, so that any inspector from Czech Environmental Inspectorate may proceed with inspections in the entire area of the Czech Republic. This practice enables us to use broadly and more efficiently the expertise and experience of

individual inspectors, if necessary. This essential change was initial and a very important step towards a more integrated approach in control of environmental compliance. However, due to sectoral legislation, the majority of control activities are still one-sector oriented. From another point of view, the current structure of CEI (namely the Regional Inspectorates) may now be considered as a valuable advantage in implementation of new environmental legislation during the EU-approximation process, in respect to EU directives on Integrated Pollution Prevention and Control (96/61EC, the IPPC Directive).

3 PRESENT MAIN PROBLEMS IN ENVIRONMENTAL ENFORCEMENT

3.1 General enforcement problems

The present state of law enforcement in the Czech Republic is significantly influenced by the history of legislation development. At first, the system of legislation was designed under a strong German and Austrian influence, and then (after a short period of democratic development between the World Wars) was affected by the communist regime. Based on these facts, some general enforcement problems, which are present not only in environmental issues, may be observed:

- Most of the Czech legislation is applied traditionally in the very rigid way, that causes the same approach in proposing a new law automatically: legislation is thus very detailed and cannot be used in more general way. In fact, in the enforcement procedures the “letter of law” is more important than the “sense of law” in enforcement. As a consequence, there is an absence of appropriate sanctions or their low ability to be applied (their “uselessness”) often occurs in individual non-compliance cases.
- The impacts and effectiveness of sanctions are often lower than might be expected: sanctions are sometimes comparatively much lower in cases of essential large companies, influencing the economy of a whole state or even owned by state, in comparison with medium-sized or small installations, where the overall economical effect is lower or negligible.
- The institutional framework of executive enforcement bodies is often underestimated. Human resources to proceed with a compliance control are limited not only by the insufficient number of staff, but sometimes also by a low level of experience. Coordination and cooperation with different ministries is often an essential problem. The competences for compliance promotion are scarce or missing, that results in the predominant application of „command and control“ principle. This is the problem not only at the national level of the state administration; implementation of competences at the lower level of administration (districts, municipalities) is limited or missing, due to the amount of other administrative work, limited human sources or missing experience. In this situation, quantitative as well as qualitative capacities of enforcement are insufficient, resulting in procedural and formal mistakes and failures. As a consequence, the effectiveness of enforcement is low, and real impact of sanctions on non-complying facilities (organizations) is often soft or absent.

- Public participation in the enforcement process is low or completely missing. The passive approach to law compliance is very common, as well as high level of tolerance for non-compliance.

3.2 Environmental enforcement problems from the EU accession point of view

It is very difficult and even impossible to separate the problems of the environmental enforcement problems linked with the EU accession from the general ones described above. Lack of institutional and human resources capacities, insufficient financing, complex and not always effective and transparent procedures of enforcement and missing legislative frameworks for promotion of environmental compliance are making problems also from the EU accession point of view. Nevertheless, the needs to solve the same problems with the perspective to meet strong EC requirements as the necessary condition for being accepted as an EU member state in the relatively near future, provides both a great challenge and stimulation to correct the problem.

Even during the pre-accession phase, the EC is paying an enormous attention not only to the process of harmonizing the “language” of appropriate legislation, but also (and even more) to providing sound evidence that the harmonized legislation will be enforced effectively. From the detailed view of the EC, the current problems in environmental enforcement are more visible. Specifically, adopting and implementing some complex and/or horizontal directives (like the IPPC Directive, the new Water Framework Directive which is under preparation now) requires intensive work in adjusting enforcement mechanisms in a short time. Our first experience with this kind of exercise have already been gained from implementing the completely new pieces of legislation (i.e. the Act No. 157/1998, on Chemicals and Chemical Substances, the Act. No. 123/1998, on Public Access to Environmental Information) which are fully compatible with the EU environmental acquis.

4 PERSPECTIVES FOR STRENGTHENING THE ENVIRONMENTAL ENFORCEMENT

Improvement of environmental enforcement in the Czech Republic in general and ensuring the effective enforcement of the EU environmental legislation cannot be considered separately as they are “two sides of one problem.” The EU member states are obliged to enforce the EC environmental legislation in the same way and using the same instruments and methods which they apply in enforcing their own national environmental requirements. Therefore measures taken to strengthen the environmental enforcement in the Czech Republic should be designed to meet the needs for enforcement of the Czech laws, strong enough to enforce the EU legislation incorporated into the national legislative system.

The measures which inevitably follow the above mentioned gaps and inconsistencies of the Czech enforcement system, could be distinguished into three categories:

- improvement of legislative procedures and environmental legislation;
- establishment of more effective institutional frameworks and procedures for the enforcement;
- changes of competencies of the competent authorities.

4.1 Legislative measures

The expected improvement must be achieved not only by preparing new acts or by updating the current laws to be compatible with the EU environmental acquis, but also by strengthening all legislative procedures. This is necessary:

- to make the legislative procedures less political and more professional, concentrated on substantial problems;
- to open procedures of making comments on bills for the general public, for academic/university and independent experts;
- even in early stage of drafting new pieces of environmental legislation, to take into account more extensively practical experience and knowledge of environmental inspectors, academic/university and independent experts;
- to specify environmental requirements which are enforceable, concrete and exact - the environmental obligations must be permanently and consistently linked with proposed sanctions (penalties etc.);
- to specify monitoring obligations in sectoral legislation;
- during drafting a new environmental law, to assess all the requirements for effective enforcement (institutional capacities, procedures, technical and information support including equipment, human capacities and financial needs) and ensure that they are in place before the law is in power;
- to review, propose and adopt clear and effective administrative rules and institutional framework for permitting procedures;
- more efficiently and a greater extent to involve the general public into the environmental decision-making;
- to introduce legal standing for representatives of the general public in environmental matters.

4.2 Institution building and strengthening of capacities

Possibilities to improve environmental compliance and enforcement depend very much on the current, real state of enforcement institutions, on their capacities and competences and, consequently, on their effectiveness. Quantitative growth of enforcement bodies does not solve the problem, structural and qualitative changes are evidently much more efficient. The process must be started by detailed and quite comprehensive assessment of present enforcement capacity, by identification of needs and gaps. This process has been already launched in the Czech Republic, supported by EC and several EU member countries.

Based on the first results of this assessment and the new legislation proposed, the capacity and effectiveness of enforcement institutions can be enhanced (in a present stage of our knowledge) by:

- changing the current state administrative system and the position of state employees working in enforcement institutions to strengthen their respect;
- establishing and introducing enforcement as a comprehensive approach used regularly as the systematic tool wherever and whenever the environmental requirements are to be met (programs of enforcement - system of targeting, priority setting, compliance promotion, inspections);

- applying the compliance promotion approach by enhancing and implementing new competences of enforcement institutions;
- changing the quantitative proportion between administrative and executive staff in environment enforcement, to strengthen enforcement capacities without essential enlargement of the state administration;
- changing the structure of enforcement organizations, to enable a more integrated approach in enforcement and to improve cooperation among different enforcement bodies;
- specifying clearly monitoring obligations (with respect to the duties of the state administration and the polluters) and setting efficient systems of reporting and data documentation;
- creating interdisciplinary (cross-sectoral) links between the enforcement bodies to avoid duplication of activities and to use existing expertise and experience more efficiently;
- strengthening considerably the system of training and education of enforcement officers;
- building new international links, especially with the neighboring countries to enhance effectiveness of environmental enforcement in transboundary issues;
- cooperating more closely with polluters, responsible owners of polluting facilities to increase the awareness of enforcement institutions on the internal problems of installations, which will support the voluntary approach in compliance;
- enhancing involvement of the general public in the enforcement process and raising public awareness on environmental problems (including education aimed at the “right-to-know” in environmental matters).

4.3 Clarification of competences

Based on experience gained from daily practice, unclear and/or inappropriate setting of competence is one of the main obstacles to achieve effective cooperation necessary for efficient enforcement. To improve the current situation in the Czech Republic, it is necessary to:

- establish the regional level of the state administration with clearly defined responsibilities;
- clarify the relationship between the Czech Environmental Inspectorate and District Offices in environmental matters;
- review, assess and redistribute responsibilities and competences of state officials in enforcement authorities.

5 CONCLUSION

Evaluating more than eight years of experience in environmental protection under the conditions of continuing democratic changes and economic transition, it is obvious that actions taken in the Czech Republic were correct in principal. But the first steps of setting

democratic state administration in environmental protection, and a foundation of new systems of environmental legislation are not enough without the strong and effective enforcement. Just after the revolution changes, the generally declared demand for “better and healthy environment” followed by expressions of a “willingness to do something for that” was leading to some kind of underestimation of what it would require to achieve. Under the economic pressures which resulted from the complex and difficult reconstruction and privatization of the economy and which were followed by changing priorities of socially accepted values, failures and gaps in enforcement became visible. The EU accession process is now a great stimulus to strengthen the environmental enforcement starting from the phase of drafting legislation. This situation seems to be also a unique challenge for changing the traditional “command and control” approach to more a proactive one, opening the opportunity for promoting environmental compliance and for active involvement of the general public.

REFERENCES

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