Environmental cases keep piling up on the desk of the Court of Justice and one may wonder why, "Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC" (hereinafter the "Emissions Trading Directive") as well as the bulk of the follow up legislation (i.e. the decision establishing guidelines for the monitoring and reporting of greenhouse gas emissions, the draft regulation for a standardized and secured system of registries) might hold the answer.

The Emissions Trading Directive was adopted on 13 October 2003, and published in the Official Journal of the European Union twelve days later. Art. 3 demanded that the Member States "bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 3 December 2003 at the latest". Such a demand in itself was audacious for a number of reasons, one of them being a hair-raising shortage of time. The fact that the Emissions Trading Directive is still being supplemented by additional Community legislation is another unpleasant element. The monitoring and reporting guidelines were adopted as late as 29 January 2004 and the regulation on registries only on 24 June 2004. That left those responsible for transposition with an incomplete picture and since transposition, of course, is not a simple transcription, lawmakers had a hard time modeling the provisions of the national legislation without having a full idea of what the registry, for instance, would look like in the end.

Nevertheless, the Ministry of the Environment – the responsible authority for transposition and implementation of the Emissions Trading Directive within the Czech Republic – started to work on its transposition and implementation shortly after its adoption, being fully aware of the commitments that the Czech Republic undertook when signing the Treaty of Accession and the Act of Accession on 16 April 2003.

The aim of this article is to scrutinize in detail the approach that the Czech Republic has adopted in order to transpose the Emissions Trading Directive and the Community legislation implementing it. Notably, the following issues will be exami-
ined: scope of legislation (II.1.), greenhouse gas emissions permit (II.2.) and related questions such as monitoring, reporting and verification (II.3.), NAP, its form and procedure for its preparation (II.4.), and allowances, their legal nature and administration (II.5.). Furthermore, the regime of sanctions for infringements of the trading-scheme rules (II.6.) and choices made when transposing the Emissions Trading Directive (II.7).

Before plunging into those engulfing waves of provisions and legislative solutions, however, it is appropriate to indicate in the first place the progress in transposition that has so far been achieved.

I. Progress in transposition

At the outset, the logical intention was to insert the rules necessary for the transposition of the Emissions Trading Directive into the Air Protection Act. Under the title Protection of Earth Climate System, the Air Protection Act contains two provisions (§ 34 and § 35) tackling concerns of the global warming or, if you want, the greenhouse effect. The idea was to keep amendments to the Act to a minimum and leave the rest of the transposition to legislation implementing the Act. The occasion was apt, since – at the time – the Senate of the Parliament had before it another draft amendment to the Air Protection Act. Thus, a great deal of time could have been saved.

The idea, however, was firmly rejected by the future addressees of the legislation, i.e. operators of installations falling under the scope of the Emissions Trading Directive based in the Czech Republic. One of their reasons was a desire that the draft legislation be discussed and negotiated thoroughly at all levels of the legislative process. Given the fact that the instrument of emission allowances trading is a novelty hitherto unknown to the Czech Republic’s environmental law, that argument is indeed understandable.

Status quo

At the time of writing, i.e. at the beginning of June, the draft act regulating the trade in greenhouse gas emission allowances (hereinafter “Emission Allowances Act”) has gone all the way to the government. The text of the draft was put through a comments procedure at the Ministry of Environment and, consequently, was submitted to other ministries, regions and institutions (associations of economic operators, non-governmental organizations, academic institutions etc.) for comments. These comments were worked into the text of the draft and the revised draft was then submitted to the Czech government, with one disputed element left for decision by the government. The government is expected to approve the draft by the end of June.

Apparently, the deadline for transposition (April 30 in case of the accession countries) was missed. Although this is indeed regrettable, implementation of the emissions trading system is not necessarily at risk as a consequence. As is generally known, the pivotal date for the start of emissions trading is January 1, 2005. On that day, the first trading period (2005 to 2007) will commence and from then on, operators of installations will be allowed to run their installations only with a permit issued under the provisions transposing the Emissions Trading Directive. It is expected that the Emission Allowances Act will come into effect (following its adoption by Parliament, signature by the President and publication in the official Collection of Laws) sometime in September this year, thus