EUFJE Conference 2014, Budapest

Report on the

Czech Republic

Impact Assessments – Preventive Measures against Significant Environmental Impacts in the 21st Century

Questions:

Legal Framework

1. How is the EIA Directive (Directive 2011/92/EU) transposed in your country? Please provide a list of your national pieces of legislation transposing the EIA Directive.

The EIA Directive is transposed into national law through many legal, administrative and other measures. In the first place it is Act No. 100/2001 Coll., on Environmental Impact Assessment and amending some related Acts (Act on Environmental Impact Assessment). The other related legal regulations are Ordinance No. 457/2001 Coll., on qualification and adjustment of some other matters regarding the environmental impact assessment authorisation, and Ordinance No. 353/2004 Coll., on authorisation for the field of public health impacts assessment.

EIA Directive is transposed into Act No. 123/1998 Coll., on right to environmental information, Act No. 150/2002 Coll., Code of Administrative Justice and Act No. 85/2012 Coll., on the storage of carbon dioxide into the natural rock structures as well.

The subsequent related procedures, for which the EIA statement is a mandatory precondition, are regulated in various specific laws, e.g. the Construction Code (Act No. 183/2006 Coll.), Act No. 254/2001 Coll., on Waters, or Act No. 76/2002 Coll., on IPPC.

2. Are the EIA Directive and the IPPC Directive[1] transposed in your country through the same legislation?

Actually, they are not transposed into Czech law through the same legislation. The EIA Directive is primarily transposed through the Act No. 100/2001 Coll., on Environmental Impact Assessment (see above), while the IPPC Directive is transposed through the Act No. 76/2002 Coll. on Integrated Pollution Prevention and Control, on the Integrated Pollution Register and on amendment to some laws. Another related legislation regulating Integrated Pollution Prevention and Control ("IPPC") is Ordinance No. 554/2002 Coll., laying down the standard application for integrated permit, extent and manner of its completion.

[1] The former Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control repealed by the Article 81 of the Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) with effect from 7 January.

3. What procedure is set up to determine whether a project (listed in Annex II) shall be made subject to an assessment, case by case examination, thresholds or criteria or a combination of these procedures?

The Act No. 100/2001 Coll. encompasses Annex 1 which divides the projects (plans) into two categories in accordance with the EIA Directive. Category I implements Annex I of the EIA Directive and includes those types of projects which are to be assessed under all circumstances. Category II implements Annex II of the EIA Directive and includes those types of projects which require prior screening.

Pursuant to Sec. 4 (1) of the Act No. 100/2001 Coll. the subject of the assessment shall be:

"*a) projects set forth in Annex 1 of this Act , Category I, and changes thereof if the change of the project reaches by its capacity or extent the relevant threshold, in case it is specified; these projects and changes of projects shall always be subject to assessment;*

b) changes of a project set forth in Annex 1 of this Act, Category I, if its capacity or extent is to be increased significantly or if there is a significant change in the technology, management of operations or manner of use thereof and these changes are not covered by letter a); these changes of projects shall be subject of assessment if so laid down in a fact-finding procedure[2]*;*

c) projects set forth in Annex 1 of this Act, Category II, and changes thereof if the change of the project reaches by its capacity or extent the relevant threshold, in case it is specified, or if their capacity and extent are to be increased significantly, or if there is a significant change in the technology, management of operations or manner of use thereof; these projects and changes of projects shall be subject of assessment if so laid down in a fact-finding procedure;

d) projects set forth in Annex 1 of this Act which do not reach relevant threshold, in case it is specified, and the relevant authority decides that they shall be subject to the fact-finding procedure; these projects shall be subject of assessment if so laid down in a fact-finding procedure;

e) constructions, activities and technologies which according to the statement of the nature conservation authority issued pursuant to the Act No. 114/1992 Coll., on Nature and Landscape Conservation, can independently or in conjunction with other projects significantly affect the sites of Community importance or birds areas; these constructions, activities and technologies shall be subject of assessment if so laid down in a fact-finding procedure."

Pursuant to Sec. 4 (2) of the Act No. 100/2001 Coll. the subject of assessment shall not be:

"*a project or part thereof about which the Government makes a decision in cases of emergency, state of danger and state of war, for urgent reasons of defence or to comply with international agreements binding the Czech Republic and when the plan is employed for immediate prevention or mitigation of unpredictable events that could seriously affect the health, safety or property of the population or the environment. This may not be laid down for projects that are subject to transboundary environmental impact assessment.*"

Furthermore, the obligation to undergo EIA can be excluded also by the regional authority which "*may decide not to assess a project if implementation of the project is necessary to mitigate or prevent the*

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[2] The term „*fact-finding procedure*" includes the screening and scoping. Pursuant to Sec. 7 "[t]*he objective of the fact-finding procedure is to refine information that should be included in the documentation on the environmental impact, in relation to*
a) the nature of the specific plan or kind of plan,
b) environmental factors referred to in Sec. 2 that could be affected by implementing the plan,
c) the current state of knowledge and assessment methods.
For projects and for changes in projects pursuant to Sec. 4 par. 1 letters b), c), d) and e), the objective of the fact-finding procedure shall also be determination of whether the project or change therein is to be assessed pursuant to this Act."

consequences of an event that seriously and immediately endangers the environment, or the health, safety or property of the population" [Sec. 23 (7) of the Act No. 100/2001 Coll.].

The criteria for selection of projects requiring an EIA are included in Annex 2 of the Act No. 100/2001 Coll. and are divided in three categories: (1) characteristics of projects, (2) location of projects, and (3) characteristics of potential impact on the population and the environment. These categories include further detailed criteria which are almost verbatim taken over from Annex III to the EIA Directive.

EIA Procedural Provisions

4. Is the environmental impact assessment procedure considered in a separate administrative procedure (e.g. - different from the development consent procedure) by the competent authority? If yes, please provide a short description of the applicable arrangements for the implementation of the Directive (including what administrative act is considered a development consent).

The EIA procedure is not considered as an administrative procedure pursuant to the Code of Administrative Procedure. The act resulting from the EIA procedure shall be issued in the form of Statement with the different nature than administrative decision has.

The purpose of the environmental impact assessment shall be to obtain an objective professional background document for issuing a decision or measure pursuant to special regulations. It is a basis for subsequent procedures on the final development consent.

The EIA process includes the following steps:

The developer shall be obliged to submit a notification of the project to the relevant authority.

The other stage of the process is fact-finding procedure. The objective of the fact-finding procedure is to refine information that should be included in the documentation on the environmental impact (hereinafter "documentation").

The notifier shall provide for preparation of documents in written form in a number of copies stipulated by the agreement with the relevant authority and in electronic form. In justified cases, especially for technical and economic reasons, the relevant authority may decide not to require provision of electronic form of cartographic, pictorial or graphical annexes to the documentation.

The relevant authority shall then provide for preparation of the expert report on the basis of an agreement with an authorized person. The person preparing the expert report shall prepare this report on the basis of the documentation or notification and all the viewpoints submitted thereon.

The final product of the EIA process is the Statement on environmental impact assessment (hereinafter „EIA statement") of the project. On the basis of the documentation or notification, expert report and public hearing and the viewpoints submitted thereon, if appropriate, the relevant authority shall issue a statement on environmental impact assessment of the project within 30 days of the date of expiration of the deadline for submitting viewpoints on the expert report.

5. Is the EIA process part of a permitting procedure in your legal system? How are the results of the consultations with environmental authorities and the public and environmental information taken into consideration in the development consent procedure? To what extent does an EIA influence the final decision, i.e. its approval or refusal and attached conditions?

The outcome resulting from an environmental impact assessment, i.e. the EIA statement , is a basis for subsequent procedures on the final development consent according to special regulations, e.g. the Construction Code, the Act No. 254/2001 Coll. on Waters, or the Act No. 13/1997 Coll. on Roads.

Pursuant to Sec. 1 (3) of the Act No. 100/2001 Coll. the purpose of the environmental impact assessment shall be to obtain an objective professional background document for issuing a decision or measure pursuant to special regulations.

The relevant authority deciding on the final development consent shall always take into account the content of the EIA statement; be there in an EIA statement special requirements on environmental protection, the relevant authority includes them into its own decision (in compliance with the case law of the Supreme Administrative Court (hereinafter "SAC"), e. g.: the judgment of 15 May 2008, No. 2 Aps 1/2008-77 and/or the judgment of 19 January 2010, No. 1 As 91/2009-91). In case the relevant authority does not include the requirements of the EIA statement in its decision or include them only partly, it is obliged to provide reasoning. (Pursuant to Sec. 10 of the Act No. 100/2001 Coll.)

6. In case of a multi-stage development consent procedure (e.g. combination of several distinct decisions), at what stage does the environmental impact assessment procedure take place during the development consent procedure in your country?

The environmental impact assessment should take place prior to the issuance of a final development consent. In case where the Act No. 100/2001 Coll. requires that a project shall always be subject to assessment or that a project shall be subject of assessment if so laid down in a fact-finding procedure, the EIA statement is a mandatory precondition for the subsequent related procedures.

7. What kind of authority (local, regional, central) is responsible for making decisions on EIA and/or to grant/refuse development consent?

The authorities responsible for performing the duties arising from the EIA Directive and the Act No. 100/2001 Coll. are (1) the Ministry for the Environment and (2) the regional authority in delegated jurisdiction in the territorial administrative area of which the project is proposed [Sec. 3 (f) and Sec. 20 of the Act No. 100/2001 Coll.].

Pursuant to Sec. 21 of the Act No. 100/2001 Coll. "*the Ministry shall*

a) be the central administrative authority in the field of environmental impact assessment;

b) execute supreme state supervision in the field of environmental impact assessment;

c) provide for assessment of projects set forth in Annex No. 1 [of this Act], column A, and for projects whose developer is the Ministry of Defence, also in columns B, and changes therein;

d) provide for the assessment of conceptions in cases when the affected territory comprises the whole territory of a region or extends to the territories of several regions or the territory of a national park or the protected landscape area or if the affected territory comprises the territory of the whole state;

e) provide the European Commission, in conformity with regulations of the European Community [Union], with information in the field of environmental impact assessment;

f) provide for transboundary assessment of projects and conceptions;

g) provide for assessment of other plans, for which the competent authority is the regional authority, if it has reserved this jurisdiction in individual specific cases;

h) keep summary records of all commenced assessments and records of all conclusions of the fact-finding procedure and statements issued;

i) grant and withdraw authorization;

j) keep and once annually publish a list of authorized persons in its Bulletin;

k) by the end of February of each year publish a list of expert reports and the persons preparing these reports and furthermore a list of conceptions and their reviewers for the previous calendar year;

l) issue a statement on environmental impact assessment of a spatial development policy and spatial development principles."

Pursuant to Sec. 23 (4) "*the Ministry may in justified cases reserve the assessment of a project or a conception, where the regional authority is competent for the assessment. On the other hand, the Ministry may in justified cases and after agreement with the regional authority delegate the assessment of a project pursuant to Sec. 21 (c) or the assessment of a conception pursuant to Sec. 21 (d) to the regional authority, if that can contribute to the promptness and economy of the assessment.*"

Pursuant to Sec. 22 of the Act No. 100/2001 Coll. "*the regional authorities shall*

a) provide for the assessment of the projects set forth in Annex No. 1 [of this Act], Column B, and changes therein and projects set forth in Sec. 4 (1) (d) a (e);

b) provide for the assessment of a conceptions in cases when the affected territory covers exclusively the territory of the region, unless the Ministry is competent pursuant to Sec. 21 (d);

c) keep records of the statements issued thereby and send one copy of each conclusion of a fact-finding procedure and statement issued thereby to the Ministry for summary records;

d) by the end of February of each year publish a list of expert reports and the persons preparing these reports and furthermore a list of conceptions and their reviewers for the previous calendar year;

e) issue a statement on environmental impact assessment of a territorial plan."

Decision to grant or refuse development consent shall be issued by the authority competent in a concrete procedure for which the EIA statement is a basis according to special regulations, e.g. the Construction Code, the Act No. 254/2001 Coll., on Waters, or the Act No. 13/1997 Coll., on Roads.

8. Is the decision resulting from the environmental impact assessment a pre-condition to grant development consent? In case of a multi-stage development consent procedure, at what stage are the results of the consultations with environmental authorities and the public and environmental information taken into consideration?

As mentioned above, the outcome resulting from an environmental impact assessment, i.e. the EIA statement, is a basis for subsequent procedures on the final development consent according to special regulations, e.g. the Construction Code, the Act No. 254/2001 Coll. on Waters, or the Act No. 13/1997 Coll. on Roads.

In case of multi-stage development consent procedure the environmental impact assessment should take place prior to the issuance of final development consent. In case where the Act No. 100/2001 Coll. requires that a project shall always be subject to assessment or that a project shall be subject of assessment if so laid down in a fact-finding procedure, the EIA statement is a mandatory precondition for the subsequent related procedures.

As indicated above, the relevant authority deciding on the final development consent shall always take into account the content of the EIA statement, be there in an EIA statement special requirements on environmental protection, the relevant authority includes them into its own decision (in compliance with the case law of the SAC, e. g.: the judgment of 15 May 2008, No. 2 Aps 1/2008-77 and/or the judgment of 19 January 2010, No. 1 As 91/2009-91). In case the relevant authority does not include the requirements of the EIA statement in its decision or include them only partly, it is obliged to provide substantial reasoning. (Pursuant to Sec. 10 of the Act No. 100/2001 Coll.)

9. In case of projects for which the obligation to carry out environmental impact assessment arises simultaneously from the EIA Directive and other Union legislation, does your country ensure a coordinated or joint (e.g. single) procedure ("one stop shop")? If yes, please provide a list of the Directives covered.

There is no coordinated or joint procedure in the Czech law, as far as environmental impact assessment is concerned, arising simultaneously from several Directives. However we consider EIA procedure as "*one stop shop*" in the meaning that it covers two main branches of assessments that are evaluated at once: 1) environment impact assessment and public health; 2) impact assessment on NATURA 2000.

10. Is it possible to carry out joint or coordinated environmental assessments fulfilling the requirements of the EIA Directive, Directive 92/32/EEC and/or Directive 2009/147/EC? Is there a legal basis for carrying out such assessments?

There is no legal basis for such connection so far. The requirements of the Directive 2014/52/EU have to be met by 16 May 2017, the implementation of this directive has been running yet.

11. What arrangements are established with neighbouring Member States for exchange of information and consultation?

The transboundary environmental impact assessment is regulated by Sec. 11 to 14b of the Act No. 100/2001 Coll.

"*On the basis of a request from either of them, the state of origin and the affected state shall determine whether post-project analysis is to be carried out and, if so, to what extent, taking into account potential significant detrimental transboundary impact of the plan that was the subject of transboundary assessment. Any post-project analysis will include especially constant monitoring of the consequences of implementing the plan and determination of any detrimental transboundary impact. This constant monitoring and determination of impacts may be carried out for the purpose of achieving the following objectives:*

a. monitoring of compliance with the conditions laid down in the decision or measure pursuant to special regulations and the effectiveness of mitigating measures,

b. examination of the impact of the plan and dealing with questions arising during the post-project analysis,

c. verification of previous forecasts in an attempt to utilize the information gained in implementing similar plans in the future." [Sec. 12 (3)].

"*If, on the basis of the post-project analysis, the state of origin or affected state has justified reasons for concluding that there is a significant detrimental transboundary impact, or if factors have been determined that could lead to such an impact, it shall immediately inform the other state. After coming to an agreement, the state of origin and the affected state shall subsequently lay down necessary measures to decrease or prevent this impact.*" [Sec. 12 (4)].

Transboundary Assessment of a Plan Implemented in the Territory of the Czech Republic [Sec. 13]:

(1) "*If the Ministry discovers that a plan is involved or if the affected state has requested assessment of the plan, it shall send notification together with information on the course of the assessment and information on related decisions that can be adopted pursuant to special regulations to the affected state for an opinion within 5 working days.*

(2) *If the received viewpoint of the affected state on the notification of the plan sent thereto contains the intention to participate in the transboundary assessment, the Ministry shall request information from the affected state on the state of the environment in its affected territory. The Ministry shall send this information within 5 working days of the date of receipt thereof to the notifier for use in preparing documents, which must always be prepared in the case of transboundary assessment, and shall also provide it to the person preparing the expert report.*

(3) Within 20 days of obtaining the documentation, the Ministry shall send these documents to the affected state and offer preliminary consultations, particularly if the documentation is prepared in variants, including description of measures for mitigating significant transboundary impacts (hereinafter "consultations"). If the affected state expresses interest in consultations, the Ministry shall participate in such consultations. The Ministry shall provide information immediately and at the latest 5 days prior to the date set for the consultations on the place and time of the consultations to the notifier and, through him (her), to the person preparing the documentation. These persons shall then be obliged to also participate in the consultations. The Ministry shall be obliged to publish information on the consultations.

(4) Within 5 working days of obtaining the viewpoint of the affected state on the documentation, the Ministry shall deliver this viewpoint as a basic document for evaluating the plan to the person preparing the expert report.

(5) The Ministry shall incorporate the viewpoint of the affected state in the statement, or shall set forth therein the reasons why it did not incorporate it partly or entirely in its statement.

(6) *The Ministry shall be obliged to send the statement to the affected state within 15 days of its issue. Furthermore, it shall be obliged to send to it requests for issuing related decisions pursuant to special regulations and these decisions, within 15 days of the date of their receipt. The administrative authorities shall be obliged to send these requests and decisions to the Ministry on the basis of the requirement made in the statement or on the basis of its request.*"

Transboundary Assessment for Plans Implemented outside the Territory of the Czech Republic [Sec. 14]:

(1) „If the Ministry obtains notification of a plan or otherwise learns of a plan that will be implemented or carried out in the territory of the state of origin, it shall be obliged within 5 working days after receipt thereof to publish information on such notification and to send it to the affected administrative authorities and the affected territorial self-governing units for an opinion.

(2) Every person shall have the right to send a viewpoint in writing on the notification within 15 days of the date of publishing information on such notification to the Ministry. The Ministry shall send all viewpoints together with its own viewpoint to the state of origin within 30 days of the date of publishing information on the notification.

(3) On the basis of a request from the state of origin, the Ministry shall communicate information on the state of the environment in the affected territory of the Czech Republic, which it shall do within 30 days of the date of receiving such request, unless a special regulation prevents this.

(4) If the Ministry has obtained documentation and any offer for consultations from the state of origin, it shall send such documents for a viewpoint to the affected administrative authorities and affected territorial self-governing units and shall publish information on this documentation.

(5) Every person shall have the right to send a viewpoint in writing to the Ministry, on the documentation referred to in paragraph 4, within 15 days of the date when information on such documentation is published. The Ministry shall send all viewpoints together with its own viewpoint and information that it will participate in the consultations to the state of origin within 30 days of the date when information on the documentation is published.

(6) If the Ministry obtains information on the place and time of a public hearing held in the territory of the state of origin, it shall publish it.

(7) *If the Ministry obtains the conclusions of the state of origin on assessment of the plan and a decision of the state of origin on the basis of subsequent procedures, it shall publish information on this conclusion and/or this decision within 15 days of receipt thereof.*"

There are several bilateral agreements between the Czech Republic and neighbouring Member States. These are:

- Agreement between the Government of the Czech Republic and the Government of the Slovak Republic on cooperation in protection and creation of the environment of 29 October 1992 published as no. 121/1994 Coll. (on the 12 April 1996 the Implementing Protocol to the Agreement between the Government of the Czech Republic and the Slovak Republic on cooperation in the protection and creation of the environment was signed and published as no. 189/1996 Coll.);

- Agreement between the Government of the Czech Republic and the Government of Germany on cooperation in protection and creation of the environment of 24 October 1996 published as no. 53/1999 Coll. and

- Agreement between the Government of the Czech Republic and the Government of Poland on cooperation in protection of the environment of 25 January 1998 published as no. 44/1999 Coll.

EIA Content

12. Is the developer obliged by national legislation to consider specified alternatives to the proposed project?

Pursuant to Sec. 6 (4) of the Act No. 100/2001 Coll. if the involved plan is subject to assessment pursuant to Annex No. 1 of this Act, the developer (in the position of the notifier) must always give an indication of the studied main variants and key reasons for its choice in relation to the environmental impact.

13. Is scoping (e.g. scope of information to be provided by the developer) a mandatory step in the EIA procedure?

The term "*scoping*" as well as "*screening*" is included in the stage fact-finding procedure of the EIA process. Pursuant to Sec. 7 of the Act No. 100/2001 Coll. the objective of the fact-finding procedure is to refine information that should be included in the documentation on the environmental impact.

In case of projects set forth in Annex 1 of the Act No. 100/2001 Coll. which do not reach relevant threshold, in case it is specified, the relevant authority decides that they shall be subject to the fact-finding procedure; these projects shall be subject of assessment if so laid down in a fact-finding procedure.

The documentation with content and scope pursuant to Annex No. 4 of this Act can be a substitution for the notification of plans and changes in plans pursuant to Sec. 4 (1) (a) (b) (c) of this Act. In such case a procedure pursuant to Sec. 8 of this Act shall be followed and the fact-finding procedure is not laid down.

Otherwise scoping as a part of fact-finding procedure is a mandatory step in the EIA process.

14. Are there any provisions to ensure the quality of the EIA report prepared by the developer?

If the relevant authority concludes that the documentation provided by the developer does not contain the requisites on the basis of this Act (pursuant to Annex No. 4), it shall return such documentation within 10 days of delivery of the documentation to the notifier (the developer) for supplementing or reworking.

The same procedure follows if the relevant authority decides on the basis of delivered viewpoints or recommendations of the person preparing the expert report, at the latest 40 days from the date when the documentation on the project was delivered to the person preparing the expert report.

Every person may submit a viewpoint on the documentation to the relevant authority in writing within 30 days of the date when information on the documentation is made public.

The relevant authority shall provide for preparation of the expert report on the basis of an agreement with a person authorized therefore.

The person preparing the expert report shall prepare this report on the basis of the documentation or notification and all the viewpoints submitted thereon.

If the person preparing the expert report requires individual documents for verification of information on the environmental impacts of implementing the project from other experts, he (she) shall be obliged to state this fact in the expert report. A person who participated in preparing the notification or documentation may not participate in any way in preparation of the expert report.

The notifier shall be obliged, at his (her) own expense, to provide the person preparing the expert report with the basic documents that were used for preparing the documentation and with other data essential for the preparation of the expert report, within 5 working days of the date when he (she) obtained a request therefore from the person preparing the expert report.

15. How is the cumulation with other existing and/or approved/already proposed projects considered? Please illustrate your answer by referring to examples of national case law!

The developer should inform about the possibility of cumulation with other projects in the notification [sec. 6 (4) or annex 3 of the Act no. 100/2001 Coll.]. The cumulation with other projects is taken into account when considering the parameters of the project.

In the case of SEA there are few judgements concerning this topic. For example, according to the judgment of the SAC of 20 May 2010, No. 8 Ao 2/2010-644, it is the substantial procedural mistake not to fulfil duty to consider the cumulation with other projects. In the judgement no. 1 Ao 7/2011-526 of 21 June 2012, the SAC in a very detailed way concerned with the topic of assessment of cumulative and synergetic impacts. In consequential case law the SAC made his previous general opinions more specific (no. 4 Aos 1/2012-105 of 31 January 2013).

16. How is it ensured that the purpose of the EIA Directive is not circumvented by splitting of projects – e.g. 'salami slicing' of projects (i.e. the assessment and permitting of large-scale, usually linear infrastructure projects by pieces)? Please illustrate your answer by referring to examples of national case law!

The Czech law unfortunately does not contain any provisions to prevent from applying such a technique.

However, the Supreme Administrative Court in the judgement No. 9 As 88/2008 – 301 of 6 August 2009 criticised this technique. The fact, that individual construction objects, within the frame of the whole construction, can work on their own, doesn´t mean that these objects should be assessed individually and separately from the others from the point of future impacts on environment. This opinion has to be applied especially in situation when it is obvious from project documentation that the aim of the construction is to improve transport service of a bigger area (town district) and so it is not accidental complex of more constructions without their connection and link to environment. The SAC stated, that when dealing with a specific project, regarding the environmental impacts, the whole intention should be assessed. Realization of a specific construction has actually impact on the environment as a whole. For this reason, assessing the impact of the partial constructions is irrelevant.

The Court further stressed, that the salami slicing technique should not have its place in EIA process. On the contrary, a method called "*puzzle*" should be applied.

17. Can the screening decision be appealed? If yes, who can lodge an appeal?

The screening procedure as a part of the EIA process is not considered as an administrative procedure pursuant to the Code of Administrative Procedure. The act resulting from the screening procedure has not the nature of administrative decision (see the decision of the Regional Court in Brno of 23 January 2008, No. 31 Ca 111/2007-156).

On the basis of these facts it shall not be lodged an appeal against the screening decision, but this part of the EIA process, as the whole EIA statement, can be contested through the administrative action against the final decision for which the EIA statement is a basic expert document.

18. Is there a time limit for the validity of the EIA-decision and the development consent? Is the permit holder obliged to apply for a new permit after a certain period of time?

The EIA statement shall be a basic expert document for issuing a decision or measure (the development consent) pursuant to special regulations. The statement shall be submitted by the notifier as one of the basic documents for related procedures or processes pursuant (leading to issue the development consent) to special regulations. The statement shall be valid for a period of 5 years from the date of issuing thereof. On the basis of a request by the notifier, the validity may be extended by 5 years, which may be repeated if no substantial change has occurred in implementation of the project, conditions in the affected territory, new knowledge related to the substantive content of the documentation and developments in new technologies utilizable in the project. This period of time shall be interrupted if a related procedure has been commenced pursuant to special regulations.

A time limit for the validity of the development consent is stipulated in special regulations, e.g. the Construction Code, the Act No. 183/2006 Coll. Pursuant to this Act the planning permission on location of the structure, alteration of the use of the area and on division, or the land consolidation is valid for 2 years from the date of its coming into force, unless the building office determines a longer period in justified cases. Upon a justified application the building office may extend the period of validity of the planning permission.

Access to Information Provisions

19. How is the public informed about the project and the EIA? When is the public informed about a project requiring an EIA and about a pertaining administrative procedure? Where can the information be accessed? What does the information contain? Who gets access to this information?

The public will be informed on official notice boards of the responsible authorities, on the Internet and in at least one of the other ways usual in the affected territory (local press, radio), so that everyone could get the information about the proceedings.

The notification must be published by the relevant authority within 7 days on the Internet.

The other information shall be released on official notice boards of the affected territorial self-governing units without delay for at least 15 days. The public hearing must be announced at least 5 days prior to the holding thereof.

Information on when and where the relevant documents may be perused must be released. The public is next informed on when and where the public hearing of the matter will take place and what the conclusions of the fact-finding procedure are. Regarding the public hearing, the relevant authority draws up minutes of it and also prepares a complete stenographic recording or audio-recording thereof.

The expert report shall be published on the Internet within 10 days and the EIA statement within 7 days from its issuing.

20. How does the authority ensure public access to environmental information in the procedures based on the EIA Directive? To what extent is this provision of information user-friendly (easy to find, free of charge, searchable, online, downloadable, etc.)?

All the proceedings are released on the website of the EIA information system http://portal.cenia.cz/eiasea/view/eia100_cr. On this site, it is possible to read and download various documents e. g. notification of the plan, conclusion of the fact-finding procedure, name of the person preparing the expert report etc. Everyone can view this site and it is free of charge. The pieces of information are up-to-date.

Public Participation Provisions

21. What are the criteria for taking part in an environmental impact assessment procedure, besides the project developer and the competent authority? What rights can people living in the neighbourhood, NGOs, authorities invoke in the procedure? What legal rights do participants of the proceeding have? What happens if the competent authority denies someone's legal standing? Please illustrate your answer by referring to examples of national case law!

The EIA process allows the public to participate in it by submitting comments or by taking part in the public hearing.

Every person is entitled to send the relevant authority a written statement in the various stages of the EIA process (e. g. notification, expert report). The only condition is to meet the time limits,

which vary according to the stage of the process. These statements are subsequently taken into account in the fact-finding procedure. The competent authority is obliged to provide for a public hearing, if a negative statement has been submitted. Everyone is allowed to express his opinion on the expert report at the public hearing. The person preparing the expert report will then deal with all objections.

People living in the neighbourhood and NGOs have the same rights as other citizens, as far as the aforesaid procedure is concerned.

Regarding participation in the related procedure (e. g. planning or building permission procedure), the NGOs, whose sphere of activity is protection of public interests, or municipalities affected by the plan shall become a participant of such related procedures if

a) it has submitted a written viewpoint on a notification, documentation or expert report within the periods of time laid down in the EIA Act,

b) the relevant authority stated in its statement that this statement is fully or partly included in its statement, and

c) the administrative authority making a decision in a related procedure did not decide that the public interests, defended by the civic association, are not affected in the related procedure.

However, more subjects can be participants of the related procedure. In the planning permission proceedings, for instance, the participants are (besides the applicant and the municipality) furthermore persons, whose proprietary or another real right to the neighbouring structures or neighbouring grounds or the structures built up on them may be directly affected by the planning permission, or the owner of the ground or the structure, within which the required programme shall be realized.

Judgment of the SAC of 15 May 2008, No. 2 Aps 1/2008-77

The complainants (two natural persons) filed an action for protection against unlawful interference, instruction or enforcement from an administrative authority. They alleged that the relevant authority performing the EIA interfered with their rights when it included another variant (relocation of the road I/13 to a place which borders with the land of the complainants) in the project documentation. This variant was not included in the notification of the project and therefore the complainants did not have the possibility to express their viewpoint thereon. The Municipal Court in Prague dismissed their action as inadmissible and therefore they lodged a cassation complaint.

The SAC first reiterated its settled case-law that the EIA statement cannot be subject to separate judicial review. Therefore, the outcomes of the particular stages of EIA (e.g. the documentation of the project which was contested in the instant case) *a fortiori* cannot be subject to separate judicial review. Neither the EIA statement nor the outcomes of the particular stages of EIA can by themselves violate rights of individuals; therefore, it is not possible to challenge them at court by means of an action for protection against unlawful interference. If the complainants feel that the relevant authority interfered with their right to express their viewpoint on the project, they can raise this objection within the subsequent related procedures.

In the light of the above, the SAC dismissed the cassation complaint.

In the judgment No. 1 As 39/2006 of 14 June 2007, the SAC held that the possibility to challenge the EIA statement only within the judicial review of the subsequent decision giving final development consent is in accordance with the Aarhus Convention as well as with the EIA-directive. It is up to the Member States to determine at what stage the decisions, acts or omissions may be challenged (Article 10a of the EIA-directive).

Administrative and Judicial Review & Enforcement Provisions

22. Can the decisions of the authority (local, regional, central) responsible for making decisions on EIA be appealed? Who is the superior authority deciding over the appeal?

In the Czech law, the EIA decision is not considered a separate administrative decision (the EIA statement is submitted by the developer as one of the basic documents for related procedures or processes pursuant to special regulations), therefore it is not possible to appeal it. The EIA statement can be contested through the administrative action against the final decision for which the EIA statement is a basic expert document. This action can be lodged with the administrative court.

Judgment of the SAC of 14 June 2006, No. 2 As 59/2005-136

The complainant (the municipality of Troubsko) filed an action against the EIA statement issued by the Ministry for the Environment on environmental impacts of the project - extension of the highway D1. The action was dismissed as inadmissible since the Municipal Court in Prague concluded that the EIA statement cannot be subject to separate judicial review. The complainant therefore lodged a cassation complaint with the SAC.

The SAC upheld the decision of the Municipal Court and confirmed that the EIA statement represents merely a background document for the subsequent related procedures and cannot be reviewed by courts as such in a separate procedure. The EIA statement as such cannot prejudice the rights of natural or legal persons since the administrative authority deciding on the final development consent is not bound by it. The administrative authority is allowed not to include the requirements of the EIA statement in its decision or to include them only partly if it provides adequate reasoning. Nevertheless, the EIA statement becomes part of the subsequent decision of the administrative authority which is subject to judicial review.

Therefore, the SAC dismissed the cassation complaint.

Judgment of the SAC of 19 January 2010, No. 1 As 91/2009-83

The Agency for Nature and Landscape Conservation (hereinafter "the Agency") approved pursuant to the Act No. 114/1992 Coll. on Nature and Landscape Conservation the construction of the highway D8. The appeal of the complainants (two NGOs) against that decision and their action filed with the Municipal Court in Prague were dismissed. The complainants therefore lodged a cassation complaint with the SAC maintaining that the municipal court erred in law concluding that the EIA statement was not a mandatory background document for the contested decision.

The SAC held that the contested decision of the Agency was a final decision which could be subject to judicial review and the Agency breached the law by not taking into account the EIA statement. The EIA statement shall be a mandatory background document for the decision-

making of the Agency. The Court backed up his conclusion on the fact that the decision of the Agency shall be binding for the building authority (in case the construction or activity can adversely affect the landscape character or extends to the protected areas) which subsequently decides on the building permit. Therefore, if the EIA statement would not be included in the decision of the Agency, the building authority would not be able pursuant to the legislation effective at the relevant time to include the information and requirements of the EIA statement as regards the subject matter regulated by the decision of the Agency (e.g. the impact of the construction of the highway on specially protected areas) in its decision and the EIA statement would be thus deprived of any value.

In the light of the above mentioned facts the Court quashed the judgment of the Municipal Court in Prague and referred the matter back for further proceedings.

23. Is there a judicial review against decisions made in EIA procedures? If yes, what matters can be challenged and what decisions can the court take?

As mentioned above, the decision on EIA cannot be appealed itself. The only way is to lodge an action against the final decision for which the EIA statement is a basic document.

NGOs, whose sphere of activity is protection of public interests, or municipalities affected by the plan, may bring an action against the administrative act (based on EIA) to the administrative court by reason of breach of the EIA Act. This can be done if they submitted a written statement on documentation or expert report during the EIA procedure.

The plaintiff may seek cancellation of such an administrative decision, or the declaration of its nullity. The case will be then referred to the administrative authority to the new procedure; the authority will be bound by the legal position adopted by the administrative court.

For instance, in 2012, the Regional Court in Ústí nad Labem quashed the planning permission for the D8 motorway because of the breach of the EIA act. The Court stated that the EIA statement was issued illegally, as the public had no chance to express its objections during the procedure. (The SAC judegment no. 15 A 29/2010-188, of 24 October 2012).

24. What are the criteria of legal standing against decisions based on EIA? Who (individuals, NGOs, others) is entitled to challenge the EIA decision at the court? Do individuals need to be affected? If yes, in what way do individuals need to be affected by the decisions in order to have standing?

See above. Anyone (natural or legal person) who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative authority whereby the person's rights or obligations are created, changed, nullified or bindingly determined (hereinafter "decision") may seek the cancellation of such a decision, or the declaration of its nullity. NGOs, whose sphere of activity is protection of public interests, or municipalities affected by the plan, if they submitted a written statement on EIA documentation or expert report, may bring an action before an administrative court. These subjects do not need to be participants of the related procedure. We can mention some examples of the SAC decisions: the judgement of 29 August 2007, no. 1 As 13/2007-63; the judgment of 6 August 2009, no. 9 As 88/2008-325; the judgement of 13 October 2010, no. 6 Ao 5/2010-43 or the judgment of 2 September 2009, no. 1 As 40/2009-251.

25. Does an administrative appeal or an application for judicial review have suspensive effect on the decision? Under which conditions can the EIA decision be suspended by the court?

The application for judicial review has no automatic suspensive effect. However, an amendment to the EIA Act is being prepared and an application for judicial review is going to have suspensive effect.

In addition, it is now possible to seek an interim relief. The administrative court shall grant an interim relief if the petitioner submitted the request and if there is necessity to temporarily settle legal relations because of a serious injury. Under these conditions the administrative court could impose on the parties the obligations to perform/refrain/tolerate something.

26. Does the court have the competence to change/amend an EIA decision? Can it decide on a new condition or change the conditions of the EIA decision?

As mentioned above, the decision on EIA cannot be appealed itself. The only way is to lodge an action against the final decision for which the EIA statement is a basic document. Courts cannot change EIA decisions themselves, but the administrative court has merely the competence to dismiss the action or to quash the contested administrative decision based on EIA decision and refer the case to the administrative authority to a new procedure. The administrative authority is then bound by the legal position adopted by the administrative court. Thus, it has to assess EIA statement according to the opinion of the administrative court.

27. In general, is it required to include monitoring of environmental impacts in the EIA? How is compliance with the monitoring conditions being checked? Is the public informed about the results of monitoring and if yes, how?

Monitoring of environmental impacts is not part of the EIA. That means, that the EIA procedure does not continue during the construction and afterwards. This absence disables the so called post project analysis, which would force the developer to abide the EIA conditions.

28. Who controls compliance with EIA decisions in your country? Are there specialized inspectorates checking compliance? How often do inspections take place? What enforcement policy do the authorities have (warnings, injunctions, sanctions and so on) in case of detected non-compliance? Has information on the results of inspections and related enforcement actions been disseminated to the wider public, and if yes, how?

It is important to bear in mind that the EIA statement is not an administrative decision, it only serves as a basis for the related procedure. The EIA statement is then taken into account, but it is not legally binding. In case the relevant authority does not include the requirements of the EIA statement in its decision or include them only partly, it is obliged to provide reasoning. For instance, in the planning permission procedure, the building office should ensure the fulfilment of the EIA statement requirements in the planning permission; otherwise, it gives the reasons for not doing so.

This example shows that the EIA decision is not binding for the developer in itself. He must follow the decisions of the related procedures (e. g. planning and building permission). This is

checked, for instance, by the building office. If a breach of the law or the permission of the office is discovered, a financial fine may be imposed.

29. If EIA decisions are infringed, what types of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and are they considered to be effective? Can those sanctions be applied on legal persons? Please illustrate your answer by referring to examples of national case law!

As mentioned above, sanctions may be imposed only for infringements of the administrative acts of the related procedures. The EIA Act itself does not contain any sanctions, as the decision on EIA itself is not a binding administrative act. These acts are merely based on the EIA statement. Such sanctions are administrative sanctions; they can be imposed on legal persons as well.

In general, we could mention responsibility of developer and/or competent authority in subsequent proceedings based on EIA decision. Situation in which a developer did not submit EIA decision although he/she was obliged to do so was a subject matter of the judgment of the SAC of 19 March 2009, No. 6 As 33/2008-110. In this judicial decision complainant (legal person) as a developer applied for a planning permission. His project was evaluated in a fact-finding procedure at the end of which regional office as competent authority decided that EIA is not necessary. Subsequently Ministry of Environment decided that EIA is inevitable. Because of this the competent building office suspended proceedings for 1 year so that the applicant had enough time to submit EIA decision. As the developer did not submit EIA decision in 1 year delay, the building office discontinued the proceedings. The developer challenged the suspension of proceedings before administrative courts. Municipal Court in Prague as well as the SAC dismissed the complaint as not justified.

30. If a given activity falls under the provisions of the EIA legislation, but the developer started the activity without the required authorization, what kind of measures can be taken by the competent authority?

If the EIA statement is required for the administrative act, no permission (authorization) will be issued without it. Therefore, it is illegal, if the developer starts the activity without this permission (e. g. planning permission). The developer is then committing a delict according to the Building Act and the building office „orders the owner of the structure to remove the structure being realized or realized without a decision or a measure of the building office required by this Act or being in contradiction to it."

A fine up to CZK 2 millions may be imposed as well.

31. Are there any penalties applicable to infringements of the national provisions adopted pursuant to the EIA Directive?

It is explained in previous questions.