

2.2. Questionnaire

2.2.1. Questions on policies of the MS

1. Is there any (un)official data available from your country on either the use of Article 176 or Article 95(4-5) EC?

The Czech government adopted resolution No. 1401/2005 which establishes a so called "Ecoaudit" for the purpose of identifying problematic areas of selected environmental laws. Ecoaudit is reviewed and updated every 2 years. Its aim is to reveal superfluous and not well-founded administrative and the financial burden for producers and other entrepreneurs related to requirements set by the Czech environmental law.

2. Is there an (unofficial/official) policy on (avoiding/favouring) "gold plating" in your country? If so, is this policy applicable only to the implementation of EU environmental law or is it applicable with respect to the implementation of all EU directives?

3. If there is an official "no gold plating" policy, what are the reasons given for this?

Obviously, there is no official policy in the Czech Republic related to the "goldplating". Some ministerial officers expressed their opinion that Czech legislation is more stringent than the EC legislation in many cases.

Generally, the requirements of EC law are strictly kept. On the other hand, it does not mean that national standards are lowered automatically to the minimum standard level. Usually the real need of given national standards is being assessed and the government is making an effort to eliminate unnecessary barriers to enterprise while maintaining the EC law requirements without clearly defining the policy of "goldplating" or "no-goldplating".

4. Is there any public discussion (industry, business, NGO) on "gold plating" either in general or with respect to environmental standards in your country?

Since the beginning of harmonization of the Czech law to the EC law, industry representatives are expressing their reluctance to meet the national requirements which are sometimes stricter than the requirements of EC directives which can lead to industry competitiveness impairment. Those complaints were also addressed to the government.

The government itself imposed on individual ministries (departments) the duty to elaborate an „Enterprise improvement proposal“. This document sets the requirement to analyze environmental legislation permanently with the aim to simplify administrative proceedings while keeping the EC legislation requirements and not to take exaggerated economically unreal measures. However, the industry representatives still were not satisfied and they kept on complaining that Czech legislative requirements are more stringent than in other Member states.

It can be concluded that discussion on „gold plating“ is taking place mainly among entrepreneurs who are generally refusing this policy.

5. Is there any debate in your country if stricter standards are indeed „better“ for the environment? In other words, is there any debate on counter-productive (hindering, rather than serving, the purpose of environmental protection) standards?

No.

2.2.2. Questions on national laws

6. Is there, in your national law, a similar provision like Article 176 EC with respect to the relation of central and regional/local authorities?

According to the Air Act (No. 86/2002 Sb.) and Water Act (No. 254/2001 Sb.) competent authorities are entitled to set stringent requirements to approve certain activities in the decision making procedure compared to the statutory requirements. Local authorities are entitled to enact local regulation banning to burn dry leaves. The municipalities are also entitled to pass an ordinance to set the duty to separate municipal waste.

7. Who is (or as the case may be: who are) the competent authority to report more stringent measures to the European Commission?

Ministry of the Environment which fulfills the role of the coordinator in relation to the Commission.

8. Is it allowed under your national (constitutional) arrangements that regional and/or local authorities enact more stringent measures? If so, who will notify the European Commission about these measures? Directly by regional/local authorities, by proxy of central government or formally by central government?

I did not get this information yet.

9. Are there any internal legal reasons (e.g. more complex legislative procedures) which would make the implementation of the European standards at the minimum level easier than going beyond the European standard?

No.

2.2.3. Questions on court decisions

10. Is there any national case law where either Article 176 or Article 95(4-6) played a role?

No.

11. C--188/07

In the Czech legal system, there are sufficient instruments to make a person responsible for the escape of hydrocarbons into the environment. First of all, there is a basic rule, that a person has a duty to get rid of a thing (without regard if it is waste or not) if this thing is listed in the Appendix I. of the Waste Act, if it not used for the former purpose and the thing is threatening the environment or if it was sorted out based on a special law. This duty can be enforced by a system of sanctions in the regime of the waste law (fines, corrective measures, closing of the operation), which can be doubled by other legal consequences envisaged by the Water Act, if the sources of water are endangered by the thing.

A waste producer is defined as a legal person or natural person running a business. The producer of waste is responsible for managing the waste till its use or disposal or until the waste ownership is transferred to another authorized person. For waste transportation, though, the operator of the vehicle or other means of transportation is responsible.

Beside administrative liability, there is a system of civil liability for the damage. The liability is construed as a strict liability. To be liable under the Civil Code, non-compliance of the polluting activity with the environmental regulation including the waste law is not required.

The liability system includes also criminal liability of natural persons and the liability for ecological damage generally and specifically under the Act No. 167/2008 Sb. in the frame of Environmental Liability Directive 2004/35/EC.

The biggest problem is the insolvency of the person who is responsible for the waste.

11. C - 6/03

According to the Czech Waste Act, the municipalities are entitled to pass ordinances setting the duty to separate the municipal waste and to pay fees for the operation of the system of waste collection and disposal.

2.2.4. Specific examples

12. In your country, are there any specific examples where the legislator refused taking stringent standards, with the argument that this would conflict with EU law?

No.

13. Are there any examples in your country of „downgrading“ the national standard to the level of the European standard?

Some small municipalities or recreational objects, mainly in mountain areas have problems with discharging waste water into the ground waters. The Czech law (§ 38/4 - Water Act No. 254/2001 Sb.) is more stringent than the EC law (80/86/EEC, 2000/60/EC). This situation was identified as necessary to change with the aim to broaden the possibility to discharge waste waters into the ground water bodies for accomodation facilities, e.g. to downgrade the national standard.

The regulation No. 294/2005 Sb. sets the conditions for landfilling of wastes and conditions for their use on the surface. The legally set conditions for the latter are more stringent. It was decided to change them with the aim to set conditions equal to the landfill requirements (S-I0) based on the Council Decision 2003/33/EC.

14. In your country, are there any examples where a legislator broadened, so to say, the scope of the obligation of a directive on a voluntary basis?

Prohibiting import of waste destined for the disposal.

Emission limits set by the regulation 355/2002 Sb., which implements the Air Act (86/2002 Sb.), exceeded the EC law requirements. During this regulation amendment preparation those stringent limits were identified and assessed as acceptable and reasonable. It was concluded that there were many enterprises which invested a lot of money to reduce their emissions to keep the limitation. If those limits would be lowered, it would disadvantage those existing polluters in relation to the newly established ones. This was the main reason for keeping the more stringent emission limitation on a voluntary basis in the ČR.

The scope of the Czech PRTR (Act No. 25/2008 Sb., on integrated pollution register) is broader in comparison to E-PRTR. In this case however, the assessment of the affects to the industry is prescribed. More stringent requirements are anticipated to be set by the governmental regulation, as to the chemical substances in wastes and substances in emissions into the air. Styren and formaldehyde in the air and chemical substances in wastes were already required to be reported under former legislation (Governmental Regulation No. 368/2003 Sb.) which was repealed by the new Act. This requirement however will be kept by the new law as well.

15. Are there any concrete examples where at national level more stringent emission limit or quality values (air, water) exist?

Regulation No. 355/2002 Sb., - emission limitation in the field of air protection.

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16. Are there any specific examples where more stringent environmental product standards (pesticides, biocides, hazardous substances) exist on a national level?

I did not get any information in this field.