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SESSION 1

*ESM in the Country Undergoing Transition of
Economy: Case Study: Czech Republic*

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The Czech republic is preparing for the accession to the European Union. Screening proceedings between EC delegates and Czech government have happened during this year. In the environment field, as one of the proceedings, the aim was to identify the gaps between EU and Czech legislation and to propose steps for their removal.

Since EU directives which regulate waste management promote ESM, it is possible to assume, that the removal of gaps in the Czech legislation creates preconditions for the full ESM development in our country.

The Czech legislation in force covers majority of the basic criteria related to ESM in the developed countries, for example:

- environment and health protection duty in waste management has been set up,
- every waste treatment equipment has to be licensed and registered and its operation is under control,
- hazardous wastes have to be marked and register,
- duties for transboundary movements as ensue from Basel Convention and OECD membership are adopted in the legislation.

The current Czech legislation covers the EU requirements in waste management in the range of 65 - 70 % in accordance to detailed analysis. Some differences still exist. The major differences consist of following:

- national waste management conceptions including hazardous and special wastes (waste oil, used batteries and accumulators, PCB/PCT wastes) are in the early stage of preparation,
- the current legislation (waste act no. 125/1997 Sb. and related regulations) is in the basic provisions similar or equal to EU legislation, some duties have to be added, changed or modified,
- some emission limits (air, water and soil) which are valid for waste incinerating are less strict comparing to required EU limits,
- existing industrial waste incinerators are not able to fulfil EU emission limits without reconstruction,
- provisions for amount reduction of biodegradable part in municipal waste which end up on the dump site and disposal of these wastes are not provided,
- collection, treatment and utilisation/disposal of specific waste types are not created,
- sufficient packaging and packaging waste recycling system is also not provided.

I am glad, that I can say, that the work on harmonisation of Czech legislation with EU legislation, leading to diminishing the above mentioned problems, has started and successfully continues. Mainly, there is an

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intensive effort on new waste act preparation. This new act will adequately covers also the new OECD Council Acts. This act will come into effect on 1. 1. 2002. One year later, completely new packaging and packaging waste act should come into effect. Preparation work on national waste management plan has also started. The waste recycling and ESM criteria will play a significant role in this National Waste Management Plan. Concurrently, preparation work on amendment of legislation has started, it is related to emission limits for waste incinerating (in the Czech republic, the emission limits are adopted in the clean law).

The unsolved task is reaching the percentage goals in recycling and reuse of packaging for which the Czech republic will ask for transition period up to 2005. In the case of PVC packaging, the existing legislation provision will be reduced as required by uniform market conditions.

Solution for waste recycling

A difficult question is the development of suitable instruments of ESM for wastes intended for recycling. We have high expectation in the enforcement of voluntary agreement between the Ministry of Environment and EKOKOM organisation. This organisation was set up by industrial companies, goods and packaging producers with the goal to create support system for responsibility of local authorities in relation to packaging waste.

This voluntary solution is open to all companies willing to pursue such way of meeting regulatory requirements. Companies opting to follow their own solution are free to do so, but they have to prove regulatory compliance to authorities by them own.

Given the fact that some of environmental oriented regulations are introduced to Czech regulatory framework as new without any previous experience voluntary agreement could be very efficient instrument to achieve required changes to benefit the environment.

Advantage of such agreement is flexible problems solution in fields where neither administration nor industry have enough experience with impact of proposed regulation. This flexibility is particularly important in conditions of transitional fast changing economy.

On the other hand same transitional non-stable economy is kind of constraint to voluntary instruments implementation. Reason to this is low concentration of industry and low industrial organisation influence on individual organisation member companies which both may result in large number of free riders if true "voluntary" attitude would be adopted.

To gain advantage from flexibility of "voluntary" approach and at the same time avoid risk of free riding Czech government took opportunity to test kind of mixed approach. This means that targets of regulations are strictly set by law and are applicable to all business entities while actual implementation, it means ways how to achieve required status, is agreed in agreement concluded between industry and government on voluntary base.

This strategy could be well documented on regulation of packaging and packaging waste treatment. It is obvious that fast evolving economy in transition period, bring swift changes in technology as well as dynamic changes in consumer habits. In such situation is hard to forecast amounts and structure of packaging streams. Even harder is to estimate impact of packaging regulations to overall economy performance. At the same time Czech Republic is committed to achieve EU standard in packaging waste management. To handle such situation needs to maintain close co-operation of industry and government aimed to achieve sustainable level of packaging waste recovery while not limiting rate of economy growth and state of art packaging technology implementation.

To achieve such level of co-operation government sets goals and limits through legal instrument, mainly through special section of the Waste Act. Targets set by this law are derived from EU Directive on Packaging and Packaging Waste 62/94. All companies are free to achieve required level of compliance with the law by means on which they will decide by them own. They will be subject to substantial penalties if they fail to do so.

At the same time the law does not set any details how targets should be achieved and industry was encouraged to create its own system of collective compliance scheme. Industry proposed its own recovery scheme designed to ensure that required level of packaging waste recovery will be achieved in the given time. Details of recovery scheme operation are not set by regulation, they are set by so called Implementation Agreement or voluntary agreement. This agreement specifies organisational details, finance streams, mechanism of control and mechanism of co-operation between government and industry in scheme implementation and development. The Agreement also incorporate participation of NGOs from various areas including ECOs.

In brief this arrangement set up simple, but efficient, process of long-term solution. There exists nation wide packaging recovery scheme which is operated by industry under supervision of government and NGOs. This gives enough flexibility to manage operational details which enable both industry and government to avoid any constraints to economy performance which may arise from implementation of regulations. Same time mandatory recovery targets are applicable both to collective recovery scheme and to individual companies which may decide not to join the voluntary agreement. This avoids "free rider" problem as government authorities retains enough power to inspect and penalise outsiders which do not meet their obligations. Regarding insiders of scheme there is no need to close government inspection as they are scrutinised within the frame of industry self-controlling and auditing. This saves resources of government which just monitors overall recovery scheme performance through controlling tools agreed in voluntary agreement.

We believe that such "government sets target and industry agrees on implementation mechanics" approach is serving both government and industry interests in transition economy environmental regulations.

Transboundary movement of waste

The Czech Ministry of Environment is not only the central body of the government for waste management within the state border, but also the responsible body for fulfilling the duties resulted from the OECD directives and Basel Convention in the transboundary movements of waste. During last four years we have gained many practical experience on the subject of control mechanisms used in export and import of wastes intended for disposal and utilisation including application of ESM criteria. They imply our recommendation to keep OECD control mechanism with contemporary consolidation of directives and recommendations for the use of only two colour lists.

In accordance with Decision of OECD Council C(92)39/FINAL, in the national waste lists, the possibility of exceptions is still used (43 items from OECD green list is listed in the national yellow list, 58 items from OECD yellow list is listed in the national red list). The amendment of promulgation no. 337/1997 Sb. of the Czech Ministry of the Environment is already prepared in accordance with OECD Environmental Performance Review conclusions and recommendations. This amendment will be the base for assessment of 19 items from the OECD green list. The national red list will be identical with OECD red list. The full transposition of this OECD instrument's list to the national legislation will be reached during transposing the Council Regulation (EEC) No. 259/93 following the EC screening's conclusion on Environmental legislation.

The major problem with the transposition of OECD mechanism for transboundary movements of wastes is implementation of the Amber list (especially the 30 days limit to settle the documents for the administration institution). Czech republic does not make use of the tacit consent and in all cases the authorities are issuing decisions similar to decision related to red list.

The evaluation of ESM by export competent authorities in the importing countries

Hazardous waste from our country is exported only into OECD countries. In these countries ESM evaluation is ensured by the relevant competent authority. The competent authority in the Czech republic always requires agreement from relevant competent authorities in the country of import.

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