Chapter 2. Environmental governance and management

This chapter evaluates the environmental governance and management of the Czech Republic since the last OECD Environmental Performance Review. It provides an overview of the environmental management institutional framework, touching on horizontal and vertical co-ordination, then discusses the regulatory framework and briefly summarises key developments in specific areas such as air quality and water management. The chapter examines the Czech approach to environmental permitting, compliance and enforcement before discussing environmental democracy, public participation and access to justice.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

2.1. Introduction

EU accession helped strengthen the environmental agenda of the Czech Republic. Since the 2005 Environmental Performance Review (EPR), the country has transposed important directives, including the 2004 Environmental Liability Directive and the 2010 Industrial Emissions Directive, which regulates integrated pollution prevention and control (IPPC). However, environmental policy is one of the main fields of EU infringement cases against the Czech Republic, demonstrating the insufficient transposition and implementation of EU legal requirements. Although administrative capacity is generally sufficient, high turnover of environment ministers and staff has caused implementation gaps. Since the last EPR, public participation in environmental decision making and access to information have improved, but on issues including the liability regime and access to environmental justice, current practices need upgrading.

2.2. Institutional framework for environmental governance

2.2.1. National institutions and horizontal co-ordination

The Czech Republic is a unitary state with three government levels: central, regional and municipal. The Ministry of the Environment (MoE) is the main authority for environmental policy, compliance monitoring and enforcement, and environmental quality monitoring. Agencies under its aegis include the Nature Conservation Agency, the Cave Administration, the Czech Environmental Information Agency (CENIA), the Czech Environmental Inspectorate (CEI), the Czech Geological Survey, the Czech Hydrometeorological Institute and the State Environmental Fund.

The MoE co-ordinates environmental activities of other ministries and central administrative authorities. On specific issues, responsibility is shared with other ministries. For example, on water resource management, the Ministry of Agriculture regulates activities related to agriculture, including water use, supply and sewage systems; the Ministry of Health develops requirements for management of hazardous waste from health care facilities. Chemicals and noise management require special permits from the MoE or, when public health may be endangered, the Ministry of Health (IMPEL, 2016; MoE, 2017a).

Horizontal collaboration is mainly carried out by the advisory Council for Sustainable Development, which co-ordinates sustainable development issues across central authorities. Its nine thematic committees and working groups bring together representatives of all ministries, Parliament, municipalities, non-government organisations (NGOs), trade unions, industry and academia. Chaired by the prime minister, it meets three times a year. The council is responsible for the Sustainable Development Strategy and its reviews, biennial reporting on the strategy, co-ordination of sectoral issues and strategies across ministries, and national implementation of the Sustainable Development Goals (Government of the Czech Republic, 2017).

A broader horizontal co-operation mechanism is the inter-ministerial commenting procedure to discuss draft policies and legislation before cabinet approval. Representatives of regions, municipalities and NGOs are also involved. Drafts are available online for information and comments.

2.2.2. Subnational institutions and vertical co-ordination

The Czech Republic is divided into 14 regions and 6 258 municipalities. Prague has the status of both a region and a municipality. The 1993 Constitution gives substantial independence to subnational authorities, which have delegated responsibilities but do not hold legislative powers. Subnational governments are mainly funded by central government budget allocations and fees for public service provision (Committee of the Regions, 2017).

Regional authorities have environmental departments dealing with transport (road networks, regional public transport), biodiversity, spatial planning (approval of regional planning and zoning documents), health and tourism. Local authorities oversee local public transport and roads, waste management, water supply, wastewater treatment, local planning and housing.

By population size, Czech municipalities and regions are among the smallest in the OECD, which contributes to governance fragmentation. In contrast to the trend in many OECD countries since the 1990s, the number of municipalities has not been declining, mainly due to a lack of incentives to merge. Mergers would increase efficiency by reducing duplication and streamlining provision of some services, but are politically difficult. The fragmentation issue has been dealt with so far via voluntary agreements between municipalities to co-operate on certain functions (OECD, 2016).

The MoE has nine regional departments providing oversight to lower-level authorities. However, the ministry has not developed implementation guidelines to strengthen vertical co-ordination. It should consider developing oversight procedures with systematic evaluations and indicators on subnational environmental performance. The Union of Czech Towns and Municipalities (SMO ČR), the Association of Local Governments (SMS ČR), and the Association of Regions are platforms for horizontal exchange and mechanisms for co-ordination with the central government. SMO ČR, a voluntary organisation, participates in preparation of draft legislation on topics pertaining to municipal responsibilities. It represents around 2 500 municipalities accounting for more than 70% of the population (SMO ČR, 2017). SMS ČR brings together mayors of about 1 100 municipalities to monitor key legislative proposals with a potential impact on local authorities. The Association of Regions represents the interests of all 14 regions before Parliament and the government. The associations participate in the Council for Sustainable Development's committee on sustainable municipalities. Other vertical co-ordination includes CENIA's role supporting regional authorities in issuing integrated permits. In addition, lower-level land use plans need to comply with higher-level ones.

2.3. Regulatory framework

Environmental legislation is heavily influenced by EU directives, particularly on such issues as integrated permitting, environmental liability, ambient air quality, waste and chemicals. However, the EU has filed many infringement procedures against the Czech Republic concerning non-conformity with, or poor application of, the EU environmental acquis (EC, 2017a). Infringements have continued to increase since 2013 and in 2016 five new environmental cases were initiated (EC, 2017b). The ten open cases, in line with the EU average, concern biocide products, flood prevention, water quality, bathing waters and air quality.

2.3.1. Evaluation of policies and regulations

Regulatory impact assessment (RIA) of all bills submitted to Parliament was introduced in 2007. Ministries and other central authorities responsible for drafting bills are in charge of evaluating their expected impact according to RIA guidelines (last updated in 2016). Since 2011 the responsibility for overall co-ordination has shifted from the Ministry of Interior to the Government Office. The RIA Board, composed of independent experts, was established to review the assessments.

Cost-benefit analysis (CBA) is the principal RIA method. However, quantitative analysis of environmental costs and benefits is rarely conducted in practice, while qualitative assessment prevails. In addition, CBA is rarely applied to *ex ante* evaluations of policies and strategies. In addition, no clear criteria on how to do CBAs have been defined, including rules for assessing greenhouse gas emissions in the analysis (OECD, 2017). Other criteria considered in RIA include impact on distribution, competition, economy, security and environment. The scope of RIA depends on the expected impact of a regulation.

Another example of *ex ante* evaluation is strategic environmental assessment (SEA) of plans and programmes, which was significantly strengthened in the last decade as recommended by the 2005 EPR. SEA is regulated by the Environmental Impact Assessment (EIA) Act. The law specifies items for which SEA is mandatory, including regional development and nature conservation plans and programmes, which goes beyond EU SEA Directive requirements. The Nature and Landscape Protection Act regulates SEA on Natura 2000 sites. The Building Act integrates SEA procedures into land use planning.

Ex post evaluations, while not mandatory, have been conducted since 2014. This is a positive practice, as very few OECD countries systematically carry out such evaluations (OECD, 2015). Generally, there are two phases: evaluation of 1) the measures proposed and 2) the effectiveness of the indicators chosen to assess progress. However, the Czech Republic has not yet developed requirements or methodological guidelines for such evaluations, which are conducted on an ad hoc basis. For example, in 2015 a midterm evaluation of the State Environmental Policy, with stakeholders assessing each measure's effectiveness in achieving targets, informed the second planning period. Similarly, an *ex post* evaluation of the National Biodiversity Strategy was used to develop the 2016-25 strategy, including new indicators making it easier to evaluate progress and follow implementation. At the time of writing, the Czech Republic was working on a proposal to develop methodological guidelines for systematic *ex post* evaluations, which should be swiftly adopted.

2.3.2. Environmental standards

This section provides a brief overview of environmental standards related to air quality and water management. Regulatory instruments for waste management are addressed in Chapter 4.

Air quality

The 2002 Air Quality Protection Act and 2006 government regulation on air quality transposed the pre-2008 EU air directives. They stipulate procedures for monitoring and evaluating air quality, ambient air quality standards, emission standards, and long-term emission targets for 13 pollutants. Transposition of the Directive on Ambient Air Quality

and Cleaner Air (2008/50/EC) was carried out through the 2002 Air Protection Act, amended in 2012. The act established permissible levels of air pollution (air quality standards), methods to assess it and tools to reduce it. It covers emissions of sulphur and nitrogen dioxide, carbon monoxide, benzene, lead, small and medium-sized particles, arsenic, cadmium, nickel and benzo(a)pyrene.

The general emission standards are specific to economic sectors or activities based on their emission and capacity threshold. Emission limit values are set for each IPPC installation and are based on EU reference documents on best available techniques. For limit values not specified, a sector emission standard is used, providing an adequate framework for regulating pollution releases. Dispersion modelling for air pollution sources ensures that ambient air quality standards are not exceeded.

Water management

The 2001 Water Act, the main law for protection and management of water resources, includes provisions for water conservation, flood prevention, economic instruments for water management, and water planning and international co-operation. It also regulates water discharge permits: any activity not subject to IPPC permits and having an impact on water bodies requires authorisation.

A government order sets quality standards for surface water bodies and groundwater. As with the air quality regulation, effluent standards are sector-specific, though the specification is less detailed than for emission standards. For IPPC installations, effluent limit values are set individually in discharge permits so as to not to exceed quality standards for the receiving water body, based on modelling developed by the Czech Hydrometeorology Institute. The Water Act requires the authority setting permit conditions to take into account the achievement of a suitable status for affected surface water or groundwater and related ecosystems. The authority must consider best available techniques for wastewater treatment. Installations may be allowed less stringent discharge limits if they are just beginning operations or conducting reparation work, or after an accident.

The main measures aimed at reducing diffuse water pollution from agricultural sources include Government Order No. 262/2012 on delimitation of vulnerable areas and a related programme seeking to reduce and prevent nitrate pollution in such areas. These measures ban nitrogenous fertilisers and provide for crop rotation, soil erosion monitoring and manure storage facilities. The programme effectiveness is evaluated every four years (MOA, 2016). Despite this legal framework, nitrate levels at many monitoring points remain an issue, as does eutrophication (Chapter 1). A recent European Court of Auditors report on water quality in the Danube river basin stated that the Czech Republic lacked ambition to address eutrophication and was not fully complying with the Nitrates Directive (EC, 2017a).

The Czech Republic transposed the requirements of the EU Water Framework Directive (WFD) into the national legislation in 2010 but still needs to achieve full compliance. The first River Basin Management Plans identified significant gaps in the monitoring system, assessment of pressures and classification methodologies for water bodies' status. This results in uncertainties concerning the pressures and status of water bodies and, more importantly, the effectiveness of the planned measures to improve water quality. These measures are not expected to contribute significantly to compliance with the WFD requirements (EC, 2017a).

2.3.3. Environmental impact assessment and permitting

Since the last EPR, which recommended strengthening the use of EIA, the Czech Republic has completed transposition of the EIA Directive in 2015 after several infringement procedures that lasted almost ten years (Box 2.1).

Box 2.1. The Czech Republic has struggled to comply with the EIA Directive

The Czech Republic first adopted EIA legislation in 1992, with an EIA Act that covered both EIA and SEA. In 2001, a new act was adopted to fulfil the requirements of the amended EU directive, but it regulated only EIA; SEA was reintegrated in 2004.

The 2001 act had shortcomings related to public participation and access to justice. It also contained restrictive requirements determining who could participate in subsequent permitting processes. The act was further considered to contravene the Aarhus Convention, which the Czech Republic signed in 1998. In 2006, the European Commission filed an initial infringement procedure for failure to comply with the directive.

Several attempts to amend the EIA Act failed, leading to the case being transmitted to the European Court of Justice. A bill amending the act finally passed in 2009, but the public participation issues were not solved, and the European Commission opened a second infringement procedure. In 2012, the Aarhus Convention Compliance Committee reiterated what it saw as the act's deficiencies.

In the third infringement procedure, launched in 2013, the Commission emphasised that, although the directive allows member states a choice on whether to link permitting procedures to EIA, the Czech Republic did not properly reflect requirements for the permitting procedure that follows EIA. The Commission raised three main issues:

- The outcomes of the EIA procedure were not binding in content for the subsequent permitting process.
- After the EIA of a project was concluded, substantial changes to the project during subsequent procedures were allowed, rendering the EIA result ineffective.
- Guarantees for public participation in the subsequent procedures and for timely and efficient access to justice for members of public concerned remained insufficient.

Under the threat of heavy financial sanctions for non-compliance, the Czech Republic made complying with the EIA Directive a priority and approved a new bill amending the act, which took effect in April 2015. The main changes were:

- The environmental impact statement resulting from an EIA procedure became binding in its content for the authority deciding in subsequent proceedings whether to grant a permit.
- At least 30 days before submitting a permit application, the applicant must submit project documentation to the EIA authority, which certifies that the documentation is in line with the environmental impact statement and that the project has not significantly changed since. If there have been substantial changes, these must undergo a screening procedure.
- The public concerned was more clearly defined, including natural and legal persons and organisations, and was given legal standing in the permitting procedure following EIA.

Source: Tomoszkova (2015), Implementation of the EU Directive on Environmental Impact Assessment in the Czech Republic: How Long Can the Wolf Be Tricked? http://scholarlycommons.law.wlu.edu/jece/vol6/iss2/5.

The 2015 EIA Act amendment, which addressed the infringements at that time, still raises issues related to the consideration of project alternatives (J&E, 2012a); in fact, the law does not define "reasonable alternatives". It does state that the competent authority may require consideration of alternatives, but in practical terms the only alternative generally considered is not carrying out the project. This is not in line with the OECD acquis on EIA,[1] according to which alternative solutions should be incorporated in the assessment of environmental impact in order to select the best environmental option. The September 2017 amendment of the EIA Act, aimed at transposing the revised EIA Directive, is focused on streamlining and shortening the procedure.

Activities subject to EIA are divided into two categories: projects with expected high impact, such as large energy and infrastructure projects, must undergo mandatory EIA, while those with less potential impact are only subject to EIA following a decision of the competent authority. Depending on the type of project, the competent authority is either the MoE or a regional authority. Screening is based on information provided by the project proponent regarding the planned activity and the local state of the environment. The authority publishes an announcement online and notifies affected municipalities; these in turn are to inform the public, which has 30 days to submit comments. Screening results in a conclusion issued by the authority. For projects likely to be of high impact, the conclusion includes requirements for preparing an EIA report, which is circulated and made available to the public for 30 days. The authority then issues a statement, which, since the 2015 amendment, is binding on the authority in charge of issuing a permit for the project (e.g. a construction permit, a mining concession). Before submitting a permit application, the applicant submits documentation to the EIA authority allowing it to certify that the project conforms to the EIA statement and has not been modified (Tomoszkova, 2015). The new Building Act introduces a "joint procedure" combining EIA, planning and building permit proceedings, which will result in single construction permit.

The IPPC system governed by the EU Industrial Emissions Directive was transposed effectively by the 2002 Integrated Prevention Act. It provides for an integrated permit, covering the entire environmental impact of the facility (emissions, noise, waste, chemicals, technological processes), to be issued in a single administrative procedure. An integrated permit is mandatory for the types of facilities listed in Annex 1 of the act. Operators of other facilities can apply for an integrated permit voluntarily, but this option has rarely been used (Clifford Chance, 2013).

To obtain an integrated permit, an operator files an application with the regional government. The CEI, river basin authorities and regional public health authorities are consulted and can issue statements of proposed requirements to the regional authority. The authority, in turn, can decide whether to integrate the statement in its final decision; if it chooses not to do so, it must provide justification. The MoE is directly responsible for issuing permits for installations with an international transboundary impact.

In accordance with the EU directive's requirements, permits conform to best available techniques. All permits granted are available on the MoE website. There are about 1 800 IPPC permits registered, of which around 1 500 are linked to active installations. The highest share was for intensive livestock rearing. Permitting can take between 117 and 185 days and a permit can be granted for a definite or indefinite period, depending on factors including the facility's projected lifespan (MoE, 2017a; IMPEL, 2016).

Integrated permits are only in place for large industrial installations, while those that fall outside the scope of IPPC are granted single-medium permits or notifications. These are

based on requirements set in air, water and waste legislation. Installations below certain thresholds, as specified in the legislation, do not need environmental permits. Single-medium permits cover construction and operation of stationary sources, water abstraction, wastewater discharges and waste management, including hazardous waste. The application process can be electronic except in particularly complex cases. Sector-specific rules for lower risk activities comprise emission/effluent standards and other requirements. They are set in air and water regulations and are in some cases diversified based on the installation's production capacity.

2.4. Compliance assurance

Compliance assurance covers compliance monitoring, enforcement and promotion, as well as responsibility for environmental damage. The Czech Republic has a traditional (binary) performance indicator of the percentage of sites or installations identified as non-compliant. This is an important indicator but can be complemented by more meaningful ones, such as indicators measuring the gravity of non-compliance or the time it takes violators to take corrective action and return to compliance. The Scottish Environment Protection Agency, for example, sets targets for improvement and measures year on year performance at non-compliant sites. The Czech Republic should consider introducing additional, more policy-relevant indicators.

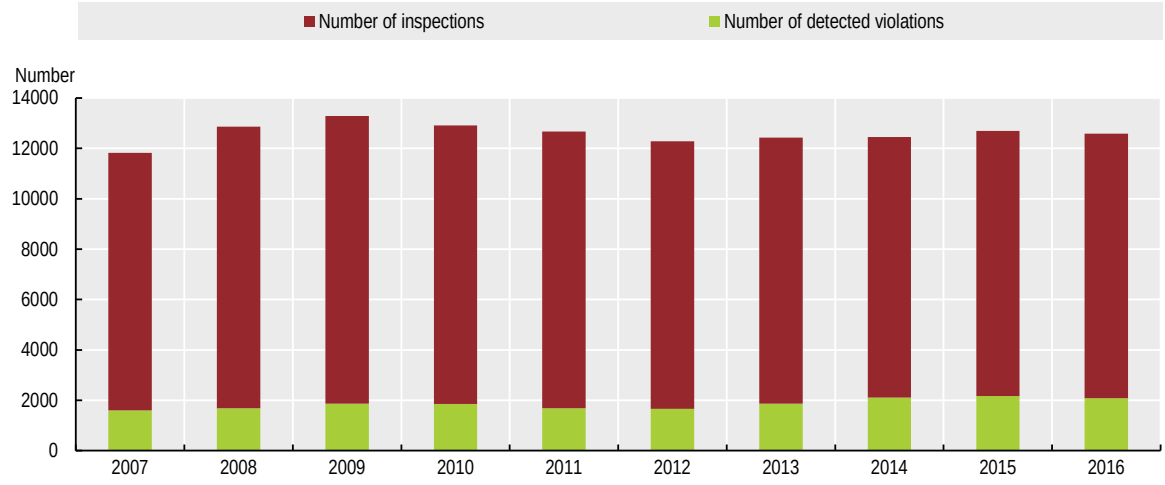
The CEI is responsible for ensuring compliance with environmental law, under the aegis of the MoE. It consists of a central directorate in Prague and ten regional branches. The principal areas of its activity are air quality, waste management, nature, water and forest protection, each dealt with in a dedicated technical department. The CEI also has responsibilities in ozone protection, handling of chemical substances, industrial accidents and management of genetically modified organisms. It conducts inspections and enforces compliance by ordering corrective or remedial action (including activity suspension) and/or imposing administrative fines. It also collects charges for groundwater abstraction and taxes on wastewater discharge and air pollution (Chapter 3).

2.4.1. Inspections

Compliance monitoring follows a risk-based planning approach, which is not always the case in other Visegrád countries. Installations are classified into three categories, from those posing the greatest risk (requiring IPPC permits), inspected annually, to those posing low risk, inspected every three years. The categorisation criteria are based on a framework for mapping facilities' environmental risk, which is developed for three-year periods and can be reviewed annually and updated, if need be. The CEI uses these criteria to draft a yearly inspection programme listing facilities to be inspected, defining the inspection scope, etc. The programme can be updated in case of accidents, complaints by the media or repeated violations. Other factors contributing to facilities' risk level assessment are the environmental and health impact, location, potential for accidents and environmental management certification.

For IPPC installations, some 75% of inspections are conducted routinely and 25% are ad hoc, which shows effective risk-based targeting of compliance monitoring. In general, non-routine inspections are triggered by complaints, accidents or follow-up inspections. Inspections of non-IPPC installations have slightly increased since 2007, while detected violations have increased at a much higher rate (Figure 2.1), showing that inspections are better targeting installations at risk. Still, a non-compliance rate of 20% is high by OECD standards.

Figure 2.1. Inspections are better targeting installations at risk



Note: Includes non-IPPC installations only.
Source: MoE (2017b), country submission.

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The Czech Republic is a member of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), a forum for sharing good practices. A recent peer review by fellow IMPEL members highlighted the risk-based planning approach as successfully implemented with regard to IPPC facilities, but said risk criteria should be applied to all permitted activities across all regimes (IMPEL, 2016).

2.4.2. Enforcement

Enforcement of environmental law includes administrative and criminal sanctions. If the CEI identifies violations, it can impose administrative sanctions. It can impose fines, temporarily shut down a facility or revoke a permit. Fines can reach as much as CZK 50 million (about EUR 1.85 million), which is high by OECD standards. The average fine, however, is CZK 50 000 (around EUR 1 850) per offence, and total fines decreased by around 20% over 2007-16. The CEI can also transmit information to the police or public prosecutors for investigation or prosecution of environmental crimes (CEI, 2015). The country has no environmental police.

Criminal sanctions for environmental violations were introduced with the 2009 Criminal Code, amended in 2011 to partially transpose Directive 2008/99/EC on the Protection of the Environment through Criminal Law. The Criminal Code provides for up to five years' imprisonment for serious environment-related offences, such as forest damage, unauthorised release of pollutants or improper waste management, but applicable to natural persons only. Fines for criminal offences can range from CZK 1 000 to CZK 2 million (EUR 40 to EUR 75 000) per day for up to 730 days. Courts can also prohibit an activity or halt participation in a public tender or concession procedure (Zicha, 2012). There is no information available about the actual use of criminal sanctions. The 2011 Act on Criminal Liability of Legal Entities, in force since 2012, extended criminal fines to legal persons. The Czech Republic still needs to finish transposing Directive 2008/99/EC, which aims to ensure that criminal remedies are available to punish serious breaches of environmental law listed in the directive.

The Czech Republic actively participates in European networks of police, prosecutors and judges, such as the European Union Forum of Judges for the Environment, the European Network of Prosecutors for the Environment and EnviCrimeNet, to share experiences and good practices (EC, 2017a).

2.4.3. Environmental liability

Liability for damage to the environment

The Czech Republic transposed the EU Environmental Liability Directive (ELD) through the 2008 Act on Prevention and Remedying of Environmental Damage, covering damage to water, land and biodiversity. The law is broader than the scope of the ELD regime with respect to biodiversity, including a larger range of protected plants and species. However, it excludes accidental contamination of water bodies, which is covered by the Water Act that also provides for remediation (J&E, 2012b).

The MoE Environmental Damage Department deals with prevention and remediation (including of past contamination), monitoring and international co-operation in case of transboundary impact. Annex I of the 2008 Environmental Damage Act lists activities that can give rise to environmental liability, including activities subject to IPPC permits, transport of chemicals, and production and handling of pesticides. Operators involved must perform risk assessment and take all necessary measures to prevent environmental damage, and repair and restore the affected area and ecosystem functionality in case of damage. Operators not covered by Annex I do not need to do risk assessment but are still obligated to take preventive measures and carry out remediation in case of damage.

The operator is responsible for covering all costs related to remediation, including the costs of risk analysis. It is, however, exempt from remediation costs in case of force majeure, if the damage was caused by a third party or if it occurred despite the operator taking all necessary steps to prevent it. Thus compliance with environmental permit conditions releases the polluter from liability, contradicting the principle of strict liability for environmental damage.

Operators whose operations may cause environmental damage exceeding the equivalent of EUR 800 000 (according to an estimate by the regional authority) must obtain insurance to cover the cost of remedying any potential environmental damage. Fines up to the equivalent of EUR 180 000 may be imposed for a breach of obligation to report information about potential damage and for not carrying out remediation (Rovenský and Sequens, 2015).

Past contamination

The total number of contaminated sites in the Czech Republic is not known but is estimated at 10 000 (CENIA, 2016). Contaminated sites include unauthorised or improperly managed landfills, abandoned industrial areas, unprotected storage facilities for hazardous waste and chemicals, former military bases, mines and quarries. Since 2008, the MoE has mapped contaminated sites and classified them according to priority for remediation (MoE, 2017a). Over 2010-15, 272 sites were fully remediated, and 51 were remediated but additional work needs to be done. The Evidence System of Contaminated Sites database is available to the public but has not been systematically updated. It currently registers 4 936 sites, of which fewer than half are up to date. Despite the significant improvements in mapping and remediating sites, there is still a large

number whose environmental and health risk is unknown (CENIA, 2016). The MoE has plans to update the database through an EU co-funded project.

Although the ELD does not cover past contamination, remediation of contaminated sites is governed by the polluter-pays principle. The polluter is responsible for the clean-up of contaminated areas; the owner or occupier is not liable if it is not the polluter. Contaminated sites are considered abandoned if the polluter is unknown, no longer exists or is insolvent. The state is responsible for cleaning up abandoned sites or those contaminated by military or industrial activities before 1989 (Rovenský and Sequens, 2015). A 2011 methodological guideline deals with monitoring and sampling of contaminated sites, while actual remediation is set out in a 2007 methodology on "the use of technologies in situ for remediation of contaminated sites", which includes tables of decontamination standards.

Financing of state clean-up activities comes from the National Property Fund of the Ministry of Finance, the MoE for Soviet-era contamination in former military areas, and funds set up by the Ministry of Industry and Trade, Ministry of Defence, Ministry of Transport and Ministry for Regional Development. In addition, regional authorities can contribute to the remediation of contaminated waters under the 2001 Water Act. Private funds and EU structural funds are also used. Since remediation financing is not centralised and various ministries deal with it, a common methodology is needed (MoE, 2017a). To avoid putting the entire burden on taxpayers, it is important to mobilise finance to ensure adequate resources for remediation when a financially solvent polluter cannot be identified or the polluter breaches its remediation obligations. The Czech Republic should consider setting up a financial mechanism, such as a special fund financed by current operators, to pay for potential clean-up carried out by the state.

2.4.4. Promotion of compliance and green practices

Government promotion of compliance can reduce costs for businesses by allowing them to achieve and maintain compliance as efficiently as possible. It may also reduce regulatory costs by increasing efficiency in compliance monitoring and enforcement. Compliance promotion is particularly effective when targeting small and medium-sized enterprises and farmers. The MoE would benefit from developing information tools such as direct advice during inspections, events such as seminars and workshops, and guidance for regulated entities, typically disseminated in written form.

A few voluntary agreements exist between the MoE and companies in the Moravian-Silesian region, setting technology targets, emission limits and additional measures that companies should put in place to reduce their environmental impact beyond legislative requirements.

Green public procurement

The national action plan on green public procurement (GPP) and socially responsible public procurement dates from the beginning of the 2000s, relatively early compared to other Eastern European countries. A 2010 government decision set out GPP rules and methodologies for furniture and information technology, and approved an MoE document laying out non-binding guidance for implementing environmental requirements in public procurement. According to the decision, sellers do not need ISO 14001 certification to qualify for GPP, which has resulted in a drop of certifications since 2010.

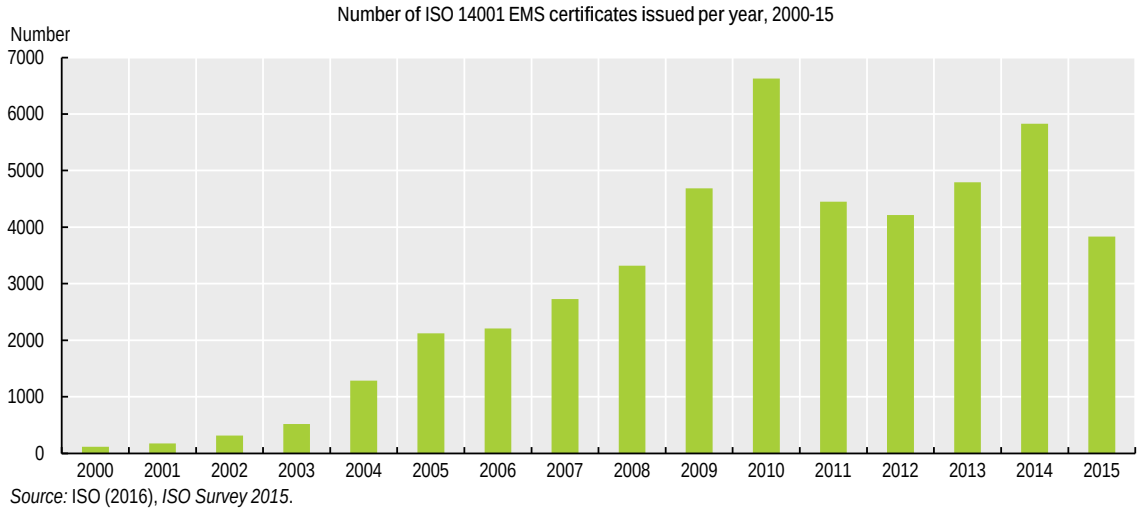
As part of the GPP decision, 25% of all state and public vehicles need to respect environmental standards. The decision also stipulates criteria for purchasing certain products. Contracting authorities should consider elements such as eco-labels, environmental standards and certification, and energy performance certificates in their procurement decisions. As GPP performance had been unsatisfactory, the strategy was revised. In 2017, the government approved a new document, "Rules for the Implementation of a Responsible Approach in the Public Procurement and Purchasing by the State and Local Governments", which includes sustainability principles and requires the MoE to publish guidelines for public procurers on green specifications for various product categories. In addition, the MoE is planning workshops and other activities to inform and train purchasers. The Czech Republic should consider introducing all the key GPP elements listed in the OECD Recommendation of the Council on Improving the Environmental Performance of Public Procurement (C(2002)3), such as analysing the environmental costs of products and services, promoting effective information tools, encouraging the development of indicators, and assessing and evaluating GPP policies.

Environmental management system certifications

Environmental management systems (EMS) are not supported to a great extent by the government. EMS such as ISO 14001 are much more widespread in the Czech Republic than the EU Eco-management and Audit Scheme (EMAS). There are only 27 EMAS-registered organisations in the country. The government provides some regulatory incentives for EMAS and ISO 14001 certification. Operators of activities with high environmental risk do not have to get insurance if they have a certified EMS, though they are still liable for any environmental damage they cause.

The adoption of ISO 14001 by Czech businesses grew rapidly between 2000 and 2010, though the average number of certificates issued per year has since fallen by around 40% (Figure 2.2). The peak was largely due to the fact that until 2010 procurers could request ISO 14001 certifications as a prerequisite for GPP, which changed after the adoption of the 2010 government decision. A 2013 survey conducted to identify EMS benefits revealed that mainly large and medium-sized enterprises were certified, consistent with international practice. More than half of respondents recognised that the system helped improve their environmental performance. Other benefits included raising (or maintaining) competitiveness and improving image and credibility (Hyrslova, 2017).

Figure 2.2. The number of businesses adopting environmental management systems has decreased significantly



Source: ISO (2016), *ISO Survey 2015*.

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2.5. Promoting environmental democracy

As the 2005 EPR recommended, progress has been made in improving public access to environmental decision making and information. The 2015 EIA Act amendment significantly contributed to this goal by expanding citizens' and organisations' access to environmental decision making, information and justice, thus strengthening environmental democracy.

The Czech Republic, like most OECD Europe countries, is party to the Aarhus Convention of the United Nations Economic Commission for Europe on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Issues. The convention, together with EU legislation on public participation and case law of the European Court of Justice, provides for the right of citizens and their associations to participate in the decision-making process for projects and plans with a potential environmental impact and to enjoy effective access to justice on environmental issues.

2.5.1. Public participation in environmental decision making

Participation in administration of public matters and access to information are basic civil rights enshrined in the Charter of Fundamental Rights of the Czech Constitution. The public, defined in laws regulating various policy areas, participates in environmental policy making through the commenting procedure on draft policies and legislation, which is open to NGOs.

To date, EIA and SEA are open to any member of the public. Since the 2015 EIA Act amendment, citizens and organisations have been able to participate in the permitting processes that follow the EIA. The public is notified about intent to perform an activity in EIA and SEA proceedings, permitting procedures and the development of safety programmes and emergency plans. All relevant information is provided on the national or regional authorities' websites. Anyone can submit comments orally (especially at the

public hearing) or in writing (including electronically). If dissenting comments on the EIA report are received, a public hearing must take place. The competent authority must consider all comments and provide justification for any that are not accepted. This is a good practice, not always followed by other OECD countries. However, a recent amendment of the EIA Act, adopted in September 2017, restricts public involvement in the procedure concerning peer reviews of EIA reports, which will cease to be open for comments. This was presented as a measure to simplify and shorten the process but could in fact reduce public participation in EIA proceedings. Stakeholders are divided on this matter.

Similarly, the recent amendment of the Building Act, which entered into force in January 2018, was presented as a way to simplify and accelerate the permitting procedure for construction projects. The developer has the option to choose whether to undertake the new joint procedure or to keep leading the proceedings separately. The new procedure does not reduce public participation for projects that undergo EIA, in that a public hearing is still required. However, for projects that do not undergo EIA, NGOs can participate in permitting procedures only under the Nature and Landscape Protection Act.

The public can take part in all IPPC permitting procedures though NGOs, which can ask to participate in permitting procedures within eight days of publication of the permit application summary. The application is available on the MoE website and on the information board of the relevant regional authority. When an NGO asks to participate in the procedure, it can request the full documentation. It can then submit comments on the proposed permit conditions and take part in the oral hearing.

2.5.2. Access to environmental information

The MoE publishes an annual state of the environment report and co-operates with regional authorities to issue a similar report for each region, accompanied by a comparative analysis of environmental indicators across regions. All these publications are submitted to the government and published on the MoE website. The Statistical Environmental Yearbook is prepared yearly by the Czech Statistical Office and published on the MoE and Statistical Office websites (MoE, 2017b). Asked if they considered themselves well informed about environmental issues, around 40% of Czech citizens interviewed provided a positive response, compared with the EU average of 54% (EC, 2014).

The Czech Republic reports on pollutant releases to air, water and land in the European Pollutant Release and Transfer Register. The Czech 2016 report covers pollutant releases, grouped by environmental issue, and waste generation quantities. The report covered 882 facilities, an increase from the previous year, and around 90 substances (Eionet, 2016). The Czech Pollutant Release and Transfer Register includes broader information, covering releases and transfers from almost 3 000 facilities (2016 data).

As the 2005 EPR recommended, access to environmental information has been improved, and the public has an extensive range of tools for such access. The Right to Environmental Information Act (1998) guarantees access to environmental information. It was amended to establish the GeoPortal, which allows electronic access to spatial data and a broader set of environmental information held by the MoE. The Access to Environmental Information Directive (2003/4/EC) and INSPIRE Directive (2007/2/EC) create a legal foundation for sharing environmental information between public authorities and with the public. In particular, the INSPIRE Directive aims at establishing geo-portals that indicate the levels of shared spatial data in each member state. Czech

implementation of the directive was assessed by the EU Commission as good but with room for further improvement (EC, 2017a).

The Strategic Framework for the Development of the Public Administration involves implementing a "digital by default" policy, which enables electronic forms for public services and requires every public administration client to create an electronic profile. Some tools of the policy include repositories of electronic communications between citizens and the public administration, land registries, information portals on businesses and public bodies, procurement information and news about local governments and their activities (OECD, 2016).

Details on all permits granted can be found on the MoE website. A summarised version of every IPPC inspection report is published on a publicly accessible integrated prevention information system run by the MoE. The public can also request inspection results for any regulated facility. Publicly accessible information on regulated entities' compliance records improves compliance with environmental law.

The recent IMPEL peer review acknowledged that the CEI website had a lot of information available to the public, in line with EU requirements for openness and transparency (IMPEL, 2016). If a request (or part of one) for environmental information is refused, the person requesting the information can appeal to the superior administrative body. The same applies where a request for information remains unanswered or only part of the requested information is provided, without any explanation.

2.5.3. Access to justice

The 2015 EIA Act amendment to implement the EU directive helped to significantly improve access to justice on EIA and permitting. Interested parties – natural and legal persons whose rights could be affected by the post-EIA permitting procedure, as well as NGOs that have been operational for at least three years before the permit was issued, or that are supported by at least 200 persons – have legal standing in the permitting procedure and may challenge procedural and substantial legality of a permit (Tomoszkova, 2015).

The Administrative Procedure Code (2002) states that all participants in the permitting procedure can submit appeals against permitting decisions of regional authorities to the MoE. In turn, the MoE decides whether to refer the procedure to branch offices. If the permitting decision is issued by lower-level authorities, the regional authority is the appeals body. Administrative court judgements can be reviewed by the Supreme Administrative Court. There are no environmental courts; ordinary civil and criminal courts deal with environment-related disputes and crimes. The cost of bringing an environmental case to a national court is not considered particularly high in the Czech Republic (EC, 2017d).

The Charter of Fundamental Rights allows citizens and NGOs to ask the competent authority to initiate proceedings or impose corrective measures. However, in many cases authorities have discretion to act on the complaint. The Czech Republic should make sure the public can exercise its right to go to court if an authority fails to act in response to non-compliance. Regarding liability for environmental damage, interested parties have a right to request to initiate proceedings (J&E, 2012b).

2.5.4. Environmental education

Environmental education and awareness are well developed regarding various sectors (Box 2.2) and are discussed in the State Environmental Policy as indispensable in making citizens aware of their responsibility to improve the state of the environment. A national environmental education and awareness programme was begun in 2000. The 2016-25 State Programme for Environmental Education and Awareness Raising and Environmental Consulting is a key document, approved by the government and accompanied by a three-year action plan. It contains strategic areas with clearly defined objectives and indicators to assess progress and evaluate results. It strongly emphasises availability of environmental information provided by national authorities and sharing of good practices. The programme focuses not only on school curricula but also on the non-profit sector, as well as lifelong education and training. It supports environmental programmes for educators and defines methodologies for evaluation of current programmes (MoE, 2016b).

Box 2.2. Good practices in environmental education and awareness raising

Circular economy

The MoE, in co-operation with the Institute of Circular Economy, an NGO, organised in April and May 2017 a pay as you throw campaign to improve waste prevention and reduce the amount of waste going to landfill. It consisted of 13 seminars in various cities aimed at raising awareness on smart solutions for waste management. The seminars provided information on waste management project financing and highlighted best practice examples on implementation of waste management options in selected municipalities. Over 600 participants were involved, which demonstrated high interest in such initiatives.

Eco-centres

The country has around 100 environmental education centres providing over 500 programmes a year and involving about 12 000 children. Around twenty of the centres provide overnight programmes, during which primary and secondary school students spend five days in nature to learn principles of sustainable development and strengthen their relationship with the environment. The programmes are focused on getting to know the most common habitats and species of plants and animals and becoming familiar with ecology, waste management, energy use and organic farming. There are also specific programmes for teachers, families and professionals.

Sources: Institute of Circular Economy (2017), website, http://incien.org; MoE (2016c), *Environmental Education in the Czech Republic*.

Since 2011 the MoE has offered an e-learning programme for civil servants, which focuses among other issues on environmental legislation, EMAS, ISO, cleaner production, waste management, chemicals and hazardous substances. Environmental education on nature, geography, sustainable consumption and climate issues is enshrined in the general curricula at all education levels from primary to post-secondary. Around 80% of primary schools have an environmental education co-ordinator in charge of developing targets for the school and organising activities. Their role may range from shaping the curricula to dealing with the school's own environmental performance.

The MoE, in co-operation with the Ministry of Education, is responsible for co-ordinating environmental education. The programmes are developed jointly with other state institutions, organisations and NGOs (MoE, 2017a). Funding comes from the State Environmental Fund, the MoE, regional budgets and private funds, including from small corporate social responsibility initiatives About EUR 30 million in EU funds were used to renovate eco-centres over 2007-14. In addition, the MoE has a subsidy programme to support NGO projects, with an annual budget of EUR 0.3 million.

Recommendations on environmental governance and management

Institutional framework

- Enhance collaboration between municipalities to increase their efficiency in providing environmental services (e.g. by setting minimum size or standards for service provision, establishing a dedicated central government unit to facilitate and monitor co-operation). Improve vertical co-ordination by strengthening guidance from the MoE to regional and local authorities.

Regulatory framework

- Ensure consideration of alternatives in EIA, beyond the "zero alternative".
- Enhance the use of, and human resource capacity for, cost-benefit analysis for assessing environmental policies, and expand *ex post* evaluation of their implementation.

Compliance assurance

- Enhance risk-based planning of environmental inspections by applying risk criteria to all regulated activities, including low risk ones.
- Consider introducing additional performance indicators to evaluate the effectiveness of compliance assurance, such as compliance rates diversified by the gravity of violation.
- Establish and enforce strict (independent of fault) liability for environmental damage by removing exemptions for compliance with environmental permits. Continue to update the register of contaminated sites and develop a financing mechanism for their gradual remediation.
- Strengthen compliance promotion targeting small and medium-sized enterprises through online information tools and guidance to regulated entities.

Environmental democracy

- Continue extending citizens' and organisations' access to justice in environmental matters to guarantee broader environmental democracy by ensuring that the public and NGOs have a right to go to court if the competent authority fails to act in response to non-compliance.
- Ensure that recent amendments to the Building Act do not restrict public participation in permitting proceedings.

Note

[1] Recommendation of the Council on the Assessment of Projects with Significant Impact on the Environment [C(79)116].

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