RECENT DEVELOPMENTS 2017/2018

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Legislation:

- **Nature Protection Act No. 114/1992 Coll. was amended by the Act 123/2017 Coll.** The most important changes were aimed at rules on national parks in order to unify the approach to regulation of all National Parks within the territory of Czechia. The amendment declared the long-term objectives of national parks protection and defined their common mission. The basic protective conditions were simplified and excessive protective rules were abolished. The purpose of national parks was clearly defined. The amendment introduced a new instrument called Principles of care of national parks and brought changes in the significance/position of the former Visiting Rules.

- **The Building Code No. 183/2006 Coll. was amended by Act No. 225/2017 Coll**., which brought substantial changes to land-use planning and to construction processes. First of all, the time period for submission of the plan-use plans was reduced from 3 years to 1 year.
  The process of preparation and adoption of land-use plan changes was simplified.
  The amendment brought a new possibility for developers to integrate individual permitting procedures (land-use consent and building permit) and environmental impact assessment into a single procedure or to combine land use consent with building permit or land use consent with environmental impact assessment. The integration is voluntary, so that the developer can go through each procedure separately or he may apply for integrated procedure.
  The amendment changed the legal form of some decisions required by the Nature Protection Act; for example, the former independent decisions of nature protection authorities on exemption from protective rules on endangered species of animals and plants was changed to the binding opinion, which is just the base for the final decision on projected activity.
  One of the most significant change relates to participation of NGOs in permitting procedures. The former possibility of NGOs to participate in land use permit and in building permit procedures was based on the Nature Protection Act (§ 70) since 1992. The possibility of NGOs to participate in decision-making procedures was reduced to permitting of projects which are subject to environmental impact assessment. This is based on the EIA Act No. 100/2001 Coll.. The Amendment changed section 70 of the Nature Protection Act so that NGOs are currently entitled to participate just in procedures regulated by the Nature Protection Act.

- **The Air Protection Act No. 201/2012 Coll. was amended by Act No. 69/2016 Coll.** effective since 1.1.2017
  This new law granted air protection authorities the right to enter private homes to check small stationary sources of pollution The amendment brought also new rules regarding acknowledgment of foreign plaquettes for drive into the low-emission zones. The ambient air quality limit value was established for PM2,5 particles applicable since 2020.

- **Act No. 73/2012 Coll., on substances depleting the ozone layer and fluorinated green-house gasses was amended by Act No. 89/2017 Coll**., with the aim to further implement EU legislation, especially Regulation 517/2014. The legislative change addressed conditions regarding placing on the market and operation of equipment containing fluorinated GGs in order to reduce the risks of its unprofessional installations and to prevent leakages of regulated substances into the air. Other new rules relate to certification procedure and sanctions for a non-compliance.

- **Act No. 100/2001 Coll. on the environmental impact assessment was amended by the Act No. 326/2017 Coll**. The most important changes:
  - The scope of projects subject to EIA procedure was reduced.
  - The validity of the impact assessment statement was prolonged up to 7 years with the possibility to ask for further prolongation.
  - Pursuant to the Amendment, the government is entitled to exclude the project from the assessment in exceptional cases of prevailing public interest
  - The amendment provides with the definition of a consequent administrative procedure.
  - The rules governing elaboration of the expert reviews are stricter.
  - The amendment introduced a duty to carry out assessment of variant which were

Jurisprudence:

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• Last year, Czech NGOs were concerned mainly with the air quality and their effort was aimed at attacking the government for ineffective Air Quality Plans (Judgment of the Supreme Administrative Court 6 As 288/2016-146 of 20.12.2017). Previously, the government was successfully taken to Administrative Courts for non-implementation of the action plans that were required pursuant to the old Air Protection Act. The private claims on compensation of damages followed, in which however, claimants failed to prove the causal link between the absence of the action plan during certain time period and the damage to their health/property. In their latest actions, NGOs claimed the quality of established Air Quality Plans was not complying with requirements set

in Art. 23(1) Directive 2008/50/EC, e.g. Air Quality Plan for Ostrava-Karviná agglomeration does not include air pollution reduction measures capable to achieve air quality limit values (AQLV) so that the exceedance period can be kept as short as possible. The Municipal Court in Prague at first quashed the claim (NGOs and Mr. B. v. Ministry of the Environment of the CR) in case 11A 84/2016-109 and declared that AQP is a program document which was subject to SEA. The Court denied to review expert findings and dismissed the case. This case was submitted to the Supreme Administrative Court for the review. In the above-mentioned decision, the Supreme Administrative Court ruled the Air Quality Directive (2008/50/EC) does not prescribe explicitly that the Air Quality Plans must have binding character. Nevertheless, the Court concluded that the transposition of the Ambient Air Directive was incorrect, since not all requirements on the content of air quality plans pursuant to the Annex XV of the Directive were met.

- The effort to achieve the objectives set out by the Ambient Air Directive resulted in changes of constitutional rights. The latest Amendment to the Air Protection Act granted Air Protection Authorities the right to enter private homes to check small stationary sources of pollution. This was conceived as the breach of constitutional right ensuring „untouchable habitation " by many. Constitutional Court denied the proposal for derogation of that part of the Air Protection Act Amendment in July 2017 (Pl. ÚS 2/17). The ruling of the Court was not unimous.

- Judgment of the Administrative Court in Prague (6 A 12/2015) of 4 April 2018 is related to allocation of tradeable allowances. The claimant claimed incorrect application of the Commission´s Decision 2013/448 by the Czech Ministry of Environment. The dispute arouse regarding Art. (14) of the Decision:

With regard to the application of the benchmark for hot metal in the NIMs as proposed by the Czech Republic, the Commission notes that the allocation to the installation listed under point C with the identifier CZ-existing-CZ-73-CZ-0134-11/M does not correspond to the value of the hot metal benchmark multiplied by the relevant product-related historical activity level as submitted in the NIMs and is therefore not in line with Article 10(2)(a) of Decision 2011/278/EU. The Commission therefore objects to the allocation to this installation unless this error is corrected. Furthermore, the Commission notes that the allocation to the installation listed under point C with the identifier CZ-existing-CZ-52-CZ-0102-05 takes account of processes that are covered by the system boundaries of the hot metal benchmark. The installation, however, does not produce, but imports hot metal. Due to the lack of production of hot metal in the installation with the identifier CZ-existing-CZ-52-CZ-0102-05, and thus a lack of a corresponding product benchmark sub-installation that would allow for the determination of the allocation in accordance with Article 10 of Decision 2011/278/EU, the proposed allocation is not consistent with the allocation rules and may give rise to double counting. The Commission therefore objects to the allocation to the installations listed in point C of Annex I to this Decision.

The Administrative Court confirmed the claim and abolished the ministerial decision, based on the previous decision of the Supreme Administrative Court.