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**TRANSPARENCY AND CONSULTATION ON TRADE AND ENVIRONMENT**

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*The attached document is a revised version of the study on transparency and consultation on trade and environment in the Czech Republic. The Czech authorities have agreed to its declassification. If no comments are received in the Secretariat by Friday 27 April 2001, the paper will be declassified under the authority of the Secretary-General.*

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## TRANSPARENCY AND CONSULTATION ON TRADE AND ENVIRONMENT IN THE CZECH REPUBLIC

### Introduction

1. This report is based on exchanges with officials of the Czech Ministries of the Environment, of Industry and Trade, and of Foreign Affairs, representatives of several non-governmental organisations (Green Circle, the Society of Sustainable Living, the Right to Know Program, the Czech Business Council for Sustainable Development, the Trade Union Metal, the Czech-Moravian Confederation of Trade Unions, the Confederation of Industry of the Czech Republic) and representatives of research institutes (the Economic Institute of the Academy of Science of the Czech Republic, the Czech Environment Institute and the Charles University Environment Center).

### Background

2. During the socialist era the Czechoslovak government was characterised by a highly centralised administration and top-down administrative decision making. Information held by the administration was also strictly centralised and often inaccessible to the public.

3. In the 1970ies, environmental issues started to attract the attention of the population. This had several reasons, such as the development of heavy industry, which caused very high pollution in North-West Bohemia and North-East Moravia with impacts on the health of the population. Scientific discussions on issues such as acid rain increased public interest on these problems. With increasing pollution and income growth, people became more sensitive to environmental issues. This interest was mainly on domestic issues such as air and water pollution and protection of nature. Few contacts with the Western world and the State monopoly in trade explain a limited interest of the population in trade issues and global environmental problems in general.

4. The “Velvet revolution” in November 1989, which brought with it democracy, made things change radically, and a fundamental shift of the Czech political and economic orientation took place.

These changes have also gradually transformed the administrative practice and working methods, and transparency and consultation mechanisms have been put in place

5. Economic reform focused on privatisation, de-monopolisation, liberalisation of foreign trade and prices, convertibility of the national currency and creation of an adequate institutional framework. Implementation of results of the Uruguay Round agreements is one of the priorities of Czech trade policy. The institutional framework in the Czech and Slovak Federal Republic for environmental management included the creation in 1990 of the Federal Committee for the Environment and the Ministry of the Environment of the Czech Republic<sup>1</sup>. A set of new environmental laws was adopted<sup>2</sup>. Article 7 of the

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<sup>1</sup>. The Czech Republic as an independent State was founded after the division of Czechoslovakia in January 1993.

<sup>2</sup>. The Czech Environmental Inspectorate is responsible for enforcement of environmental legislation.

Constitution of the Czech Republic requires "thrifty exploitation of natural resources and the protection of natural assets". In 1990-92, the Federal Committee for the Environment initiated the so-called "Dobris Initiative", which led to the Pan-European "Environment for Europe" process, under the auspices of the UN Economic Commission for Europe<sup>3</sup>.

6. In the process of preparation of the Czech Republic for accession to the European Union currently under way, environmental protection and foreign trade performance represent clear priorities. This process mobilises considerable legal efforts and administrative resources. Among the essential measures in the framework of the pre-accession strategy are the participation of the private sector and of the general public in environmental activities.

7. A large number of non-governmental organisations and associations have emerged, many of which are effectively engaged in environmental protection and education<sup>4</sup>. Professional organisations have been formed, such as the Czech Business Council for Sustainable Development, and the Czech Environmental Management Centre. Further, a number of institutions have been set up to provide expertise and carry out research<sup>5</sup>.

8. The OECD Environmental Performance Review of the Czech Republic was carried out in 1998 and the report published in 1999<sup>6</sup>.

9. The Government has declared environmental education to be a priority and the State Programme on Environmental Education and Public Awareness was adopted in October 2000. The Office of the Parliament Ombudsman for Public Administration was recently established. The first Ombudsman should be elected in a very near future.

### **Trade and Environment Policy making**

10. Three ministries deal with policy issues regarding trade and environment: the Ministry of Industry and Trade, the Ministry of the Environment and the Ministry of Foreign Affairs. Other ministries intervene for specific issues such as the Ministry of Agriculture, the Ministry of Regional Development, the Ministry of Transport and Communications and the Ministry of Health. The Ministry of Foreign Affairs and the Ministry of Industry and Trade are in charge of all matters related to international trade agreements. The Ministry of the Environment participates in the negotiation of multilateral environmental agreements. In international negotiations, one ministry generally has responsibility for the substance, and the Ministry of Foreign Affairs takes part to assess the conformity of the proposal with international

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<sup>3</sup>. At the Conference held in Dobris (Czech Republic) 1991, Environment Ministers requested a report on the state of the pan-European environment. A series of conferences under the title "Environment for Europe" followed: Luzerne (1993), Sofia (1995), and Aarhus (1998). The next meeting is to take place in Kiev (Ukraine) in 2003.

<sup>4</sup>. According to the "State Environmental Policy", Ministry of the Environment of the Czech Republic, 1999, there are around 650 non-governmental organisation and associations in the country.

<sup>5</sup>. These include the Czech Environmental Institute, the Czech Hydrometeorological Institute, the Czech Environmental Inspectorate, the Institute for Economic and Environmental Policy at the University of Economics of Prague, the Agency for Nature and Landscape Protection, the Administration for the Protected Landscape Areas, the TGM Water Management Research Institute, the Horticultural Research Institute, and the Geofond (Geological Fund).

<sup>6</sup>. Environmental Performance Reviews, Czech Republic, OECD 1999.

commitments. Matters dealing with approximation with EU legislation are co-ordinated by the Department for European Integration, in the Ministry of Foreign Affairs.

11. Inter-ministerial co-operation in policy making, including trade and environment policy-making takes place mainly by way of written procedure. Under government rules of procedure, all draft regulations and proposals for changes to existing regulations are submitted to all ministries concerned and other state administration authorities for comments, in the framework of the so called "interdepartmental amendment procedure". All comments must be considered and dealt with, otherwise, these comments can be presented again by the relevant minister at a Cabinet meeting discussing the draft. Draft regulations are discussed in Parliament. In some cases, public hearings are organised.

12. In addition to written consultations, the "group of economic ministries" comes together when economic aspects of policies are discussed. Further, co-ordination meetings are held between relevant ministries to discuss horizontal issues such as the Czech environmental tax reform.

13. In 1999, in preparation of the WTO Ministerial meeting, consultative meetings were held between the deputy ministers of the Ministry of Foreign Affairs, the Ministry of Industry and Trade and the Ministry of the Environment. At these meetings, issues related i.a. to trade and environment were discussed.

## **Transparency**

14. Since 1989, the Czech Republic has moved from secrecy on matters related to administrative activities and practices, and inaccessibility of information on such activities, to a system in which the public has a right to be informed.

15. The 1999 Act on Freedom of Access to Information guarantees access by individuals and entities to administrative information, including on draft regulations. Under this Act, every state administration authority must publish relevant information on adopted regulations in a way that is openly accessible. The Act provides for a large margin of flexibility on the way the Act is implemented by the different authorities. In September 2000, the government approved a "methodological instruction on consolidation of procedures of individual state authorities" for the enforcement of the Act. Following this instruction, the Ministry of Industry and Trade has recently adopted concrete measures for the implementation of the Act.

16. Access to information on environmental issues is guaranteed by the 1998 Act on the Right to Environmental Information, which was prepared to harmonise Czech legislation with Directive 90/313/EEC on access to environmental information. The Act represents a breakthrough as compared to former restrictive practice by state bodies and represents a completely new approach in Czech legislation.

17. The Czech Republic has signed, but not yet ratified, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. On the basis of experience in the operation of the 1998 Act on the Right to Environmental Information and following ratification of the Aarhus Convention, it is expected that the Act will be amended and improved in the near future, to correct weaknesses that have appeared in its implementation. This has also become necessary in view of some incompatibilities of this Act with the 1999 Act on Freedom of Access to Information.

18. The Ministry of Environment publishes an annual "Report on the Environment in the Czech Republic", which is distributed for free to interested parties. Further publications include an Environment Statistics Yearbook, and brochures on specific issues (for example, a recently published guide on eco-management in small and medium sized enterprises) For the last ten years, the Ministry of Environment

has been publishing a monthly report (“Zpravodaj” or “Bulletin of the Ministry of the Environment”) in order to disseminate information on current international issues of interest such as negotiations of multilateral environment agreements. The mission reports of the Minister of the Environment as well as of officials are also regularly included in this bulletin. Significant attention is also given to major domestic environmental issues. The report is distributed for free to environmental NGOs, business associations, private firms, etc.

19. The Ministry of Industry and Trade publishes several information bulletins: the "Economic Bulletin", the monthly bulletin "Trade, Contact, Marketing", dealing with trade promotion activities, the monthly "Czech Business and Trade", and "Doing Business in the Czech Republic". All of them are available in paper and electronic form, both in Czech and English, and some of them also in other languages. An "information box" has been set up in the hall of the Ministry, for the distribution of brochures and information material concerning the activities of the Ministry (including guidelines, statistical overviews, expert information, etc.). A large amount of information is provided at no cost, e.g. in form of brochures. For specifically requested information, reimbursement of the costs (e.g. of photocopies) can be requested, although information may be granted for free on the condition that the cost does not exceed 100 CZK. Other means for ensuring transparency are press conferences, briefings, publication of articles, provision of advice requested by firms, institutions, NGOs and the public at large, etc. A large number of requests deal with environmental issues. Advice is given orally or in writing (by fax or electronically). In October 2000 the Ministry of Industry and Trade created a new section for relations with the public and the press, aimed at improving the Ministry's communication strategy and enhancing openness towards the public.

20. In the last years, the Internet has also made a breakthrough in Czech administration, and currently, the principal means of conveying the most up-to-date information about governmental policy-making and related activities are the websites of ministries. The government further provides information to the public through various means such as press conferences, seminars, articles in journals based on interviews with governmental officials, etc. The website of the Parliament publishes draft bills under discussion. Usually, three months after enactment, the full text of Acts is published on the Government website<sup>7</sup>.

## **Consultation**

### ***Formal standing mechanisms***

21. In the framework of the regulatory decision-making process, non-governmental organisations can provide comments on draft regulations<sup>8</sup>. Affected and interested parties (such as specific companies and authorities from the country of export or origin, in the case of trade rules) have access to draft regulations and may provide comments. The title of draft regulations is published on the Government website once it

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<sup>7</sup>. The address of the Ministry of the Environment's website is <http://www.env.cz>. The State Environmental Policy is available on this site both in Czech and English. Environmental information (articles, relevant documents, events organised by the Ministry, etc.) is available at <http://www.env.cebin.cz>. The website of the Ministry of Industry and Trade is [www.mpo.cz](http://www.mpo.cz). It disseminates information on all relevant policies within the competence of the Ministry, on current legislation, etc. A significant part of the information is provided also in English. The OECD procedural guidelines on trade and environment are published on the websites of both Ministries. The website of the Parliament is [www.psp.cz](http://www.psp.cz), that of the Government [www.vlada.cz](http://www.vlada.cz).

<sup>8</sup>. The regulatory decision-making process is governed by Governmental Rules of Procedure and Legislative Rules, and Rules of Procedure of the Chamber of Deputies and of the Senate.

has been approved by the government, and before it is submitted to the Parliament for a first reading. To obtain the full text of a draft regulation or amendment, however, a specific request must be made. All parties without exception may present comments, and regulatory authorities must take account of all comments. In general comments are preferred in writing (including in electronic form).

22. Consultation is also done in the framework of agreements on co-operation between regulatory authorities, and non-governmental organisations or professional associations. Under these agreements, all draft regulations are discussed between the two parties. Recent examples are the agreement between the Ministry of Industry and Trade and the Confederation of Industry<sup>9</sup>, and the agreement on co-operation between the Ministry of the Environment, the Confederation of Industry and Transport, and the Czech Business Council on Sustainable Development, signed in 1999. An Action Plan for the implementation of these agreements was signed in 2000.

23. The Ministry of the Environment maintains regular contacts with environmental NGOs and has recently appointed an official to act as contact person with NGOs.

24. The "State Environmental Policy" (SEP) is adopted by the government, after a process involving all departments within the Ministry of the Environment, other Ministries, as well as stakeholders and experts, and the Parliament. The current State Environment Policy was adopted and published by the Ministry of the Environment in 1999. An amendment to the SEP has recently been prepared. A draft was published during a month on the website of the Ministry of Environment for public comments. The Government endorsed the amendment to the SEP in January 2001 and the new State Environmental Policy should be adopted by the Parliament in the near future

25. A similar process has been applied for the approval of policies within the competence of the Ministry of Industry and Trade, such as the "Mid-horizontal sectoral policy", approved in early 2000, and the "Pro-export policy", of which foreign trade policy is part, approved in 1999.

26. In the last years, the Ministry of the Environment has been holding an annual so-called "Green Parliament" at which ministry officials discuss with environmental NGOs the current and planned work of the Ministry. The agenda of these meetings is prepared in consultation with NGOs.

### ***Formal ad hoc mechanisms***

27. The Government sometimes organises ad hoc policy consultation meetings when urgent or important issues arise. In the framework of preparations for the WTO ministerial conference in Seattle in 1999, the Ministry of Industry and Trade established 12 working groups. One of these groups was the Working group on trade and environment, which met three times during the past year. Participants in this group were officials from various ministries such as the Ministry of Industry and Trade, the Ministry of the Environment, the Ministry of Foreign Affairs, the Ministry of Agriculture, the Ministry of Finance, the Ministry of Transport and Communications, as well as academics, several environmental NGOs, business representatives, etc. It was agreed that this Working group would meet in the future for discussions of issues related to trade and environment.

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<sup>9</sup>. The Confederation of Industry adopted its "Environmental Policy for the Czech Republic" in 1999. It recognises the importance of the concept of sustainable development for competitiveness in a global economy and strives to develop measures to achieve the objectives of such development. It is expected that the Environmental Policy will provide a basis for co-operation of industry with the government, the parliament and the public.

28. Research institutes<sup>10</sup> often act as de facto intermediaries between the government and the private sector. Researchers from these institutes participate in ad hoc discussion group meetings organised by the Ministry of the Environment. Representatives of private sectors including firms and NGOs are often invited to these meetings with relevant government officials.

29. NGO representatives sometimes attend international meetings alongside government officials. While NGOs rarely form part of Delegations in trade negotiations, at meetings on environmental matters, this is more common. At the OECD meeting to discuss the Environmental Performance Review of the Czech Republic in 1998, the Czech Delegation included a member of an environmental NGO. At the negotiations of the Aarhus Convention, three out of six members of the Czech Delegation were NGO representatives. At the current discussions for the preparation of an international protocol on a pollutant release and transfer register (PRTR) one of the leading experts of the Czech Delegation is an NGO representative. Czech NGOs took part in the 1999 WTO Symposium on Trade and Environment.

30. The Ministry of the Environment financially supports so-called "Programmes of care for the environment". The objective of these projects is to obtain technical and legal information from scientists or other professionals. Three years ago one such project dealt with the linkages of trade and environment. In 1999, the Ministry of the Environment published a study on environmental education and training in the EU and other countries, written by a team of NGOs under the Ministry's leadership. In 2000, a project on the environmental assessment of trade agreements and on trade impact assessment of multilateral environmental agreements has been launched in the framework of the Ministry's research and development activities. The study is being carried out by a research institute financed by the Ministry of the Environment, selected after a call for tender.

### *Informal mechanisms*

31. Informal contacts between government officials and members of civil society are a common and usual practice. These contacts are often the result of personal relationships between officials and members of non-governmental organisations.

32. Direct contacts are more usual between officials of the Ministry of Industry and Trade and representatives of business and industry and of trade unions. Contacts with consumer groups are less frequent, but the recent creation of the Consumer Protection Advisory Committee should improve mutual contacts.

33. Officials of the Ministry of Environment often meet with NGO representatives to discuss or clarify issues of concern. These communications are often held in informal settings. The Ministry of the Environment puts at the disposal of non-government organisations meeting rooms and other facilities. Government officials are often invited to seminars and training programmes organised by academia or private organisations. Occasionally, joint seminars are organised by the Ministry of the Environment and NGOs, such as, recently one on risk assessment. The Ministry of the Environment is currently organising an informal consultation forum to inform the public, business and other stakeholders about environmental issues arising from accession to the EU.

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<sup>10</sup>. See footnote 5.



## **Beneficiaries**

34. There are no specific formalities for NGOs to be recognised and have access to transparency and consultation mechanisms.

35. The main problem for NGOs is funding, which is often very scarce. Occasionally, the administration provides funding to allow representatives of NGOs to attend relevant international meetings, or take part in Delegations of the Czech Republic at negotiations. The largest part of funding for such purposes however comes from other sources.

36. Both the Ministry of Foreign Affairs and the Ministry of the Environment have a budget to finance NGO projects in the fields of development and environment respectively.

## **Experience with transparency and consultation**

37. There is general agreement both among government officials and NGOs that in matters of transparency and consultation important improvements has been made in the past years, but that they are all still in a learning process. As in many other countries, especially among economies in transition, involvement of civil society in policy making is still in its beginnings. Habits from the recent past, in which transparency and consultation mechanisms were virtually non-existent, have still to be overcome. Appropriate resources including human resources are needed to maximise the benefits of both legal and administrative, as well as technical improvements, to ensure the proper functioning of transparency and consultation processes.

38. An official of the Ministry of the Environment expressed his wish that trade and environment issues be discussed in a more structured way between the Ministries of the Environment and of Industry and Trade, and that the Ministry of Foreign Affairs established an inter-ministerial consultative group on trade and the environment, to prepare negotiation and discussion of trade agreements (e.g., currently, the Agreement on agriculture or the GATS).

## **Assessment**

### ***Transparency***

39. Both government officials and NGOs generally praised the improvements in transparency and access to information made in the last years. However, the latter criticised the way in which legislation on access to information is being implemented, which sometimes results in actual barriers to such information.

40. Some NGOs considered that often there is neither the will nor the means to put current legislation on access to information in practice. Since there is no precise mandate or system in place on how to bring information to the public, and implementation is left to each public institution, artificial barriers, such as bureaucratic procedures, sometimes render access to information extremely difficult. Often, information is provided against a charge. The price charged by some institutions for providing specific information raised criticisms from some NGOs. Another problem mentioned by NGOs was the need for specific requests for information to be approved by several instances within an institution. Further, it was considered that the classification of requested information as "confidential" was often arbitrary. One NGO representative said that often, the more important the information was the more difficult it was to obtain.

41. The fact that much information is available on the websites of relevant ministries and institutions was praised. It was mentioned, however, that the high cost of equipment, and for some, of telecommunications, renders information distributed over the Internet accessible to a limited number of people only. The limited access to Internet at schools was also mentioned. NGO representatives suggested that much more information should be put on the website, that this information should be timely, and that the webpages should be updated more often. For example, environmental NGOs had requested at the "Green Parliament" held in 1999 that all drafts of environmental legislation be published on the Ministry's website; and of the 12 drafts currently under discussion, none had been published by the last quarter of the year.

42. Representatives of environmental NGOs considered that co-operation with Parliament is good. They are adequately informed about work of the Environment Committee of the Parliament and can therefore easily follow that work. Further, NGOs are often invited for consultations. They mentioned also that the final decisions however often reflect the lobbying done by other interest groups.

### *Consultation*

43. A Government official considered that in spite of increased possibilities for participation in the policy-making process, there is still a relative lack of sensitivity of environmental NGOs to trade and environment issues. There are however exceptions; for example, trade with electricity has been given much attention in relation with the construction of the Temelin Nuclear Power Plant.

44. One official considered that some NGOs are not very articulate and do not formulate their opinions in a clear manner, which makes it difficult to integrate such opinions in the decision-making process. Others, however, were said make good contributions. It was acknowledged that funding is a major problem for many NGOs, which often work on a voluntary and non-professional basis. Environmental NGOs were generally considered to be knowledgeable, interested and satisfied of being part of a process to contribute to solving environmental problems. It was acknowledged that NGOs often lack qualified staff, for example, lawyers, capable to actively participate in the process of commenting on draft legislation.

45. Among the different ministries, the Ministry of the Environment was considered to be the most open, and even to act as "go between" for contacts between NGOs and other Ministries, such as that of Transport and Communications. The failure to hold a public consultation on the draft programme for environmental education, due to the refusal of the Ministry of Education and in spite of the support by the Ministry of the Environment was mentioned.

46. NGOs considered that, in general, they have good contacts with ministries directly related to their activities- trade unions and business with the Ministry of Industry and Trade, environmental NGOs with the Ministry of the Environment - but that there were hardly any contacts with the other ministry: environmental NGOs have almost no contacts with the Ministry of Industry and Trade, nor trade unions and business groups with the Ministry of the Environment. The difficulties to have access to the Ministry of Industry and Trade was emphasised by several environmental NGOs. There was general agreement among NGOs that this should be changed, and that the effort to "break out of the circle", so as to improve contacts and consultations of NGOs representing all sectors with all relevant ministries, should be made by both sides.

47. They also pointed out that there were few contacts and very little interaction among the various NGOs, and the wish was expressed to hold more often "tripartite" meetings with government officials, in which trade unions, business and environment NGOs were represented. A trade union representative

commented that they do not have any expert on environmental issues (i.a. due to lack of funds), and that the expertise from environmental NGOs was welcomed.

48. NGOs expressed their concern about the fact that consultations often take place at a working level, whereas decisions are taken at a higher level, and that the results of these consultations hardly permeate to the latter. Environmental NGOs considered that consultation is often unequal: the more important and costly a project is, the less civil society is involved.

49. It was acknowledged that legislation and practices concerning consultation have been introduced, but that often, these consultations are not effective enough. For example, while the legislation on environmental impact assessment (EIA) provided for public information and consultation of projects, the relevant information was often made available at the final stages of the process, when it was too late to take into account any input from the public. This legislation has recently been amended and early access of NGOs to information is now guaranteed. The recent Act on Geological Research was mentioned as constituting a good example, as it provides for early involvement of the public. NGOs also pointed out that often, the time granted for comments (e.g. on draft legislation or in the framework of EIAs) is too short to allow for effective consultation.

50. The "Green Parliament" held in the Ministry of the Environment was considered a good starting point for general discussion, but too heavy a mechanism to discuss concrete problems. On the other hand, the easy access to the Ministry's premises to hold meetings and organise seminars, sometimes jointly, was praised.

51. Business representatives mentioned the issue of representation and legitimacy, and considered that in public consultations, the opinion of the business community, representing a large sector, often weighs as much as, or less than that of a few environmental NGOs. A representative of an environmental NGO on the other hand considered that NGOs are more visible, but that in practice the opinion of business is given more weight.

52. Lack of funding was mentioned on several occasions as a major problem. Though the availability of public funding was acknowledged, this is generally directed at specific projects, but not at the day to day functioning of NGOs.

53. NGOs were generally satisfied of their involvement in Czech Delegations at international meetings. They considered it to be a useful contribution to consensus building, a very good learning process, and a direct way to be informed about the government's activities.

54. The role of the media as an alternative way to bringing information to the public, whether by government officials or by NGOs was mentioned. It was considered however that the media often focused on photogenic and spectacular events and that there was little room for real discussions of relevant issues. It was mentioned that NGOs have easy access to the media and that there was more coverage of NGO's activities than on related ministerial work.