

**Transport and Environment:
Vessels, aircrafts, trains and lorries – equal treatment before the law in
view of their environmental impact?**

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National Report of the Czech Republic

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DESCRIPTION OF THE WORKSHOP

Vessels, aircrafts, trains and lorries – Equal treatment before the law in view of their environmental impact?

The aim of the workshop is to verify whether the four main means of transport, vessels, aircrafts, trains and lorries, are treated reasonably equally before the law in view, inter alia, of their shipping volumes in relation to their emissions, their impact on/danger for the environment by accidents/collisions, the transport of hazardous goods etc., or if there is – for whatever reasons – a regulatory overkill with regard to one or few of the means of transport.

QUESTIONNAIRE

Legislation for Means of Transport regarding Emissions

1. By which national rules is the normal operation of vessels, aircrafts, trains and lorries with respect to emissions governed?

Protection of environment is not regulated uniformly in national legislation governing transport. It is confined to provisions responding to certain aspects endangering and/or violating the environment (such as emissions discharged into the air and noise generated by transport and other related activities). As a consequence, respective legislation is not uniform, but rather fragmented. First, general legislation is listed. Secondly, main national legislation governing emissions produced by vessels, aircraft, trains and lorries follow in this order. Both acts and their implementing regulations (i.e. regulations of the Government and decrees of ministries) are enumerated as amended.

General legislation

- Act no. 201/2012 Coll., on Air Protection
- Decree no. 415/2012 Coll., on Permitted Levels of Pollution and its Detection, and Implementing Other Provisions of Act on Air Pollution
- Act no. 200/1990 Coll., on Offences (“**Act on Offences**”)
- Act no. 40/2009 Coll., the Criminal Code (“**the Criminal Code**”)
- Act no. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against them (“**Act on Criminal Liability of Legal Entities**”)

Vessels

- Act no. 114/1995 Coll., on Inland Navigation (“**Act on Inland Navigation**”)
- Decree no. 223/1995 Coll., on Vessels’ Eligibility Operating on Inland Waterways
- Decree no. 334/2015 Coll., on Administration of the Register of Small Vessels and Technical Eligibility of Small Vessels, Ferries and Floating Devices Operating on Waterways
- Decree no. 312/2012 Coll., on Establishment of Requirements for Fuel Quality for Inland and Naval Vessels in terms of Air Pollution

Aircrafts

- Act no. 49/1997 Coll., on Civil Aviation (“**Act on Civil Aviation**”)
- Decree no. 108/1997 Sb., implementing the Act on Civil Aviation
- Act no. 383/2012 Coll., on Conditions for Trading in Greenhouse Gas Emission Allowances
- Decree no. 192/2013 Coll., Establishing Application Forms for Allocation of Allowances for the Aircraft Operator, and Issuing a Permit to Greenhouse Gas Emissions

Trains

- Act no. 266/1994 Coll., on Railways (“**Act on Railways**”)

- Decree no. 209/2006 Coll., on Requirements for Permissible Emissions of Pollutants in the Exhaust Gases of the Combustion Engine of Train Vehicles

Lorries

- Act No. 56/2001 Coll., on the Conditions for the Operation of Vehicles on the Road Network (“**Act on Traffic Conditions on Roads**”)
 - Decree no. 341/2014 Coll., on Approving the Technical Competence, and on the Technical Conditions, for Operating Vehicles on the Road Network (“**Decree on Approving Technical Competence**”)
 - Decree no. 302/2001 Coll., on Technical Controls and Vehicles Emissions Measuring
 - Regulation no. 56/2013 Coll., on Establishing Rules for the Classification of Road Vehicles into Emission Categories, and on Emission Plaques
 - Regulation no. 351/2012 Coll., on Sustainability Criteria for Biofuels
 - Regulation no. 240/2014 Coll., on the Amount of Time Charges, Toll Rates, Toll Discounts and Procedures for Applying for Toll Discounts
2. Are international and/or European rules (if applicable) fully implemented in your country?

The Information System for Implementation of EU law (the “**Information System**”)¹ contains, *inter alia*, a list of EU directives that have not been implemented into Czech law in a timely manner. According to this publicly available list, all relevant EU directives for specified means of transport regarding emissions have been implemented into Czech law.

¹ The Information System is a database administered by the Department for Compatibility with EU Law that is a part of the Office of the Government of the Czech Republic. The Information System is used for monitoring and exchange of information on EU law as of its creation within the European Union until the end of implementation process in the Czech Republic. Implementation of EU law and its compatibility with national law is monitored by the Information System. For more information please see <https://isap.vlada.cz/homepage.nsf/esduvod3> [cit. 2016-01-27].

Additionally, we have not identified by analysis of information arising out of other publicly available sources and legal databases that any relevant European rules have not been fully implemented in the national legal order of the Czech Republic.

We also contacted several industry associations² to ask for their independent opinions in this regard. In general, their representatives indicated that they are not aware of any issues in their area of expertise with respect to implementation of relevant directives.

3. Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?

Following the conclusion drawn under the previous question, we understand that national rules cannot be less strict than European regulations since the latter, *per definitionem*, govern the framework based on which national rules are adopted. National regulations in the area of transport and emissions fulfil requirements adopted at the EU level. The Czech Parliament, as any other legislative body of an EU member state, is entitled or required (depending on the case) to adopt more detailed rules by which EU rules become clearer and more accurate. Penalties imposed for failure to comply with the legislation in question can be a classic example (please see our answer to question no. 4 and 5 below).

As a consequence, the wording of Czech national rules can be either the same as the ones adopted at the EU level or more detailed on the bases of the discretion exercised by an authorized legislative body.

We note that a different regime applies to international rules. In the Czech Republic, promulgated treaties, ratified by Parliament by which the Czech Republic is bound, form a part of the legal order. Therefore, there is no need to implement them in the national order since they are applicable directly. If such a treaty provides something different to that which an act provides, the treaty shall apply.

4. What are possible consequences if the requirements set forth in the rules are not fulfilled?

² Such as the Confederation of Industry and Transport of the Czech Republic, the Association of the Czech Railway Industry, the Confederation of the Czech Aviation Industry and the Association of Aerospace Manufacturers of the Czech Republic.

In general, failure to comply with the applicable rules can result in either an offence/administrative delict of a person breaching the law or a crime based on the severity of the wrongful act. In practice, offences/administrative delicts are more common in the area of transport and emissions.

A penalty can be imposed only on the basis of an act, and each of the acts mentioned above enumerates its own offences/administrative delicts and a respective type of penalty that can be imposed. However, in general, imposition of a fine and/or prohibition of activity of a wrongdoer is the common consequence of failure to act in line with the applicable law.

It is worth mentioning that the Czech Criminal Code governs criminal offences against the environment that can be applied in this regard (such as Damage and Endangering of the Environment or Damage and Endangering the Environment out of Negligence). In practice, such criminal offences do not occur very often. A court may impose especially a prison sentence or a disqualification for these criminal offences.

5. If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?

When comparing existing rules for vessels, aircraft, trains and lorries, it is necessary to take into account differences and specifications in their nature. As a consequence, different rules apply in relation to individual means of transport.

An illustration of the different rules is apparent in relation to penalties imposed on a wrongdoer operating a given means of transport. All the component acts mentioned above govern the offence/administrative delict consisting of the placement of a particular means of transport on the market or usage thereof without its technical capability being approved by a competent authority.

The maximum fine differs significantly in this regard. The Act on Railways and the Act on Traffic Conditions on Roads govern a fine of up to CZK 10,000,000 (approx. EUR 371,000) with the latter even setting forth a fine of up to CZK 50,000,000 (approx. EUR 1,852,000) where road vehicles have been placed on the market in a bulk without having been approved by a competent authority. This fine is the highest amount whatsoever in this regard. A fine ranging from CZK 100,000 (approx. EUR 3,700) to CZK 5,000,000 (approx. EUR 185,000) can be imposed under Act on Civil Aviation. However, a disqualification can also be imposed in the

area of operating aircraft. On the other hand, the lowest fine can be imposed according to Act on Inland Navigation of up to CZK 500,000 (approx. EUR 18,500).

Generally, EU rules do not govern the exact amount of a fine. They rather provide the national legislative bodies with certain guidelines that the respective body is obliged to follow when using its discretionary powers.

Legislation for Means of Transport regarding Accidents/Collisions (including Hazardous Goods)

1. Which national rules apply to prevent accidents/collisions and in case an accident/collision happened to prevent and minimize their impact on the environment?

As in the case of legislation for means of transport regarding emissions, this topic is not regulated by a single piece of legislation. Below we list both relevant acts and their implementing regulations (i.e. regulations of the Government and decrees of ministries) as amended. Czech national legislation in the area of accidents/collisions (including hazardous goods) is fragmented into component acts regulating rather generally the issues in question. We note that legal regulation concerning hazardous goods arises substantially from international treaties.

General legislation

- Act on Offences
- the Criminal Code

Vessels

- Act on Inland Navigation
- Decree no. 222/1995 Coll., on Waterways, Shipping Traffic in Ports, Common Accident and Transportation of Hazardous Goods (“**Decree on Waterways and Transportation of Hazardous Goods**”)
- Decree no. 223/1995 Coll., on Liability of Vessels Operating in Inland Waterways

- Decree no. 42/2015 Coll. on Liability of Persons Operating and Handling Vessels
- Decree no. 67/2015 Coll., on Rules of Navigation Traffic
- Act no. 61/2000 Coll., on Maritime Navigation

Aircraft

- Act on Civil Aviation
- Decree no. 108/1997 Coll. implementing the Act on Civil Aviation
- Decree no. 466/2006 Coll., on Flight Safety Standard

Trains

- Act on Railways
- Regulation no. 1/2000 Coll., on Transport Rules for Public Railway Cargo Transportation (“**Transport Rules for Railway Cargo Regulation**”)
- Decree no. 376/2006 Coll., on the Management System For the Rail Operation Safety and Rail Transport Safety, and on Procedures in the Event of Accidents and Incidents on Rail Systems
- Decree no. 16/2012 Coll., on Professional Qualification of Persons Managing Railway Vehicles
- Decree no. 173/1995 Coll., on Transport Rules of Railways

Lorries

- Act no. 361/2000 Coll., on Road Traffic (“**Act on Road Traffic**”)
- Decree no. 32/2001 Coll., on Traffic Accidents Records
- Act no. 111/1994 Coll., on Road Transport (“**Act on Road Transport**”)
- Act on Traffic Conditions on Roads

Hazardous Goods

- Act on Inland Navigation
 - Act on Road Transport
 - Decree no. 478/2000 Coll., implementing the Act on Road Transport
 - Decree no. 522/2006 Coll., on State Supervision and Inspection of Road Transport
 - Decree no. 64/1987 Coll., on the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)
 - Notification of the Ministry of Foreign Affairs no. 102/2011 Coll., on the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway (AND)
 - Decree on Waterways and the Transportation of Hazardous Goods
 - Regulation no. 208/2011 Coll., on Technical Requirements for Transportable Pressure Equipment
 - Decree no. 8/1985 Coll., on the Convention concerning International Carriage by Rail (COTIF)
 - Aviation Regulation of Civil Aviation Authority no. L18 governing Safe Aviation Transport of Dangerous Goods published under ref. no. 1162/2005-220-SP/2)
2. Are international and/or European rules (if applicable) fully implemented in your country?

The Czech Republic as a member state of the European Union complies with its obligations related to implementation of EU directives in the national order. However, there are two implementation issues dealing to certain extent with transportation and accidents/collisions (including hazardous goods) that the Czech Republic has been challenged on lately.

Firstly, in October 2015, the European Commission decided to refer, *inter alia*, the Czech Republic to the Court of Justice of the European Union (the “**Court**”) for not having established national electronic registers of road transport undertakings and for not having connected them with the national electronic registers of the other EU member states given that the Czech Republic has not yet complied with

these obligations arising out of Regulation No. 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC. The interconnection of national registers is necessary in order to facilitate the flow of information between member states on possible infringements committed by companies carrying out haulage at the international level (such as exceeding allowed driving times). The national registers should have been established and connected with each other by 31 December 2012 at the latest. The Czech Republic failed to fully implement this regulation.

Secondly, in October 2015, the European Commission also decided to refer the Czech Republic to the Court for failing to correctly implement Directive 2004/49/EC, on safety on the Community's railways. The directive requires member states to establish a safety authority, to establish an independent accident and incident investigation body, and to define common principles for the management, regulation and supervision of railway safety. The time limit for the transposition of the directive expired on 30 April 2006.

Further, it should be noted that the Information Register lists Directive 2012/34/EU of 21 November 2012 establishing a single European railway area, governing, to a limited extent, certain issues related to the prevention of accidents/collisions that has not been implemented in the national order in a timely manner.

The independent opinions of certain industry associations do not indicate any other implementation issues in this regard.

3. Do national rules provide stricter or less strict requirements than international and/or European regulations (if applicable)?

With the exception given in our answer to question no. 2 above, please see our answer to question no. 3 above regarding legislation for means of transport covering emissions.

4. What are possible consequences if the requirements set forth in the rules are not fulfilled?

In general, two types of penalties may be imposed for failure to fulfil requirements set forth by national legislation mentioned above in terms of vessels, aircraft, trains

and lorries. They include fines and prohibition of activity. As regards individual means of transport, certain differences need to be mentioned in terms of types of penalties that can be imposed and conditions related thereto (such as a scale for a fine in respect of individual infringements).

The widest range of penalty types are enumerated by respective legislation on road transportation by lorries. In our view, the most practical and efficient tool used in relation to road safety and to prevent prospective accidents is a delict point system. If a driver reaches 12 points in total (each infringement of respective legislation results in attribution of a certain number of points to a driver), the offender's driving licence shall be revoked for a specified period of time (12 months). According to the decision-making practice of courts and respective administrative authorities, if a driver commits an offence while driving and a single point is attributed as a consequence thereof, it corresponds to a penalty. When committing an offence while driving a lorry (or another road vehicle), the delict point system is in practice used along with the imposition of a fine or other type of applicable penalty.

It is worth mentioning that the most common applicable penalty is a fine of up to CZK 5,000,000 (approx. EUR 185,000) in the area of transportation (irrespective of the means of transportation). Prohibition of activity can be imposed for the most significant infringements of transport legislation (such as unauthorized transport of dangerous goods).

5. If you compare the existing rules for the different means of transport, would you say that there are particularly strict rules for certain means of transport?

Differences and specifications of individual means of transport need to be taken into account also in the area of accidents/collisions (including dangerous goods). It follows thereof that national regulations as well as international and/or European legislation reflect these particularities and consequently relevant legal regulations differ to a certain extent. We find it necessary to mention at least the following specifications in this regard.

One of the most important requirement related to transportation in general is its safety. It is particularly visible in civil aviation as the consequences of accidents can be very severe. As a consequence, the European Union required its member states to establish an independent authority for investigation thereof. It is called the Air

Accidents Investigation Institute in the Czech Republic, the existence of which was one of the criteria necessary for the Czech Republic to join the European Union.

As regards road transportation in general, there are several pieces of legislation governing accidents/collisions and related issues in comparison with the area of trains. Further, please note that the Act on Road Traffic defines a term “traffic accident” in detail on its own whereas the Act on Railways governs a broader term of “extraordinary event” consisting of, *inter alia*, an accident. Consequently, legislation governing train transportation seems to be more general in this area.

Besides, there are also other differences such as the existence of traffic accidents records in the area of road transportation and a special piece of legislation regulating rules for railway cargo transportation, i.e. Transport Rules for Railway Cargo Regulation. Specifications of applicable penalties have already been mentioned in our answer to question no. 4 above.

In conclusion, it is apparent that legislation in this area varies with differing degrees of significance and thus some rules can be seen as stricter than others. However, we understand that these differences follow from the nature of operation of the means of transport in question.

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