Environmental law and practice in Czech Republic: overview

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ENVIRONMENTAL REGULATORY FRAMEWORK

1. What are the key pieces of environmental legislation and the regulatory authorities?

Environmental protection is largely governed by EU legislation that either applies directly or is implemented into national legislation. The main environmental legislation at the national level includes:

- Civil Code (Act 89/2012 Coll.).
- Act on the Conditions of Transferring State-owned Property to Other Persons (Act 92/1991 Coll.).
- Agricultural Land Resources Protection Act (Act 334/1992 Coll.).
- Forestry Act (Act 289/1995 Coll.).
- Atomic Act (Act 18/1997 Coll.).
- Act on the Rights to Environmental Information (Act 123/1998 Coll.).
- Energy Act (Act 458/2000 Coll.).
- Environmental Impact Assessment Act (Act 100/2001 Coll.).
- Chemical Act (Act 350/2011 Coll.).
- Waste Act (Act 185/2001 Coll.).
- Water Act (Act 254/2001 Coll.).
- Packaging Act (Act 477/2001 Coll.).
- Integrated Prevention Act (Act 76/2002 Coll.).
- Air Protection Act (Act 201/2012 Coll.).
- Act on Emission Allowances (Act 383/2012 Coll.).
- Act on Substances that Deplete the Ozone Layer and on Fluorinated Greenhouse Gases (Act 73/2012 Coll.).
- Renewable Resources Act (Act 165/2012 Coll.).
- Mining Act (Act 44/1988 Coll.).
- Act on Mining Activities, Explosives and the State Mining Administration (Act 61/1988 Coll.).
- Act on Prevention and Remedy of Environmental Damage (Act 167/2008 Coll.).
- Criminal Code (Act 40/2009 Coll.).
- Act on Criminal Liability of Legal Entities (Act 418/2011 Coll.).

The Ministry of the Environment (Ministerstvo životního prostředí) is the central regulatory authority for environmental matters. In certain cases, such as when public health, land or energy policy is involved, other government bodies may be the responsible authority (for example, the Ministry of Public Health, the Ministry of Agriculture and the Ministry of Industry and Trade). Where the possible environmental impact is limited to a region, the regional or district municipality is the responsible body.

The Czech Environmental Inspectorate (CEI) is an expert executive body within the state administration that is charged primarily with supervising the enforcement of environmental legislation and the legality of administrative decisions taken by public administration bodies on the environment. The CEI is an independent organisation subordinate to the Ministry of the Environment.

REGULATORY ENFORCEMENT

2. To what extent are environmental requirements enforced by regulators?

The responsible regional or central authority's approach largely determines the level of enforcement. In general, environmental laws are enforced quite strictly.

Both administrative liability and criminal liability can be incurred to public authorities. Administrative liability arises from public law, but civil liability generally arises between individuals and legal entities.

Administrative liability

Various pieces of legislation regulate administrative liability. Administrative liability relating to environmental law is unique; the concept of environmental damage or harm is broader than that of damage under civil law and includes harm that cannot be quantified in financial terms.

The regulator ex officio may initiate an administrative proceeding. No third party complaint is necessary.

There is usually strict liability for administrative offences committed by legal entities. This means that an entity may be liable even without being culpable in the sense of acting intentionally, negligently or taking other subjective matters into account.

Criminal liability

The Criminal Code provides that a breach of the relevant legislation that is either intentional or the result of gross negligence may give rise to criminal liability.

Individuals (directors) and companies can be criminally liable for the same offence, including an environmental offence (Act on Criminal Liability of Legal Entities). A legal entity's criminal liability passes to any legal successor irrespective of mergers or restructurings.
Civil liability
There are no special rules of civil liability for environmental matters. In general, civil law damages can only be awarded against parties who are culpable by intention or negligence. However, there is strict liability for damage (including environmental damage) that results from certain industrial activities or activities that create particular risks for third parties.

ENVIRONMENTAL NGOs
3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active?
There are several internationally renowned and local NGOs active in environmental matters. They operate mostly in the building, energy, chemicals and mining sectors. NGOs active in the field of environmental protection have certain information rights and rights to participate in administrative proceedings under various legislation including the Building Code, Act on Nature and Landscape Protection, Water Act and Integrated Prevention Act.

ENVIRONMENTAL PERMITS
4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?
Integrated/separate permitting regime
An integrated permit regime is mandatory for certain types of facilities listed in Annex 1 to the Integrated Prevention Act. Operators of other facilities have the option to apply for an integrated permit. The integrated permit regime is mandatory in the following industrial sectors in particular:
- Energy
- Metallurgy
- Mining and mineral processing
- Chemical industry
- Waste treatment
- Other industrial activities
The integrated permit usually covers:
- Admissible emission threshold levels
- Tolerable noise/vibration threshold levels
- Waste treatment
- Machinery used in facilities
- Chemical substances and processes used in facilities
An assessment under the integrated permit regime:
- Covers the regulated environmental impacts of the examined facility
- Is subject to a single administrative procedure
Single/separate permits
Activities outside the scope of the Integrated Prevention Act are not subject to the mandatory integrated permit regime. Permits may be required under other regulations, see Questions 6 and 7.

5. What is the framework for the integrated permitting regime?
Permits and regulator
Integrated permit applications must be submitted to the territorially competent regional municipality. If the environmental impact of the project is not confined to the Czech Republic, the Ministry of the Environment is the responsible authority. The responsible authority then requests assessments from other relevant authorities on the basis of which it makes a final decision.
An applicant may ask the municipality for guidance on the information that the application must contain.
The process of granting a permit under the integrated permitting regime may take a considerable amount of time and involve a number of participants. Participants may include the local and regional municipality where the facility is to be located and NGOs or similar organisations acting in the public interest. Any participant may decide to challenge the permit before the final decision is made.
Length of permit
Permits can be granted for a fixed or indefinite time, depending on, for example, the projected life of the facility. Open-ended permits granted for an indefinite time are reviewed periodically and can be suspended where there have been serious compliance failures. The courts may review the suspensions of permits.
Restrictions on transfer
The rights arising from an integrated permit cannot be assigned and the duties cannot be delegated. A transferee of an asset must apply for a new permit.
Permits, however, pass to legal successors (for example, the new owner of a facility for which the permit has already been issued).
Penalties
A fine of up to EUR360,000 can be imposed for operating a facility without a permit or for operating a facility in breach of the conditions set out in a permit.
Failure to report material modifications to the relevant facility for which a permit has been issued or, for example, filing incorrect data in an application for an integrated permit can lead to fines up to EUR75,000.
WATER POLLUTION
6. What is the regulatory regime for water pollution (whether part of an integrated regime or separate)?
Permits and regulator
Unless an integrated permit has already been obtained (see Question 4), any activity that has an impact on surface or ground water such as the discharge of wastewater into watercourses must be authorised by the competent authorities (Water Act).
General activities involving the use of water that do not diminish the quality or quantity of water do not require authorisation.
Depending on the type of activity, the competent authority is the:
- Ministry of the Environment
- Ministry of Agriculture (central regulator, unless stipulated otherwise)
- Regional municipality
- Local municipality
Local authorities and the Czech Environmental Inspectorate (CEI) are responsible for supervising compliance with the obligations imposed by law and particular permits.

**Prohibited activities**
Legal entities and individuals must refrain from any activity that would cause the quality of surface or groundwater or its power producing potential to deteriorate, unless they hold the relevant authorisation (*Water Act*).

**Clean-up/compensation**
The regulator may request polluters to remedy the impact of any unauthorised pollution at their own expense.

**Penalties**
Breaches are subject to the following fines:
- Individuals: from EUR800 to EUR40,000.
- Legal entities: up to EUR400,000.

**AIR POLLUTION**

7. What is the regulatory regime for air pollution (whether part of an integrated regime or separate)?

**Permits and regulator**
The type and impact of the source of air pollution determines:
- Whether the permitting regime is integrated or separate (see Question 4).
- The competent authority. The mandatory integrated permit procedure covers all combustion facilities with over 50 MW of heat output, in which case Ministry of the Environment is the responsible authority. Smaller combustion facilities must obtain a permit from the regional or local municipality.

**Prohibited activities**
General rules apply on the prevention of damage or environmental harm. Any activities not prohibited under normal circumstances or in relation to a permit may become prohibited in some circumstances. One example is the regulation of smog, under which the operation of certain air pollution sources may be temporarily restricted or prohibited.

**Clean-up/compensation**
The Czech Environmental Inspectorate (CEI) has the authority to impose fines and clean-up obligations on polluters regardless whether the facility is operated under an integrated or separate permit (*Air Protection Act*).

**Penalties**
Fines of up to EUR400,000 can be imposed on entities operating in breach of the terms of the relevant permit or operating illegally without a permit.

**CLIMATE CHANGE, RENEWABLE ENERGY AND ENERGY EFFICIENCY**

8. Are there any national targets or legal requirements for reducing greenhouse gas emissions, increasing the use of renewable energy (such as wind power) and/or increasing energy efficiency (for example in buildings and appliances)? Is there a national strategy on climate change, renewable energy and/or energy efficiency?

**Climate change**
The new 2030 framework for climate and energy policies agreed on 23 October 2014 by EU leaders (Framework) sets a target to reduce EU domestic greenhouse gas emissions by at least 40% below the 1990 level by 2030.

The Ministry of the Environment and other relevant ministries are currently preparing two new strategic documents, which they will present to the government in 2015:
- The Climate Protection Policy, which will contain mitigation measures.
- The Adaptation Strategy, which will include estimates of negative impacts, adaptation measures, and legal and economic analyses.

**Renewable energy**
Renewable energy must form 20% of the EU’s total energy consumption by 2020 under Directive 2009/28/EC on the promotion of the use of energy from renewable sources. The directive amends and subsequently repeals Directives 2001/77/EC and 2003/30/EC (*Renewable Energy Directive*). The framework in the directive aims to make the EU’s economy and energy system more competitive, secure and sustainable. It also sets a target of at least 27% renewable energy by 2030 and certain energy savings targets.

Under the Renewable Energy Directive 2009/28/EC, the Czech Republic and other member states must ensure that at least 10% of overall transport fuel consumption comes from renewable sources. The target will mainly be met by the increased use of sustainable biofuels.


**Energy efficiency**
Certain minimum requirements for the energy efficiency of buildings came into force on 1 April 2013 in the Energy Efficiency Act, which implemented Directive 2010/31/EU on the energy performance of buildings (Energy Performance Directive). They also impose strict energy efficiency and consumption requirements on new or newly renovated buildings, such as requirements on effectiveness of the usage of the energy generated by energy sources or the usage of energy grids, and so on.

A common framework of measures for promoting energy efficiency exists within the EU (*Directive 2012/27/EU*). Its main aims are:
- To ensure that the EU is able to achieve a 20% headline target on energy efficiency by 2020.
- To lead the way for additional energy efficiency improvements beyond that date.

Rules in the framework aim to remove barriers in the energy market and overcome market failures that impede efficiency in the supply and use of energy. In particular, the Directive aims to establish:
- Indicative national energy efficiency targets for 2020.
- A compulsory requirement for large companies to have energy audits once every four years.

The European Commission proposed a 30% energy savings target for 2030, following a review of the Energy Efficiency Directive. The European Council, however, endorsed an indicative target of 27% with a review in 2020.

An amendment to Energy Efficiency Act is currently in the legislative process. The amendment reflects the Energy Efficiency Directive and supplementary implementation of other directives such as the Energy Performance Directive.
**Country Q&A**

**Emission Allowances, see Question 10.**

largely incorporated in the Air Protection Act and the Act on 1990 level by 2030. EU domestic greenhouse gas emissions by at least 40% below the global.practicallaw.com/environment-guide

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include:

Phase III started on 1 January 2013. The main changes in Phase III

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The ETS has four compliance stages:

- Phase I ran from 2005 to 31 December 2007.
- Phase II ran from 1 January 2008 to 31 December 2012.
- Phase III started on 1 January 2013 and will run to 31 December 2020.
- Phase IV will begin in 2021.

Phase III

Phase III started on 1 January 2013. The main changes in Phase III include:

- A single EU registry for all users instead of national member state registries.
- A single EU-wide cap on emissions, which decreases annually. This means the former National Allocation Plans are no longer required.
- Additional greenhouse gases and industrial sectors.
- Auctions to partially replace the allocation of allowances.

For Phase III, the Czech Republic has a free allocation of a part of the emissions allowances required by Czech electricity and heat generators. The free allocation corresponds to the investment made to enhance energy efficiency under Article 10a and 10c of Directive 2003/87/EC, which establishes a scheme for greenhouse gas emission allowance trading within the Community (Emissions Trading Directive). Free allowances will be unavailable from 2019.

The current Act on Emission Allowances came into effect on 1 January 2013 governing the system for providing and trading in emission allowances.

**ENVIRONMENTAL IMPACT ASSESSMENTS**

11. **Are there any requirements to carry out environmental impact assessments (EIAs) for certain types of projects?**

Scope

Environmental assessments ensure that the environmental implications of decisions are taken into account before the decisions are made. The Environmental Impact Assessment Act provides a limited list of activities subject to the EIA procedure.

There are two categories for each activity. A different regime applies to each category:

- An EIA is mandatory for activities in the first category, which includes the construction of large energy, industrial or infrastructure projects and mines.
- Activities in the second category are only subject to an EIA if the responsible authority decides an EIA is required. The second category includes construction of medium-sized energy, industrial or infrastructure projects.

When deciding whether to require an EIA, the responsible authorities consider:

- Location of the facility.
- The seriousness of its possible impact on the environment and public health.

Permits and regulator

The applicant must provide detailed information to the Ministry of the Environment or the relevant regional authority for the EIA. The information must include details of the company’s background, the project and a report on the current environmental status of the location.

Although the EIA report does not bind the regulator, the report is considered to be a principal factor in the regulator’s decision whether to issue a permit.

Penalties

A permit is likely to be invalid if the EIA procedure is not followed. However, it is unlikely that a third party who does not participate in the administrative procedure will challenge the final decision and be successful.

**WASTE**

12. **What is the regulatory regime for waste?**

Waste is any movable that has been abandoned or that the owner is obliged to dispose of (Waste Act).

Legal entities and individuals engaged in business operations:

- Must ensure waste is transported to and deposited in an authorised landfill.
- Pay the relevant fees.

Non-domestic waste must be categorised. The producer must properly label hazardous waste.
Legislation entitles the consumer for them to be destroyed or stored in accordance with the law. The importer's obligation to collect any returned products and arrange one of the categories below. This mirrors the producer's or to return, free of charge, products or their packages that fall under the Act on Prevention and Remedying of Environmental Damage, has been transposed into Czech law by the principle relevant legislation. It implements Directive 2004/35/EC on environmental liability with regard to the

Permits and regulator
A relatively rigorous government authorisation process applies to landfill operations:
- An integrated permit is required.
- An EIA may be required depending on the size of the landfill.

Apart from landfill operations, the handling of non-hazardous waste is not subject to particular permits. The management of hazardous waste requires a special permit. The Ministry of the Environment is usually responsible for granting the permit. In some circumstances, particularly where public health is concerned, other government bodies such as the Ministry of Public Health may be the responsible authorities. At the regional/local level, the regional/local municipalities are responsible.

The CEI is in charge of supervising waste management.

Prohibited activities
All persons involved in activities involving waste have a particular duty of care. In particular, they must:
- Obtain an environmental permit to treat, keep or dispose of waste.
- Not treat, keep or dispose of waste in a manner likely to pollute the environment or harm human health.
- Comply with the conditions of an environmental permit.
- Not otherwise breach the duty of care.

Operator criteria
A person meeting certain criteria in respect of education and experience must operate landfill operations. These precautions aim to ensure that waste, primarily hazardous waste, is handled with an appropriate level of professionalism. Operators must also open and contribute to a special bank account that is earmarked for rehabilitating and reclaiming landfill sites.

Special rules for certain waste
The most rigorous regime applies to hazardous waste. Additional obligations apply to the categorisation, labelling and professional handling of hazardous waste.

The following types of waste are subject to stricter regulation:
- Sewage sludge. Directive 86/278/EC.
- Asbestos. Directive 87/217/EC.
- Mining waste. This may only be deposited in dumps that meet special criteria.
- Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC, governing mining waste, has been transposed into Czech law by the Act on Mining Waste Management. That Act provides that mining waste can only be deposited in dumps that meet special criteria.

Obligations to take back waste. Legislation entitles the consumer to return, free of charge, products or their packages that fall under one of the categories below. This mirrors the producer's or importer's obligation to collect any returned products and arrange for them to be destroyed or stored in accordance with the law. The categories are:
- Vehicle wrecks.
- Batteries or accumulators.
- Discharge lamps.

- Mineral oils.
- Packaging.
- Tyres.
- Electronic devices from private households.

Penalties
The Waste Act provides for fines up to EUR1,800,000 depending on the nature of the offence. The highest fines would apply to the most flagrant breaches of the Waste Act, notably to cases of hazardous and other high-risk waste treatment.

ASBESTOS

13. What is the regulatory regime for asbestos?

Prohibited activities
Asbestos is a specific category of hazardous waste under the Waste Act. Special obligations apply, see Question 12.

Asbestos must not be used in construction. A specially certified inspector must supervise the demolition of buildings that contain asbestos. Although minor exceptions exist, employees are prohibited from handling substances that contain levels of asbestos above a certain threshold.

Main obligations
Employers must:
- Report activities that cause exposure to asbestos to the relevant authority.
- Ensure that where employees are permitted to work with asbestos, work only takes place in marked and secured controlled zones.
- Keep records of the controlled zones and ensure all specific safety rules are followed. Keep a file containing details of all categories of work with asbestos and of their employees’ exposure to asbestos. The file must be kept for a period of 40 years after the date of last exposure.

Permits and regulator
The building office of the local municipality is responsible for approving the demolition of buildings in their area that may contain asbestos.

The Czech Labour Inspectorate is the responsible supervisory body for employment-related legislation.

Penalties
Fines up to EUR80,000 apply to breaches of the Building Code for:
- Proceeding without the supervision of a certified inspector.
- Demolishing a building that may contain asbestos.

The Labour Inspectorate can impose fines up to EUR80,000 on person who fails to comply with the obligations imposed by the Act on Labour Safety.

CONTAMINATED LAND

14. What is the regulatory regime for contaminated land?

Regulator and legislation
The Act on Prevention and Remedying of Environmental Damage is the principle relevant legislation. It implements Directive 2004/35/EC on environmental liability with regard to the
prevention and remediing of environmental damage (Environmental Liability Directive). The territorially competent local municipality is the relevant regulator.

Investigation and clean-up

Annex I to the Act on Prevention and Remediing of Environmental Damage lists activities falling within the scope of the Act. Activities directly connected to soil contamination include:

- Any activity that is subject to a mandatory integrated permit procedure, see Question 4.
- The transport of chemicals through pipelines or by any kind of road, railway, fluvial, maritime or aerial transport.
- The production or handling of herbicides and pesticides.

Operators conducting any of the activities in the bullets above must take all practical measures to:

- Prevent environmental damage.
- Repair environmental damage and restore the full functionality of the relevant natural resource.

If there is a justified suspicion of environmental harm, the competent authorities have the right to require the operator to carry out an immediate risk analysis.

The operator is responsible for paying all the necessary costs of any remediation and restoration, including the costs of a risk analysis. The operator may not have to pay costs, if it can prove that:

- The harm was caused by a third party and occurred even though the operator had taken all practical steps to prevent the harm.
- The harm resulted from measures the operator took to comply with official regulations.
- It acted in full compliance with the relevant regulations and the environmental damage resulted from an activity that was authorised under relevant regulations.
- The operator could not have reasonably foreseen the environmental damage despite using its best effort.

Insurance requirement

Operators whose operations may cause environmental damage exceeding EUR800,000 must obtain insurance that covers the costs of remediing any potential environmental damage, see Question 29.

Penalties

Legal entities and individuals can be subject to a fine of up to EUR35,000 for breaching the obligations to:

- Report to the competent authority any information about possible environmental damage.
- Take all practicable measures to repair environmental damage and restore the original function of the relevant natural resource.

A fine up to EUR180,000 may be incurred for a breach of obligations to:

- Take immediate pre-emptive measures.
- Avoid or mitigate environmental damage.
- Report all the relevant information on the circumstances under which environmental damage has occurred to the competent authority.

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- Take all practicable measures to repair environmental damage and restore the original function of the relevant natural resource.

A fine up to EUR180,000 may be incurred for a breach of obligations to:

- Take immediate pre-emptive measures.
- Avoid or mitigate environmental damage.
- Report all the relevant information on the circumstances under which environmental damage has occurred to the competent authority.

15. Who is liable for the clean-up of contaminated land? Can this be excluded?

**Liable party**

Under the polluter pays principle, the administrative liability for contaminated land lies with the polluter. This liability cannot be contractually passed to another person. However, a buyer can seek warranties and indemnities from the seller for damages or potential future damages caused by the pollution to third parties.

There is an exception to the polluter pays principle. The state is responsible for cleaning up, if:

- The polluter cannot be identified.
- The polluter has ceased to exist.
- The pollution is attributable to military or industrial activities before 1989. These activities are known as old ecological burdens.

Privatisation contracts between the state and the relevant acquirer have often transferred clean up responsibility to acquirers of privatised businesses. The provisions of these contracts determine the treatment of the old ecological burdens. The state has often agreed to provide a financial contribution to a clean-up.

For liabilities on the sale of land, see Question 19.

**Owner/occupier liability**

The polluter alone is responsible for the clean-up of contaminated land. An owner or occupier is not liable if they are not a polluter.

A current owner may have a civil liability to third parties that suffer damage, for example through migration of contaminated water from a contaminated plot of land.

In this case, the current owner bears the civil responsibility to stop the third party's property from contamination and compensate for any damage caused. The current owner could then be made subject to an injunction to cease or limit the operation of the acquired asset.

**Previous owner/occupier liability**

The administrative liability lies with the polluter. Therefore, former owners or occupiers can be liable for contamination they caused in the past.

**Limitation of liability**

Administrative liability is unlimited as it is deemed to arise from public law.

Parties are free to limit the contractual liability arising from their business activities. However, there are exceptions, in particular where harm has been caused intentionally or as a result of gross negligence.

The general limitation period under the Civil Code is three years for contractual and non-contractual claims. Contractual parties may agree on a different limitation period from between one and ten years. For damage or harm caused intentionally, the limitation period may last up to 15 years.

The limitation period starts running at the moment the damaged party became aware of the damage.
Lender liability

Lenders are not liable for land contamination except in cases where the corporate veil is lifted. The liability is based on the relevant lender being deemed a shadow director. This may happen in the following cases and can lead directly to environmental liability:

- The lender exerts substantial influence over the management or a supervisory board member or certain other persons.
- The lender misuses its influence to the detriment of the company or its shareholders.

Minimising liability

Lenders should not interfere with a borrower company's day-to-day management to avoid possible shadow director liability for any environmental or other matters.

17. Can an individual bring legal action against a polluter, owner or occupier?

If pollution constitutes unlawful interference with a legally recognised right such as personal integrity or a property right, this may give rise to civil liability. In such cases, the wrongdoer must remedy the damage caused to the injured individual or entity or compensate accordingly.

An individual or legal entity can begin a civil law action against a polluter or the owner of property from which pollution originates if the pollution directly affects the individual or legal entity.

An individual or legal entity cannot bring an action for administrative or criminal liability. An individual or legal entity can only notify the relevant authorities of alleged breaches.

HYDRAULIC FRACTURING

18. Is fracking being pursued or considered in your jurisdiction? If so, please describe the regulatory framework which applies to manage environmental risks.

Consenting and environmental impact assessment

Fracking is not prohibited but is very limited by general rules on the prevention of damage or environmental harm. Geological research and surveys may be carried out only by organisations that meet obligatory requirements set by the relevant legislation, such as:

- Geological Activities Act.
- Act on Mining Activities, Explosives and the State Mining Administration.
- Environmental Impact Assessment Act.

Other issues

Generally, fracking is not publicly supported. In 2013, the Upper Chamber of the Czech Parliament proposed a draft bill aimed at prohibiting fracking. The Ministry of Environment also considered a moratorium. Although none of above attempts to explicitly forbid any fracking in the Czech Republic were successful, several companies tried but completely failed to obtain permission from the Ministry of Environment to carry out surveys for shale gas.

ENVIRONMENTAL LIABILITY AND ASSET/SHARE TRANSFERS

19. In what circumstances can a buyer inherit pre-acquisition environmental liability in an asset sale/the sale of a company (share sale)?

Asset sale

In an asset sale, administrative liability and civil liability must be distinguished:

- Administrative liability. The seller of the assets (the polluter) retains environmental liability and cannot transfer the obligations arising from the assets to the buyer.
- Civil liability. In most cases, the seller (the polluter) retains the liability for environmental damage previously caused.

However, the buyer risks liability as the new owner of the asset for continuing environmental harm. In these circumstances, an administrative action or third party injunction may result in the buyer being required to cease or limit the use or operation of the acquired asset. The buyer may also incur fines and third party civil liability for continuing environmental harm.

Share sale

Companies are separate legal entities under Czech law. As such, all the obligations arising from environmental law remain with the target company once it is transferred to the buyer. Consequently, the buyer will be interested in ensuring that the final purchase price reflects any environmental liability in the target company and may seek representations and warranties from the seller. Environmental due diligence should be performed in cases where an operating company is being acquired, see Question 22.

20. In what circumstances can a seller retain environmental liability after an asset sale/a share sale?

Asset sale

In accordance with the polluter pays principle, responsibility lies with the person or entity responsible for causing the pollution. The extent of civil law liability depends on the terms of the agreement between the seller and the buyer.

Share sale

See Question 19.

21. Does a seller have to disclose environmental information to the buyer in an asset sale/a share sale?

Asset sale

In a sale of real estate, the seller must disclose to the buyer any factual or legal defects in the asset of which it is aware. If the seller fails to do so, they may be liability for defects, damages, or rescission of the contract. However, the seller has no specific obligation to disclose environmental information to the buyer.

Under the Act on Energy Management, the seller must arrange for an energy performance certificate to be issued by an authorised person. The seller must give the certificate to the buyer.

In practice, a buyer generally requires a seller to give environmental warranties concerning the environmental condition of the business and its assets to encourage the seller to disclose environmental information. If the seller does not fully disclose all relevant environmental information to the buyer, the seller is
potentially liable to pay damages to the buyer if the warranties prove to be incorrect and the buyer suffers loss.

**Share sale**

In relation to environmental matters, there is no particular disclosure obligation associated with share sales arising from environmental regulations.

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22. **Is environmental due diligence common in an asset sale/a share sale?**

**Scope**

In real estate transactions or acquisitions of industrial or agricultural businesses, it is common to perform environmental due diligence. The scope of the due diligence always depends on the nature of the target business and particular aspects of transaction.

Relevant areas usually covered by environmental due diligence include:

- Old ecological burdens (see Question 15).
- Fines, penalties, lawsuits, claims, notifications or complaints made or threatened against the target.
- Historic environmental reports, surveys or audits (including those relating to asbestos).
- Circumstances that may give rise to a future breach of environmental law.
- Environmental permits or consents required to operate the business or occupy a site.
- A building’s energy efficiency.

**Types of assessment**

In most cases, the assessment includes the following:

- A review of the relevant documentation.
- A soil and water contamination analysis.
- An analysis of potential or pending administrative procedures and civil claims relating to environmental liabilities.

**Environmental consultants**

Environmental consultants are often engaged, particularly on acquisitions involving operating industrial businesses.

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23. **Are environmental warranties and indemnities usually given and what issues do they usually cover in an asset sale/a share sale?**

**Asset sale**

The scope of the representations and warranties always depends on the relevant business. Usually, the following types of environmental warranties are given in an asset sale:

- The business is not a party to any environmental proceedings, claims, investigations or complaints.
- There is no contamination or pollution present on any of the business’s assets or properties.
- Full disclosure of all environmental reports relating to the business or the properties.

**Share sale**

The position is similar to that for asset sales as described above.

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24. **Are there usually limits on environmental warranties and indemnities?**

In the majority of cases, environmental warranties are limited by time and subject to a financial cap, both of which are subject to negotiation but are often similar to the position on other warranties. The cap often includes all warranty claims and is linked to a percentage of the purchase price. The time limits and caps for environmental indemnities may vary according to the scope of the indemnity and the environmental losses it is intended to cover.

Usually environmental indemnity is also subject to trigger events that must occur before a buyer is permitted to make a claim. Limitations of liability due to events after completion are usually included.

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REPORTING AND AUDITING

25. **Do regulators keep public registers of environmental information? What is the procedure for a third party to search those registers?**

**Public registers**

The Ministry of the Environment maintains a publicly accessible register of facility operators to whom integrated permits have been granted. There is also a public real estate register (cadastre), which includes information on how each plot of land is classified, for example, as farm land, industrial land or as a built-up area.

**Third party procedures**


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26. **Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?**

**Environmental auditing**

There is no legal obligation to carry out an environmental audit. However, environmental auditing is common among companies that voluntarily adhere to environmental quality standards and ethical codes, or internal corporate responsibility policies.

**Reporting requirements**

Publicly listed companies are obliged to report matters that could potentially affect them financially or in relation to their business activities. These matters include actual or potential environmental liabilities. Otherwise, there is no general reporting obligation.
27. **Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?**

Private entities are not obliged to inform the public about environmental incidents. However, the Environmental Information Act puts public authorities under a wide range of duties to provide information on environmental matters. The public can therefore easily obtain information about environmental incidents.

The Water Act specifies a duty to immediately inform the relevant authority of environmental water accidents. The relevant authority may be the police or fire department. The authority is then obliged to inform the Czech Environmental Inspectorate (CEI), see Question 14.

28. **What access powers do environmental regulators have to access a company?**

The competent officials carrying out pre-emptive or corrective measures are authorised to enter any facility whose activities fall within the scope of the Act on Prevention and Remedying of Environmental Damage. The officials are obliged to notify the company in advance unless the matter is urgent. The officials must prove their identity by showing an official personal ID card.

**ENVIRONMENTAL INSURANCE**

29. **What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it common in practice?**

**Types of insurance and risks**

An operator whose operations could potentially cause environmental damage exceeding EUR750,000 must maintain appropriate financial security to cover its potential clean-up and compensation obligations (Act on Prevention and Remedying of Environmental Damage).

**Obtaining insurance**

Most commercial insurance companies offer a range of relatively comprehensive and flexible insurance policies relating to environmental damage.

**ENVIRONMENTAL TAX**

30. **What are the main environmental taxes in your jurisdiction?**

Certain activities that have a demonstrable adverse impact on the environment are taxed (Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity). The following are taxed under this principle:

- Natural gas and certain other gases.
- Solid fuels.
- Electricity.

Generally, there are no other taxes that are directly related to the environment except for tax on natural gas and certain other gases, solid fuels and electricity. However, certain fees/charges (that is, obligatory payments other than taxes) must be paid to the Czech Republic when exploiting natural resources and on removing land from the agricultural land bank.

**Tax liability**

**Gas and solid fuel.** The person responsible for paying the tax on natural and other gases and solid fuels is the supplier of the gas or solid fuel to the end consumer.

**Electricity.** The person responsible for paying the tax on electricity is either:

- The operator of the electricity grid.
- The electricity producer.
- Under certain circumstances, the electricity trader.

**Tax rates**

The applicable rates are:

- Natural gas and certain other gases: between EUR1.10 and EUR9.48/MWh depending on the end use.
- Solid fuels: EUR0.31/GJ, on the exothermal heat produced.
- Electricity: EUR1.01/MWh.

**REFORM**

31. **What proposals are there for significant reform (changes) of environmental law in your jurisdiction?**

An amendment to the Environmental Impact Assessment Act is in the process of becoming law. The amendment should eliminate defects that were criticised by the European Commission in the transposing of Directive 2011/92/EU.

Also, a Bill on end-of-life products is in the legislative process. The new law will:

- Define requirements for waste management for selected products, for example automobiles, batteries and tyres.
- Define duties for producers and manufacturers in all stages of the life cycles of selected products.
THE REGULATORY AUTHORITIES

The Ministry of the Environment (Ministerstvo životního prostředí)

Main activities. The principal regulatory body in charge of environmental matters.

W www.mzp.cz

The Czech Environmental Inspectorate (Česká inspekce životního prostředí)

Main activities. The government body with the powers of investigation and supervision in the field of environmental law.

W www.cizp.cz

Regional and local councils

Main activities. The authorities responsible for environmental matters of lesser gravity or limited territorial impact.

W www.statnisprava.cz/rstsp/ciselniky.nsf/i/d0045

ONLINE RESOURCES

Ministry of the Interior

W www.portal.gov.cz/app/zakony

Description. An official government website containing a variety of information related to public administration and the contact details for government bodies. The website intends to provide up-to-date legislation and relevant news concerning the administrative sector. The webpage is available in Czech only.

Ministry of the Environment


Description. The official website of the Ministry of the Environment, publishing essential environmental legislation. The webpage is available in Czech only.

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