

LEGAL STRATEGY

Overview of opportunities around the use of strategic litigation for industrial decarbonization, specifically in the steel sector in Czechia

I. Objectives to achieve

The overall objective is the decarbonisation of the steel industry in Czechia. To come closer to achieving this goal, we must ensure that steelworks comply with relevant national and EU law (especially the IED and BAT Conclusions), that the public authorities monitor this compliance regularly and that they ensure the public has an easy access to information and is able to meaningfully participate in decision making processes.

II. Legal goals

These objectives can be achieved by specific legal steps. In a case of noncompliance, the authorities must act swiftly to amend the relevant permit, so that the operation of the steelworks does not exceed the boundaries set by law. The authorities shall also be proactive in monitoring the compliance, abide by the law on public participation and publish all required information.

III. Access to information

III.1. Potential legal obstacles

In Czechia, there have been no significant obstacles identified in terms of access to information. The public authorities are required by law to publish all relevant permits, their amendments and reports on compliance of the operation with said permits. All of this is done through a centralized information system which is accessible to anyone.

A potential obstacle may be a practice of certain regional authorities not to publish consolidated versions of the IED permits. The public then may face an uphill battle of trying to decipher the current status of the permit by comparing its original version with its many amendments. This practice has now thankfully ended due to a recent amendment of the IPPC Act,¹ which obliges the authorities to publish a consolidated version of the permit after each change.

III.2. Suggested legal responses

In case there is still not a consolidated version of the permit available in the online IPPC portal, the public may file a standard access to information request according to the Information Act.² Alternatively, it may file an access to environmental information request according to the

¹ Zákon č. 76/2002 Sb., o integrované prevenci a omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci) [Act no. 76/2002 Sb., on integrated pollution prevention and control, on the integrated pollution register and on amendments to certain acts (IPPC Act)], [available online](#)

² Zákon č. 106/1999 Sb., o svobodném přístupu k informacím [Act no. 106/1999 Sb., on free access to information (Information Act)], [available online](#)

Environmental Information Act.³ Both requests produce very similar legal effects and the authority is then obliged to provide the consolidated version.

IV. Public participation

IV.1. Potential legal obstacles

Environmental associations may take part in the proceedings on the issuance of the IED permit (§ 7/1/g of the IPPC Act), as do municipalities or chambers of commerce. They may also participate in the proceedings on the changing of the IP, however only when the authority decides that such change may have a negative impact on the environment (§ 19a/2). This leaves the authority with a rather big discretion on whether it will allow the public to participate or not. Since pursuing the proceedings without the participation of the public is much quicker and easier, the authorities are naturally incentivized to interpret “negative impact on the environment” as narrowly as possible.

IV.2. Suggested legal responses

Even in cases where authorities do not inform the public about the ongoing proceedings and the possibility to partake in them in time, there is a legal remedy available. The environmental association may still file an appeal against the authority’s decision within 30 days after its publication (§ 84 of the Administrative Code (AC)).⁴ It must claim that its participation rights have been violated and that the authority has wrongfully ruled that the decision on amending the permit does not have a negative impact on the environment. The appellate authority (typically the Ministry of the Environment) may change the decision or strike it down while allowing the public to fully participate.

V. Access to justice

V.1. Summary of the main non-compliances with the relevant BAT conclusions

The expert's assessment found that the emission monitoring requirements in the permits for the steelwork’s facility (Třinecké železářny) are insufficient to ensure compliance with EU and national legislation. Specifically, the permits require only infrequent, annual monitoring of certain pollutants, while BAT Conclusions require continuous monitoring for dust (particulate matter). Furthermore, EU legislation obliges the authorities to at least consider the use of continuous monitoring for other pollutants as well, based on the specifics of the facility. In case of one part of the facility, the permit does not require actual monitoring at all, settling down only for an approximate calculation of the emissions.

This lack of robust monitoring makes it impossible to determine whether the facility is actually complying with emission limits and overall BAT standards. Emissions vary widely throughout the year. This system also allows the operator to temporarily reduce emissions during the scheduled monitoring days, thus ensuring compliance with the emission limit values set in the permit.

³ Zákon č. 123/1998 Sb., o právu na informace o životním prostředí [Act no. 123/1998 Sb., on the right to information about the environment (Environmental Information Act)], [available online](#)

⁴ Zákon č. 500/2004 Sb., správní řád [Act no. 500/2004 Sb., Administrative Code], [available online](#)

The expert therefore concludes that the permits of the facility do not comply with the relevant BAT Conclusions since their monitoring requirements are impermissibly lenient. The permits fail to comply with the EU BAT standards in a fundamental way that makes it impossible to determine whether emissions from the facility comply with EU BAT emission standards and the permits themselves.

V.2. Short description of the potential legal responses

Since the permit is already issued, no typical legal remedies are available to participants of administrative proceedings (e.g. an appeal, a lawsuit against a decision).

The public has a right to file a non-binding proposal (§ 42 of the AC) to the Regional Authority asking for a review procedure under § 18 of the IPPC Act. The review is initiated by the authority at least every 8 years and examines whether the permit still complies with relevant legislation and whether no circumstances have changed.

In case of an unlawful inaction by the Regional Authority, which may be constituted by not starting a review procedure, the Ministry must order the Regional Authority to act (§ 80 of the AC). Any member of the public may inform the Ministry of this inaction by the non-binding proposal.

If an omission or a failure of the authority is unlawful and interferes with the plaintiff's own rights, he or she can file a lawsuit against an unlawful interference. The court could then order the authority to correct the situation (§ 82-87 of the Administrative Procedure Code).⁵

Besides national remedial measures, the public may also file a complaint with the European Commission, if the situation presents a potential infringement of EU law, as is in this case.

V.3. Comparison of efficiency of possible legal actions, legal and other barriers, risks

As for the proposal to the Regional Authority to start a review procedure, such proposals can be submitted by anyone and anytime. There is however no legal obligation of the authority to comply with this proposal. It must only, and just if the applicant requests it, inform him of how it handled the matter. All of this considered, it is a wise first step, since it is free, not excessively time consuming and may produce the quickest redress. If the authority recognizes its mistake and starts the review procedure, the facility's permit may comply with BAT Conclusions within a few months.

Concerning the proposal to the Ministry to correct the Regional Authority's inaction, it is highly improbable that the Ministry would act even if the Regional Authority was not asked first to start the review. Therefore, this proposal would be effective only after the Regional Authority would inform the public that it does not intend to start the review based on the new findings. Filing of this proposal is also fairly easy both financially and time-wise. If the Ministry decides to comply with the proposal, it may order the authority to start the review procedure or even start the review by itself. While the latter option is used rather rarely, even ordering the authority to start the review may be an effective way of reaching the legal goal.

⁵ Zákon č. 150/2002 Sb., soudní řád správní [Act no. 150/2002 Sb., Administrative Procedure Code], [available online](#)

However, if even the Ministry is inactive, the applicant does not have many remedies left, since its proposals are not binding for the authorities in any way and the lawsuit against administrative inaction cannot be used if no proceeding has started yet.

The only avenue to obtain a judicial decision might be through the lawsuit against administrative interference. The applicant would have to argue that the impermissibly lenient monitoring requirements are interfering with his or her own rights and the court should step in and order the authorities to set the IP in accordance with BAT Conclusions. The claim of interference may be very hard to prove for an individual, but it might have a chance if raised by an environmental association, since they enjoy a special status in procedural environmental law. In any case, it would be preferable for the applicant to reside near the steelwork's facility. Filing a lawsuit is obviously more demanding, both on time and finances (the fee for filing a lawsuit is set at 2 000 CZK, equal to approximately 80 EUR). The judicial decision however carries its own benefits as well, mainly a higher authority and a bigger guarantee of impartiality than the proceedings before the Regional Authority or the Ministry. The Czech courts usually tend to decide within two to three years, although it largely depends on each individual court. This option is however definitely the least time effective of those already mentioned.

As a means of last resort, the complaint to the European Commission could offer a potential remedy. This might be however even less time effective than the lawsuit. And especially with regard to the principle of subsidiarity, its result would be hard to predict, since the Commission might be hesitant to start an infringement procedure if there is still a chance to provide remedy at national level.

V.4. Conclusion, recommended legal action(s)

While the Czech legislation provides adequate guarantees of access to information and public participation, in access to justice area, it still faces some issues. The fact that the biggest Czech steelworks facility is being operated thanks to permits that are in such stark odds with the requirements of BAT Conclusions is alarming.

The recommended legal action is therefore to notify the responsible Regional Authority of this issue by a non-binding proposal, requesting a change in the monitoring of emissions in the review procedure. In case of a negative response, a proposal to the Ministry of Environment to adopt a measure against unlawful inaction would be recommended. If these avenues fail, a lawsuit against administrative interference or a complaint to the European Commission might serve as means of last resort.

It is important to note however, that aside from the traditional legal remedies described above, other pieces of European legislation may positively impact the reporting and compliance of steel producing plants. The Directive 2022/2464 of the European Parliament and of the Council of 14 December 2022 (Corporate Sustainability Reporting Directive) sets disclosure requirements and transparency rules for certain companies (known as ESG). Companies operating steelworks typically belong among the companies affected by this regulation. In the long term, it is crucial to increase transparency about the impacts of



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Třinecké železářny on the environment and society. ESG can gradually contribute to a change in the operator's business strategy and to the gradual decarbonisation of the operations.

Contact information:

authors: Eliska Beranova
organization: *Justice & Environment*
e-mail: info@justiceandenvironment.org
URL: www.justiceandenvironment.org