



## BIOREGIO PROJECT

# ANALYSIS OF NATIONAL INSTITUTIONAL FRAMEWORKS AND LEGISLATIONS AFFECTING BIODIVERSITY AND ECOLOGICAL CONNECTIVITY IN THE CARPATHIAN COUNTRIES

## NATIONAL REPORT POLAND

### PILOT AREA

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## **Section I - GENERAL PART**

### **1 Introductory framework**

#### **1.1 The constitutionalized division of power (See Questionnaire 1.1)**

The Constitution is the supreme legal act of the Republic of Poland. It specifies (in Chapter I), the most important system of rules for the state. Pursuant to these rules, the Republic of Poland is: the common good of all its citizens (Article 1), a democratic state (Article 2), a state ruled by law (legality principle - Article 7), and a state which implements the principles of social justice (Article 2), a state with separated powers (balance of powers) - Article 10, a state with social market economy (Article 20).

The Republic of Poland is a unitary state (Article 3). That means that autonomous territorial ethnic and territorial units do not occur within the Republic of Poland. Unlike in federal states, Polish territorial units and their bodies – regardless of how they are established, what their competences are and to what extent central authorities can interfere in their activities – ‘together with the central bodies will always create a unified system of bodies of the same State’<sup>1</sup>. This rule results from Article 3 of the Constitution and from the decentralization of public power which is elaborated in:

- Article 15, which stipulates that *the territorial system of the Republic of Poland ensures public power decentralization, while the basic territorial division of the state should allow for social, economic and cultural ties and ensure that territorial units retain the capacity to perform their public duties.*

-Article 16 (1) and (2) which stipulates that ‘*inhabitants of basic territorial division units form, in accordance with the law, a self-governing community*’; ‘*This community participates in the exercise of public power*’. *The self-government shall perform an essential part of public tasks, to which it is entitled to within the framework of the laws, on its own behalf and at his own risk*’.

-Article 163 which stipulates that ‘*Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities.*’

In Poland, a three-tier structure of local self-government is in place which is formed by *Gmina* (the municipality) is the basic unit of local government. *Powiat* (district) and voivodship are other units of regional and/or local government.

#### **1.2 Legislative and administrative competences in the field of environment, landscape protection, land use and spatial planning, water, hunting, agriculture, transport, tourism, energy and mining (See Questionnaire 1.1)**

##### ***1.2.1 The legislative power and legal sources of law in the Republic of Poland***

In accordance with Art. 87 contained in Chapter III of the Constitution (Sources of law), the sources of universally binding law are: the Constitution, statutes, ratified international agreements and regulations (paragraph 1), and acts of local law are the sources of universally binding law in the area of operation of organs which established them (paragraph 2).

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<sup>1</sup> P. Sarnecki, ‘Ogólna charakterystyka państwowości w Konstytucji Rzeczypospolitej Polskiej’ in P. Sarnecki (ed.), *Prawo konstytucyjne Rzeczypospolitej Polskiej* (Warsaw, Wydawnictwo C. H. Beck, 2008), at 78.

- **The Constitution is the supreme law** of the Republic of Poland; there stems from the provisions of the Constitution (articles 8, 9, 90-91) that<sup>2</sup>: (a) The Constitution recognizes multilayered structure of regulations binding within the Republic of Poland, which is formed by provisions introduced by the national legislator and provisions created outside the system of national legislative organs; (b) international agreements ratified by means of an act enjoy precedence of application if they cannot be reconciled with the provisions of domestic acts, (c) legislation introduced by an international organisation is applied directly, with precedence over domestic acts in case of collision, provided that such a hierarchy results from the agreement establishing this organisation and that this agreement has been ratified by the Republic of Poland.

- A statute [*ustawa*] is the basic form of law-making activity in the Republic of Poland; **legislative power shall be exercised by the Sejm and the Senate**; the right to introduce legislation shall belong to deputies, to the Senate, to the President of the Republic and to the Council of Ministers; to a group of at least 100,000 citizens having the right to vote in elections to the Sejm.

- **Ratified international agreements**, which after promulgation thereof in the Journal of Laws of the Republic of Poland [Dziennik Ustaw Rzeczypospolitej Polskiej], shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.

- **Regulations** are executive acts; **they shall be issued by the organs specified in the Constitution (the President, the Council of Ministers, the Prime Minister and the ministers)**, on the basis of a specific authorization contained in a statute, and for the purpose of implementation thereof;

- Acts of local law are binding only within the borders of the relevant territorial unit, **these acts shall be established by local government organs** (organs of municipalities [gmina], districts [powiat] and voivodship [województwo]) and territorial organs of governmental administration (e.g. voivod), on the basis and within the scope of the competences defined in the statute.

**Resolutions of the Council of Ministers and orders of the Prime Minister and of ministers** shall not be ranked among the sources of universally binding law; they shall be of an internal character and shall bind only those organizational units subordinate to the organ which issues such acts

### ***1.2.2 Public Administration***

Following the constitutional principle of a unitary state, the constitutional principles of subsidiarity and decentralisation of public authority through participation of local self-government in its execution and diversity of possible organizational forms of performing tasks and functions of public administration, the execution of public administration functions is entrusted<sup>3</sup> to government administration (central and local), local/regional self-government administration and to public and non-public 'administering entities'.

**Central government administration** organs include: the Council of Ministers, the President of the Council of Ministers and ministers managing respective areas of government administration. The material responsibility of different ministers is distributed in the Act on the Government

2 Cfr. The judgment of the Constitutional Tribunal (CT) of 11 May 2005, K 18/04, p. 674.

3 On allocation of competences in the field of the environment in Poland, cf. B. Iwańska, P. Czepiel, M. Stoczkiewicz, *Environmental Governance in Poland*, [in:] Environmental Protection in Multi-Layered Systems Comparative Lessons from the Water Sector, ed. by M. Alberton and F. Palermo, Leiden • Boston 2012, p. 212 and next along with the literature cited therein.

Administration's Branches [*Ustawa o działach administracji rządowej*] (1997). According to the Act, and taking into consideration the discussed area it is necessary to indicate on:

- (a) construction department, local planning and spatial planning and housing department – managed by the Ministry responsible for Construction, Local Planning and Zoning, and Housing,
- (b) water management - managed by the Ministry competent for Water Management (currently the Ministry of Environment),
- (c) culture and protection of national heritage - managed by the Ministry competent for Culture and Protection of National Heritage,
- (d) agriculture - managed by the Ministry of Agriculture,
- (e) regional development - managed by the Ministry of Regional Development,
- (f) fishing – managed by the Ministry competent for Fishing
- (g) transport - managed by the Ministry of Transport
- (h) environment - managed by the Ministry of Environment

The tasks which belong to the minister who manages a given branch of government are as follows:

- initiating and developing policy of the Council of Ministers in relation to the department which it manages as well as submitting initiatives, projects, assumptions underlying draft statutes and draft normative acts for the Council of Ministers' meetings in the very regard,
- performing the Council of Ministers' policy and coordination of its execution by the organs, offices and organizational entities which are under its authority or are supervised by it,
- performing tasks and responsibilities in relation to the organs, including local government organs and organizational entities which are under its authority or are supervised by it, as determined by the separate provisions.

**Territorial government administration** organs include voivods, who represent the government in respective voivodships; there are also numerous organs within the government administration (both central and territorial) which are established by means of a statute and include: (a) central government administration organs whose territorial jurisdiction covers the whole country and (b) territorial government administration organs whose jurisdiction covers a relevant voivodship or an area going beyond the areas of the voivodship.

**Local/regional self-government administration** includes bodies at the following levels: (a) local – *gmina* administration organs, (b) regional - *powiat* administration organs, (c) voivodship – organs of voivodship self-government administration. The legislator guarantees local governments the right to participate in the execution of public administration functions; each local government fulfils a large part of its public tasks (defined by means of a statute) independently ('on its own behalf and on its own responsibility') and in accordance with the following principles: (a) presumption of a local government jurisdiction (the local government performs all public tasks that the Constitution or a statute does not designate to other public authority organs) and (b) presumption of *gmina* [*municipality*] competences (a *gmina* performs all the tasks of local government, unless they are restricted to other units, i.e. *powiat* [*district*] or voivodship [*województwo*] government). Within these limits, local government units fulfil public tasks on a local scale<sup>4</sup>.

**Further public and non-public 'administering entities'** e.g. corporations, public institutions, commercial law companies who perform public tasks by operation of the law or on the basis of agreements.

<sup>4</sup> Cf. the judgment of the Constitutional Tribunal (CT) of 6 June 2006, K 23/05.

### **1.2.3 The administration of environmental protection**

Differentiation of types of public task within environmental protection (which are classified into the following main categories: organisation, restriction and obligation, control and supervision, execution<sup>5</sup>), their scope (a nationwide or a local one) and the nature of environmental issues (in subjective terms it is ‘very much interministerial’<sup>6</sup>, and in objective terms it requires complex protection of environment) means that tasks and competences associated therewith are entrusted to different public authorities (government or local, general or special).

At the same time the subjective scope of the administration of environmental protection has neither permanent (the issue of creating new, specialized public administration organs, changing the competences) or monopolistic nature (it may include, in addition to organs of public administration (at its governmental and local level), other entities performing functions concerning the administration of environmental protection as well, such as e.g. social organizations, foundations).

In the current state of the law and with reference to the fundamental distinction between governmental and local administration, tasks concerning environmental protection along with competences have been entrusted by the legislator to the following entities:

- **organs of central government administration**, among which one should mention the Ministry of Environment and further central organs of government administration established by way of adopting statutes, which are appropriate in some cases concerning protection of environment (e.g. water management, or environmental protection);
- **organs of territorial government administration** (general or special), among which one should mention: **a) a voivod** [*wojewoda*] as an organ of government general administration within the voivodship, within whose competences are all matters concerning government administration in the voivodship, which were not reserved in separate statutes to competences of other organs of the very administration<sup>7</sup> **b) organs of the special government administration combined with the general administration** (within the office of voivod) (e.g. voivodship inspectors of environmental protection) **c) organs of the special government administration not combined with the general administration**, but subordinate to a competent Ministry or a central organ of government administration authority; and at the same time creation of the latter is justified by the all-Poland nature of the tasks performed or by a territorial scope of activity exceeding more than one voivodship<sup>8</sup>;
- **organs of local self-government administration** (of municipalities – at the local level, of districts – at the regional level, and of voivodship – at the voivodship level)  
(a) what belongs to the scope of the municipalities’ actions are all public matters of local importance to *inter alia*, spatial order, environmental protection and nature conservation as well as water management, communal roads, streets, bridges, squares as well as to traffic organization, culture (including conservation of monuments and taking care of monuments), physical culture and tourism, including recreational and sports facilities, green areas and tree-covered areas,

5 Górski, Marek in: Górski, Marek (ed.), *Prawo ochrony środowiska [Environmental protection law]*, Warsaw: Oficyna 2009, at 82.

6 Brzeziński, Władysław, *Ochrona prawna naturalnego środowiska człowieka [Legal protection of natural human environment]*, Warsaw 1975, at 335.

7 See Article art. 3 (1) point 5 of the Act of 23 January 2009 on the voivode and the government administration in the voivodship.

8 See. art. 56 i 57 of the Act of 23 January 2009 on the voivode and the government administration in the voivodship.

(b) a district performs public tasks defined by statutes, which are of a supra-communal nature and concern, *inter alia*, mass transport and public roads, culture, as well as conservation [of monuments] and taking care of monuments, physical culture and tourism, water management, environmental protection and nature conservation, agriculture, forestry and inland fishing, flood protection (including providing for equipment and maintenance of a district flood storehouse), fire protection and tasks aimed at preventing other extraordinary threats to life and health of human beings and environment;

(c) a voivodship self-government performs tasks which are of a voivodship nature, set out by statutes, including tasks within the scope of culture and conservation [of monuments] and taking care of monuments, spatial planning environmental protection, water management (including flood protection and in particular providing for equipment and maintenance of a district flood storehouse), mass transport and public roads, physical culture and tourism.

- **the non-public units which perform environmental tasks** by operation of the law or on the basis of agreements.

‘Although the general structure of public administration in Poland is based on a model that differentiates between government administration (including principal, central, territorial, combined and non-combined organs) and local administration (including organs at the *gmina* [municipality], *powiat* [district] and *voivodship* levels), it is difficult to define the organisational model of environmental protection administration. This ensues from the fact that the division of tasks and powers to respective government and local government administrative bodies dealing with environmental protection is inconsistent and is characterised by a casuistry, dispersion and randomness. Centralised supervision over these dispersed competences is also lacking’<sup>9</sup>.

## ***1.2.4 The legislative and administrative competences***

### ***1.2.4.1 The Legislative competences***

In all the above-mentioned areas:

- legislative competences are entrusted to the Parliament
- legal acts of a lower order (regulations and acts of local law) are issued by the competent organs, both at the central level (by the President, the Council of Ministers, the Prime Minister and Ministers) as well as at the local one (organs of local self-government and territorial bodies of governmental administration). In each case these acts are issued on the basis and within the scope of the competences defined in the statute (law).

### ***1.2.4.2 The administrative competences***

In all the above-mentioned areas of environment administrative competences are divided (although in different scope) among central government administration, territorial government administration and local self-government administration.

Generally environmental protection tasks in the above-mentioned areas are performed both by administration bodies for which environmental protection is only one of many public tasks they are responsible for (e.g. *voivod*, *starost*, *gmina* leader) as well as bodies dealing only (or mostly) with environmental protection (e.g. Ministry of Environment, Regional Environmental Protection Directors) or specialised organs dealing only with special area of environmental protection (e.g. organs specialized in water management administration).

<sup>9</sup> Cf. B. Iwańska, P. Czepiel, M. Stoczkiewicz, *Environmental Governance...*, at. 227.



Public administration organs responsible for environmental protection include organs that execute over environmental power resulting from the public law and those that execute over environmental power resulting from the private law (e.g. resulting from water ownership or from the forest ownership).

*(a) The administrative competences in the field of environmental protection<sup>10</sup>*

The area of environmental protection including the area of: the protection of environment, the conservation of nature including conservation in national parks and in natural landscape parks, in nature reserves, as well as protection of species of plants and animals, forests protected by law, wildlife and other natural objects; geology; natural resources management, monitoring compliance with the requirements of environmental protection and the area of examining environmental condition, forestry, protection of forests and forest land, hunting, genetically modified organisms **is in the responsibility of the Ministry of Environment** whom the General Director of Environmental Protection is subordinate to; the same Ministry supervises the President of the National Atomic Energy Agency, the President of the State Mining Authority and the Chief Inspectorate of Environmental Protection, as well as the activities of the National Fund for Environmental Protection and Water Management and the National Forest Holding ‘State Forests’.

The EPL Act contains two important definitions related to this area: **the definition of ‘administration organs’** which include government and territorial government administration on different levels and **the definition of the term ‘environmental protection organs’** which means ‘administration organs established to perform public tasks in environmental protection’. They include organs of central government administration (Ministry responsible for environmental matters and the General Director of Environmental Protection), territorial government administration (*voivods* and Regional Directors of Environmental Protection), local self-government administration on different levels: (a) local – gmina administration bodies, (b) regional - powiat administration bodies, (c) voivodship – organs of voivodship self-government administration.

**This is not a closed list**, as there are other organs that are responsible for conducting public tasks in the area of environmental protection, e.g. organs of Environmental Protection Inspection (EP Inspection), the Chief Sanitary Inspector, *gmina* councils, *powiat* councils<sup>11</sup> and non-public units that perform these tasks by operation of the law or on the basis of agreements<sup>12</sup>.

**The special control and monitoring competences** are vested in Environmental Protection Inspection, which is appointed to control compliance with environmental protection provisions as well as to provide research and assessment within the framework of a state monitoring of environment. Within the framework of the state monitoring of environment, a natural monitoring of biodiversity and landscape diversity is carried out as well.

*(b) The administrative competences in the field of landscape protection*

Protection of tourist advantages is not subject to a separate statute. It is, however, subject to the provisions of various statutes, including environmental protection provisions (e.g. EPL Act, The Nature Conservation Act, The Forest Act, The Water Law Act, The Law on Hunting) and the

<sup>10</sup> *Ibid.*, at. 222 -227.

<sup>11</sup> J. Stelmasiak, (ed.), *Prawo ochrony środowiska [Environmental protection law]*, Warsaw: LexisNexis, 2010, at 58.

<sup>12</sup> Górski et al., *Prawo ochrony środowiska [Environmental protection law]*, at 89.

provisions from outside of the scope of ‘environmental protection law’ (e.g. provisions of the Spatial Planning and Land Development Act, the Law on conservation of monuments and on taking care of monuments), in which tasks and competences of various organs of government or of local self-government administration related thereto are set out.

*(c) The administrative competences in the field of land use and special planning*

The area of land use and spatial planning at a local level is in the responsibility of the Ministry of Construction, Local Planning and Zoning, and Housing, who supervises the Chief Inspector of Building Control

**The division of tasks** within the scope of spatial planning and land development was defined in the Spatial Planning and Land Development Act, in relation to the three levels of spatial planning – a national, a regional and a local one and it shall include both organs of central government administration and local self-government administration.

According to this Act:

- Development and carrying out a spatial policy **on a municipality’s territory**, including the adoption of the study of conditions and directions of spatial development of the municipality as well as of local area development plans, with the exception of internal sea waters, territorial sea and exclusive economic zone as well as of closed areas, belongs to the **municipality’s own tasks**.
- Carrying out, within the limits of its material jurisdiction [*ratione materiae jurisdiction*], analyses and studies concerning land development, relating to **the area of a district** and issues concerning its development, belongs to tasks of the **district’s self-government**.
- Development and carrying out a spatial policy **within a voivodship**, including the adoption of a voivodship area development plan, belongs to tasks **of the voivodship’s self-government**.
- Development and carrying out **spatial policy of the state** as expressed in the concept of spatial development of the country belongs to **tasks of the Council of Ministers**.

**Other parties** are also involved in carrying out tasks of spatial development. They were entrusted with planning competences in relation to specific areas (e.g. the Ministry of Construction, Housing, Spatial planning and Housing economy has competences in the areas of internal sea waters, territorial sea and exclusive economic zone as well as of closed areas, whereas in matters of area development plans concerning closed areas it is the voivod who is a competent organ).

*(d) The administrative competences in the field of water protection<sup>13</sup>*

The area of water management is in the responsibility of the Ministry of Environment, who supervises the activities of the President of the National Water Management Authority and the Institute of Meteorology and Water Management, who supervises the Chief Inspector of Building Control.

The water management organs include both government administration as well as local government administration. Nevertheless, the organs of government administration at various levels hold the majority of competences in water management. They bear the main burden of the legally required public administration in water management.

13 B. Iwańska, P. Czepiel, M. Stoczkiewicz, *Water Management and Protection in Poland* [in:] *Environmental Protection in Multi-Layered Systems Comparative Lessons from the Water Sector*, ed. by M. Alberton and F. Palermo, Leiden • Boston 2012, p.464 and next.

**The structure of water management administration is adjusted to the division into river basins and water regions.** As they are delimited according to hydrographic conditions, they do not coincide with the general administrative division of the country into *voivodships*, *powiats* [districts] and *gminas* [municipalities].

Additionally in this area **specialised bodies of government administration and regional government administration were created** (e.g. President of the National Water Management Authority, Directors of Regional Water Management Boards). They are responsible for water protection together with other bodies of public administration (e.g. the voivods, local government bodies) including environmental protection bodies (e.g. the Ministry of Environment, Inspectors of Environmental Protection, General Environmental Protection Director Regional Environmental Protection Directors).

*(e) The administrative competences in the field of hunting*

The area of hunting is in the responsibility of the Ministry Environment. The Law on hunting in its Chapter 2 (the administration organs within the scope of hunting) indicates two organs competent in questions concerning hunting:

- the Ministry of Environment - as the principal organ of government administration (Article 6)
- a voivodship self-government, which - unless the law provides otherwise - performs administration within the scope of hunting as a task from within the scope of government administration (Article 7), this is one of the example of changing of division of competences in the fields of environment which took place after 1 January 2008; bodies of self-government administration at the *voivodship* level took over many competences of *voivods* (bodies of government administration at the voivodship level); it concerns also competences in the field of hunting;

Administration in the field of hunting and hunting management is also entrusted - in derogation from the principle of the presumption of competences for the benefit of the voivodship self-government – with further government administration organs (e.g. with a voivod, veterinarian inspection, directors of national parks) and local with organs of self-government administration (organs of municipalities and of a district).

*(f) The administrative competences in the field of planning*

Environmental protection policy includes an obligation to develop various strategic documents, which vary in their objective and subjective scope, their territorial and time range as well as their effects<sup>14</sup>. There are documents of general objective scope (e.g. national environmental policy) as well as documents with limited objective scope as they focus on the protection of particular environmental resources (e.g. water management plans, protection plans for Natura 2000 sites, forest management plans) or on protection against a particular threat (e.g. waste management plans, flood risk management plans). Moreover, planning documents can regard the whole country (national environmental policy) or can be limited to selected areas (e.g. *voivodship*, *powiat* or *gmina* environmental protection programmes).

Because of that the administrative competences in the field of planning are divided between various bodies, especially those vested with executive power on a state, regional or local level. But it also includes ‘planning competences’ of legislative power (e.g. a basic strategic planning document, i.e. the national environmental policy, is prepared by the Ministry of Environment, passed by the Council of Ministers and adopted by the Sejm in a resolution).

<sup>14</sup> *Ibid.*, p. 217-218.

*(g) The administrative competences in the field of mining*

The area of mining is in the responsibility of **the Ministry of Environment** who supervises the President of the State Mining Authority. In this area the geological administration organs are also organs of local self-government administration: voivodship speakers and district [*powiat*] starosts [*starosta*] (bodies with executive competences).

*(h) The administrative competences in the field of agriculture, transport, energy, tourism*

**The area of agriculture** is in the responsibility of **the Ministry of Agriculture** whom the Inspectorate of Plant Health and Seed Inspection and the Veterinarian Inspection as well as the Main Research Centre for Cultivate Plants' Varieties are subordinate to.

**The area of transport** is in the responsibility of the **Ministry of Transport**, who supervises the President of the Civil Aviation Authority, the General Director for National Roads and Motorways, the President of the Office of Rail Transportation as well as the Chief Inspector of Road Transport. The Transport Technical Supervision, inland navigation offices as well as the Polish Air Navigation Services Agency are all subordinate to the Minister competent for transport.

**The area of energy** is in the responsibility of the **Ministry of Economy**, who supervises the President of the Central Office of Measures and the President of the Energy Regulatory Office and the activity of the Polish Patent Office.

Also, in these areas competences are entrusted to organs of government administration at a state and at a regional level as well as to organs of self-government administration at a local regional or at a voivodship level.

### **1.3 Authorities in charge of nature protection, monitoring and controlling activities, finance mechanisms (See Questionnaire 1.1)**

#### **1.3.1 The legislative competences**

- The legislative competences in the field of nature and forest protection are entrusted to the Parliament.
- legal acts of a lower order (regulations and acts of local law) are issued by the competent organs, both at the central level (by the Council of Ministers and the Ministry of Environment) and at the local one (territorial organs of governmental administration and organs).

#### **1.3.2 The administrative tasks and competences in nature protection law**

The administrative tasks and competences in the field of nature protection are vested in the **'nature protection organs'**:

- **The Ministry of Environment** - the principal organ of government administration who manages the department of administration - environment, including, *inter alia*, matters of: conservation of nature including that conservation in national parks and in natural landscape parks, in nature reserves, as well as protection of species of plants and animals, forests protected by law, wildlife and other natural objects; geology; natural resources management, forestry, protection of forests and forest land.

Among other things its role is to: determine environmental policy, drawing up draft statutes within the scope of nature conservation, issuing normative acts, mainly implementing regulations for statutes, international cooperation in the field of nature conservation, supervision

and control within instances, coordination of activities in the field of environmental protection; issuing certain individual decisions; carrying out organizational and economic functions; supervision of specific bodies and individuals.

- **The General Director of Environmental Protection** - as a central body of government administration, among other things its role is to: co-participate in the implementation of environmental policy in the field of nature conservation and of controlling investment processes, controlling responsibility for preventing damage to the environment and repairing damaged inflicted to environment, including protected species and protected habitats, collecting data and drawing up information on Natura 2000 [*Natura 2000*] and other protected areas, and on the environmental impact assessments, cooperation with relevant environmental authorities of other countries and international organizations as well as with the European Commission, cooperation with the Chief Nature Conservation Officer and with the National Nature Conservation Council in matters of nature conservation, cooperation with local self-government organs in matters of environmental impact assessments and of nature conservation, participation in strategic environmental impact assessments, participation in proceedings concerning cross-border impact on environment, the execution of tasks related to the Natura 2000 network; the General Director of Environmental Protection supervises the functioning of the Natura 2000 areas, keeping a register of data needed to take up actions to protect them. The supervision consists in: issuing recommendations and guidelines for the protection and operation of the Natura 2000 areas, determining the scope and requesting information concerning the protection and operation of the Natura 2000 sites, monitoring implementation of the findings of conservation plans and plans of protection tasks of Natura 2000 sites.

- **Voivod** - as a representative of the government within the voivodship, he exercises supervision over the local government entities;

- **The regional director of environmental protection** - as a territorial organ of the non-combined government administration, among other things its role is to: participate in strategic environmental impact assessment, carry out evaluations of the impact of ventures on environment or participate in these assessments, create and liquidate forms of environmental protection, protect and manage Natura 2000 areas and other forms of nature conservation, issue decisions under the Nature Conservation Act, conduct investigations and perform other tasks related to the prevention and remedying of damages inflicted to the environment and its repair;

- **A director of a national park** - who directs the activities of the national park and represents the national park outside; the director of the park also performs supervision over Natura 2000 areas within the boundaries of the national park where the Natura 2000's area includes all or a part of the park's area

- **Organs of local self-government administration** at the local, regional and voivodship levels:

(a) *gmina [municipality]* leaders (e.g. mayors, with executive functions) - who are responsible for protection of green areas and tree-covered areas,;

(b) *powiat [district]* starosts (organs with executive competences) - who are responsible for keeping a register of species listed in Annexes A and B to the Regulation on the protection of species of wild fauna and flora by way of regulating trade therein)

(c) voivodship speakers

The Act also creates organs of a consultative and advisory character within the scope of nature conservation, which are as follows: 1) The State Nature Conservation Council, acting beside the Ministry competent for the environment, 2) a regional nature conservation council, acting beside a regional director for environment protection, 3) a scientific council of a national park,

acting beside the director of a given national park, 4) a council of a natural landscape park or a council of a complex of landscape parks, acting beside the director of the landscape park or beside the director of a complex of landscape parks. Their tasks include, inter alia, evaluation of the implementation of protective actions adopted in the planning acts (e.g. strategies of conservation and sustainable development, conservation plans of national parks or of natural landscape parks).

**There are two groups of bodies responsible for tasks connected with control or supervision**

- nature protection bodies and specialized public bodies empowered of special control competences. Nature protection control covers a whole range of obligations imposed on public and private subjects in the Nature Conservation Act, including among other things: the implementation of nature protection plans and strategies, the implementation of nature conservation regime, the observance of conditions specified in decisions issued on the basis of the act, supervision over the activities of protected areas, controlling compliance with the provisions of the nature conservation during the economic use of resources and elements of nature, control of botanical gardens, zoos and centres within the scope of their operations. The great majority of nature protection control tasks fall within the responsibility of the organs of government administration: central (the Minister of the Environment, the Director General Environmental Protection) or regional (environmental protection regional directors). Local self-government administration carry out control of compliance with and enforcement of nature conservation provisions only within the scope of their jurisdiction.

Tasks related to nature conservation, scientific research and educational activities, as well as to protect property of protected areas and to combat offences and misdemeanour within the scope of nature conservation in protection areas is carried out by a **nature conservation service** among which the Nature Conservation Act counts, among others: the National Park service, including the Park's Guard, the director of a natural landscape park and the Natural Landscape Park's Service.

There is one Park's Guard although it is not the only unit entitled to provide protection of property of the protected areas and to combat offences and misdemeanour within the scope of nature conservation. Other units include the Forest Guard, the Hunting Guard, the Fishing Guard and the police.

Environmental organizations can supervise nature protection by such instruments as public participation right in decision making process or in adoption of plans/programs, by access to information right or by right to access to justice to protect the environment as a common good.

### **1.3.3 Financing nature conservation<sup>15</sup>**

According to Article 4 of the Nature Conservation Act, 'public administration organs are obliged to ensure, *inter alia*, financial conditions for the conservation of nature'. This means that the burden of environmental protection costs is borne by the public entities. They must have secured funds for the implementation of their public duties from public funds.

An important mechanism of financing nature conservation are **funds of environmental protection and water management** (national, voivodship and communal ones).

Revenues of respective funds are or may be as follows: (a) receipts from fees for use of environment and administrative pecuniary penalties, (b) voluntary contributions, legacies, donations, benefits in kind and the receipts from foundations and receipts from ventures organized for the benefit of protection of environment and water management, (c) funds from

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<sup>15</sup> B. Rakoczy, *Prawo ochrony przyrody [Environmental protection law]*, Warszawa: C.H. Beck 2009, p. 85-88.

the European Union budget as well as funds from foreign sources, non-refundable, other than funds from the budget of the European Union, (d) subsidies from the state budget, (e) receipts from the issue of own bonds and other revenues arising from the operation of these funds (f) funds may also take out credits and loans.

Financing of environmental protection by funds of environmental protection and water management shall include: (a) the development of management plans for areas which are subject to protection as well as carrying out a nature's monitoring (b) ventures related to the conservation and restoration of protected species of plants or animals, (c) ventures related to nature conservation, including setting up and maintaining green areas, trees, shrubs and parks, (d) tasks associated with increasing forest cover of the country and with preventing damages to forests and with liquidation of such damages caused by biotic and abiotic factors.

Special regulations shall concern principles of financing national parks which keep independent financial system, covering from their resources and gained revenue expenditure for financing tasks set out in statutes including the tasks of the National Park Service, and operating costs. Revenues of a national park are subsidies from the state budget and loans from funds of environmental protection and water management, receipts from fees associated with making the park available and from the park's activities on the one hand. From the other hand receipts of a national park may be, *inter alia*, voluntary contributions, inheritances, legacies and donations, benefits in kind, receipts from ventures organized for the benefit of nature conservation or funds from the budget of the European Union, as well as credits and loans taken out on conditions laid down in the Act.

However, the expenditures associated with the implementation and functioning of the Natura 2000 areas' network are funded by the European Union and, to the extent not covered by the funding from the state budget, by the budgets of local government entities, the National Fund for Environmental Protection and Water Management, and voivodship funds for environmental protection and water management.

#### **1.3.4 Forest**

The provisions of the Forest Act shall apply to forests irrespective of their form of ownership (ownership of the State Treasury or of other entity, either of public or of private law). However, a form of property determines how forests are managed and how supervision on forest management is carried out.

Forests owned by the State Treasury are managed by the State Forests National Forest Holding (hereinafter referred to as 'the State Forests'), with the exception of forests: which are in perpetual usufruct [*leasehold ownership*] of national parks (a given park exercises management) comprising the Reserves of Agricultural Ownership of the State Treasury (which are managed by the Agricultural Property Agency or by another designated entity), which are in perpetual usufruct under separate legislation (which are managed by the perpetual usufructuary himself). Supervision of State Forests is carried out by the Minister of the Environment.

Forests not constituting ownership of the State Treasury are managed by owners of forests, by which as 'a natural or a legal person who is the owner or perpetual usufructuary of the forest as well as a natural person, a legal person or an entity without legal personality who holds it like an owner (who is an autonomous possessor), a holder of usufruct, a manager or the forest's tenant' is understood (Article 6 (1) (3) of the Forest Act). Supervision over forest management - in forest not owned by the State Treasury - shall be exercised by a *starost* [*starosta*] (executive body of regional self-government administration) within its own tasks as well as tasks assigned from within the scope of the government administration.

## **2. Legislative and administrative frameworks relevant for Biodiversity and Ecological Connectivity**

### **2.1 Protected Areas**

#### **2.1.1 Implementation of relevant European Directives (See Questionnaire 1.2)**

**Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds has been implemented by the following legislation:**

- The Act of 16 April 2004 on nature conservation, consolidated text, OJ No 151 of 2009, item 1220, as amended
- The Act of 13 October 1995 on hunting, consolidated text, OJ No 127 of 2005, item 1066, as amended.
- as well as by implementing regulations issued on their basis, including the Regulation the Minister of Environment of 12 January 2011 on areas of the special protection of birds, designating 145 protected areas

**Council Directive 92/43/EEC of 21 May 1992 on the conservation of Natural Habitats and of wild fauna and flora has been implemented by the following legislation:**

- The Act of 16 April 2004 on nature conservation, consolidated text, OJ No. 151 of 2009, item 1220, as amended.
- The Act of 13 October 1995 on hunting, consolidated text, OJ No. 127 of 2005, item 1066, as amended.
- The Act of 3 October 2008 on access to information about environment and its protection, public participation in environmental matters and environmental impact assessments, OJ No. 199 of 2008, item 1227, as amended
- and by implementing regulations issued on their basis

**Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy) has been implemented by the following legislation:**

- Act of 18 July 2001 on water law, unified text, OJ no. 145 of 2012 as amended
- The Law of 7 June 2001 on the public water supply and discharge of wastewater, consolidated text OJ No 123 of 2006, item 858 as amended
- and by implementing regulations issued on their basis

**Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage has been implemented by the following legislation:**

- Act of 13 April 2007 on the prevention and remediation of environmental damage, OJ No. 75 of 2007, item 493, as amended, along with implementing regulations

**Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment has been implemented by the legislation:**

- Act of 3 October 2008 on access to information about environment and its protection, public participations in environmental matters and environmental impact assessments, OJ No 199 of 2008, item 1227, as amended, along with implementing regulations



**Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment Directive has been implemented by the following legislation:**

- Act of 3 October 2008 on access to information about environment and its protection, public participation in environmental matters and environmental impact assessments, Dz.U. No 199 of 2008, item 1227, as amended along with implementing regulations

**2.1.2 Implementation and management of the Natura 2000 Network (See Questionnaire 1.2)**

Legal provisions introducing a system of protected areas Natura 2000 sites in Poland are located in the Nature Conservation Act. Relevant Articles are namely: 5, 6, 25-39, 127 providing that:

- The Natura 2000 area means a special birds' protection area, a special area of conservation of habitats or an area having an importance for the Community, created to protect populations of wild birds and natural habitats and species of Community interest.

- The Natura 2000 areas constitute **a genuine and new category of area protection** provided for in the Act on Nature Conservation beside national forms; however, the Natura 2000 area can include either all or only some of the areas covered by 'national' forms of nature conservation; then, the legal regime/ legal regulations applicable to both forms of protection is in force in the given area.

- **The procedure of designating** SACs and SPAs is as follow: The General Director of Environmental Protection prepares a draft list of Natura 2000 sites pursuant to regulations of the EU law; the draft list requires opinions to be given by bodies of the municipality self-government competent with respect to the territory (30 days, absence of response denotes absence of comments); then the draft list of SPAs and list of SACs is delivered to the Commission by the Minister of the Environment upon having obtained the consent of the Cabinet.

- Appointment of a special bird protection area or special area of conservation of habitat, change of its borders or decommissioning shall come into being in agreement with the minister competent for agriculture, minister for rural development, the minister responsible for fisheries and the minister responsible for water management, by way of a regulation of a Minister responsible for the environment.

- The obligation to improve the lists of Natura 2000 areas is not directly evident from the Act. However, considering such circumstances as natural variability or absence of a complete nature catalogue in the given country, one cannot exclude the necessity to complete and modify the list of sites.

- According to the Nature Conservation Act **a change of boundaries of the designated sites as well as their liquidation** are possible; in both cases such actions require prior national consultations and taking into account the real condition of natural habitats and plant and natural species as well as the prior acceptance of the Commission.

- **Management of the Natura 2000 sites and conservation measures sites** (See Article 28 and next of the Nature Conservation Act):

- (a) National law require management plans for the sites - they are either specifically designated for Natura 2000 areas or integrated plans to others, those prepared for national parks, nature reserves, natural landscape parks and forests.

- (b) In Poland statutory and administrative conservations measures are main forms for protection of Natura 2000. Although contractual measures are also possible.

(c) The legal regime of the Natura 2000 site arises directly from the provisions of the Nature Conservation Act and the plan for the conservation of the Natura 2000 site.

(d) The Act introduces an interdiction to take any actions which may significantly worsen the state of natural habitats and habitats of different species and affect the species for which the Natura 2000 site was designated. Thus - according to Art. 6.3 and Art. 6.4 of the Directive – it provides for the obligation to subject each plan or project (which is not directly connected with or necessary for the management of the Natura 2000 site, but likely to have a significant effect either individually or in combination with other plans or projects) to the assessment proceedings (which takes the form of the assessment under EIA Directive or SEA Directive). The prerequisites which make the implementation of the plan or project possible, in spite of their negative effect on the Natura 2000 site together with the obligation of natural compensation, comply with the ones laid down in Article 6 (4) of the Directive. The National law makes this regime applicable also to Proposed Sites of Community Importance (pSCIs).

(e) Carrying out activities in the Natura 2000 area (e.g. business, agricultural, related to forest economy) is permitted provided that they do not threaten the conservation of natural habitats and plant or animal habitats or have a significantly negative effect on plant or animal species for the conservation of which the Natura 2000 area has been designated.

(f) The Act obliged to adjust business, agricultural, forest-related, hunting or fishing activities to the requirements of the Natura 2000 area. On sites where support programmes cannot be applied, a competent Regional Environmental Protection Director can enter into agreements with owners or holders of a site (contractual measures). Subjects of the agreements are as follows: a specification of necessary actions, manners and dates of their performance, conditions and due dates of settlements of dues for performed actions as well as the volume of compensation for lost revenues subjects of the agreements are as follows.

**From the perspective of ecological coherence provided in Articles 3 and 10 of the habitat directive** the following provision of the Nature Conservation Act concerning the Natura 2000 should be pointed out:

- Article 29 (8) according to which a protection plan for the Natura 2000 area includes, *inter alia*, specification of the conditions to maintain or restore an appropriate state of conservation of objects of protection within the Natura 2000 area, to preserve the integrity of the Natura 2000 area and the coherence of Natura 2000 areas, relating in particular to: other forms of nature conservation, coinciding with the area of Natura 2000 area, with land use, development of marine areas, water management, agriculture, forestry and fisheries economy systems, inland flowing surface waters, in which a possibility of migration of fish and other aquatic organisms should be preserved or restored;

- Article 33 (1) of the Nature Conservation Act contains an interdiction to take any actions which may significantly worsen the state of natural habitats and habitats of different species and affect the species for which the Natura 2000 site was designated, including in particular **to deteriorate the integrity of the Natura 2000 area or its links with other areas;**

- Article 34 of the Nature Conservation Act forms the basis for granting a permit to carry out a plan or actions which could materially adversely affect on conservation objectives of the Natura 2000 area, but only in exceptional cases, in situations set out by law and while claiming the need to redress specific requirements of the law, including that of ensuring the implementation of natural compensatory measures necessary **to ensure consistency and the proper functioning of the Natura 2000 areas.**

The Act on Nature Conservation directly **uses the term ‘coherence’** in provisions concerning Natura 2000. Although the obligation to support and improve the ecological coherence can be

also derived from other provisions of this Act as well as from others Acts. Examples may include provisions concerning:

- determination of the border areas which are valuable in natural terms, in order to provide for their joint protection,
- creation of ecological corridors,
- management of natural resources to ensure their durability, optimum size and conservation of genetic diversity, including by creation of conditions for reproductions and spreading of endangered plants, animals and fungi, as well as protection and restoration of their natural habitats and sanctuaries, as well as protection of animal migration routes,
- an obligation to take into account nature conservation requirements in various acts of planning, including land use planning. The latter requires the agreement with bodies governing protected areas in the field of spatial planning arrangements, which could have a negative impact on the conservation objectives of the protected area,
- the obligation to ensure, within the investment process, compliance of land development with environmental protection requirements, including that of nature conservation.

### **2.1.3 Procedure for establishing protected areas and the different protection regimes (See Questionnaire 1.2)**

In accordance with Article 6 of the Act on nature conservation, the forms of nature conservation are as follows:

- national parks (23 objects)
- nature reserves; (1469 objects)
- natural landscape parks (121 objects)
- areas of a protected natural landscape (386 sites)
- Natura 2000 sites (in Poland, at this point in time, the Nature 2000 [*Natura 2000*] network covers almost one fifth of the country's land area. It consists of: 845 areas of importance for the European Union and 145 areas birds' special protection)
- outstanding natural features (36318 objects)
- documentation sites (157 sites)
- ecological areas (6952 objects)
- natural and landscape complexes (324 objects)
- protection of species of plants, animals and fungi.

By way of an agreement concluded with the neighbouring countries border areas valuable in terms of nature may be designated in order to provide for their common security.

Man-made areas:

- botanical gardens
- zoological gardens
- wildlife rehabilitation centres.

This variety of nature conservation forms allows that, while based on the objective criteria set out in statutes, a form of conservation be adapted to the existing needs and that complementarity of various forms of conservation be achieved. At the same time the creation of these forms of nature conservation allows the creation of a system of protected areas. The system constitutes a spatial arrangement of complementary forms of conservation of nature (national parks, natural landscape parks, nature reserves and areas of a protected natural landscape) linked by means of the ecological corridors.

16 reported national parks belong to IUNC category II. Only two of reported parks - Ojcowski Park Narodowy and Wigierski Park Narodowy belong to IUNC category V.

1239 nature reserves belong to IUNC category IV only one nature reserve *Berezowo Nature Reserve* belong to category Ia.

122 reported landscape parks belong to IUNC category V.

All the forms of nature conservation referred to in Article 6 of the Nature conservation Act, are created on the basis of the Nature Conservation Act. The Act lays down the premises for the establishment or liquidation of a given form of nature conservation, its goals, competences within the scope of creation, alteration, or liquidation of the boundaries of protected areas and the procedure for their creation/establishment. The Act also determines the rules of functioning of a given form of conservation, including determining the legal regime of the protected area.

Competences within the scope of covering resources, nature creations and nature components by forms of nature conservation were granted to:

- organs of the central government: the Council of Ministers (national parks) or the Minister competent for the Environment (Natura 2000 sites, species protection of plants, animals and fungi);
- organs of territorial government administration: competent regional directors of environment protection (nature reserves);
- voivodship assemblies (voting authorities of local self-government's entities at the voivodship level) - natural landscape parks, areas of a protected natural landscape;
- municipality councils (voting authorities of local self-government's entities at the local level) - outstanding natural features, documentation sites, ecological areas, natural and landscape complexes.

In the process of creating certain forms of nature conservation, as well as of changing boundaries of a designated area or of liquidating a given form, participation of the following subjects (public and private) is provided for:

- the voting authorities of proper venue of local self-government entities, in the case of the creation of nature protection forms by organs of government administration. It sometimes constitutes a practical barrier in creating a given form, due to a possible conflict of interest between interacting organs. This is the case in the case of national parks created by way of a Council of Ministers' regulation. According to the Act, determination and changing the boundaries of the national park may come into being following consultation with competent voting authorities of proper venue of local self-government entities, on whose area of operation the above-mentioned changes are envisaged;
- organs of government administration, in the case of creating forms of nature conservation by organs of self-government administration;
- non-governmental organizations concerned (in accordance with the Nature Conservation Act, issuing a regulation on the establishment of a national park, on changing its borders or on its liquidation should be preceded by consultation with the organizations concerned);
- relevant nature conservation organs with consultative and advisory nature. The State Council for Nature Conservation, acting beside the minister competent for environment, a regional council of nature conservation, acting beside the regional director; a scientific council of a national park, acting beside a director of a national park, a council of a natural landscape park or a council of a natural landscape park's complex, acting beside a director of the natural landscape park or a director of the natural landscape park's complex. Their tasks include *inter alia* giving their opinions on draft legal act concerning conservation of nature and presentation of conclusions and opinions on issues concerning nature conservation;

- owners. In accordance with the Nature Conservation Act creation or enlargement of an area of a national park or of a nature reserve covering areas constituting real properties which are not owned by the State Treasury shall come into being upon the consent of the owner, and in the absence of consent – under an expropriation process.

**A national park** covers an area distinguished by particular natural, scientific, social, cultural and educational values, of an area of not less than 1,000 ha where all nature and landscape values are subject to protection. The purpose of the creating a national park is to preserve biodiversity, resources, creations and elements of inanimate nature and landscape values, restore the proper state of resources and elements of nature and reconstruct distorted natural habitats, plant habitats, habitats of animals or fungi.

Determining and modifying boundaries of the national park come into being by way of a Regulation of the Council of Ministers, following a previous consultation with the voting authorities of proper venue of local self-government entities, on whose area of operation the above-mentioned changes are envisaged and following an opinion of the non-governmental organizations concerned. Creation or expansion of the area of a national park or of a nature reserve covering areas constituting real properties which are not owned by the State Treasury shall come into being upon the consent of the owner, and in the absence of his consent – under an expropriation process. Liquidation or reduction of the national park's area comes into being only in the event of irreversible loss of natural and cultural values of its area.

A park is being divided into zones of strict protection (total and permanent cessation of direct human intervention in the condition of ecosystems, natural creations and natural elements in protected areas, and in the case of species – a year-round protection of specimens belonging to such species and stages of their development), active protection (allowing the use, if necessary, of protective treatments in order to restore the natural state of ecosystems and elements of the nature or maintenance of natural habitats and habitats of plants, animals or fungi), natural landscape protection (maintenance of characteristics of a given natural landscape).

**A nature reserve** may be designated for an area which is preserved in its natural state or in a slightly changed state, for an ecosystem, for sanctuaries, natural habitats and habitats of plants, animals and habitats of fungi as well as creations and elements inanimate nature which stand out for their particular environmental, scientific, cultural or landscape values.

Establishment of a reserve shall come into being the way of an act of local law – an order of a regional director of environmental protection. The director, by this act of local law, following consultation with a regional council of nature conservation, may increase the area of the nature reserve, change the objectives of protection, and in the case of irreversible loss of natural values for which the reserve was established - reduce the area of the nature reserve or liquidate the nature reserve.

Creation or expansion of the area of a nature reserve covering areas constituting real properties which are not owned by the State Treasury shall come into being upon the consent of the owner, and in the absence of his consent – under an expropriation process.

A reserve area is divided into zones of strict protection, active protection and natural landscape protection (see as above).

**A natural landscape park** covers an area protected due to its natural, historical and cultural values as well as natural landscape values in order to preserve and popularize these values under sustainable development conditions. Creation of a park comes into being by way of a resolution of a voivodship assembly.

The creation of a natural landscape park, or increasing its area comes into being by way of a resolution of a voivodship assembly. Liquidation or reduction of a natural landscape park's area

comes into being by way of a resolution of a voivodship assembly, following consultation with the municipality councils of proper venue, due to irreversible loss of natural, historical, cultural and natural landscape values of the area proposed to be excluded from protection. A draft resolution of a voivodship assembly on establishment, on changing the borders or on liquidation of a natural landscape park needs to be agreed with a municipality council of proper venue and a competent regional director of environmental protection.

**A protected natural landscape** covers an area protected due to a distinctive landscape of diverse ecosystems, valuable because of its ability to meet the needs of tourism and recreation or because of functions of ecological corridors they serve.

Designation of an area of a protected natural landscape comes into being by way of a resolution of a voivodship assembly. Liquidation or changing the borders of an area of a protected natural landscape comes into being by way of a resolution of a voivodship assembly, following consultation with the municipality councils of proper venue, due to irreversible loss of its distinguished natural landscape values of diverse ecosystems and of the ability to meet the needs of tourism and recreation. Draft resolutions of a voivodship assembly on establishment, on changing the borders or on liquidation of an area of a protected natural landscape need to be agreed with a competent regional director of environmental protection.

**Natura 2000 sites** have been explained in details in the previous paragraph 2.1.2.

**Outstanding natural features** are single creations of animate and inanimate nature, or their clusters of special natural, scientific, cultural, historical or natural landscape value, which are characterized by individual features, distinguishing them among other creations, impressive-sized trees, shrubs of native and foreign species, springs, waterfalls, vauculian springs (rising springs) rocks, ravines, erratic boulders and caves.

**Documentation sites** are places - not-defined on the surface or possible to be defined - important in scientific and educational terms where geological formations, accumulations of fossils or mineral creations, caves or rock shelters along with deposits of silt as well as fragments of exploited or inactive surface and underground excavations appear.

Documentation sites may also be places where fossil remains of plants or animals appear.

**Ecological areas** are the following remains of ecosystems relevant to the conservation of biodiversity which are worthy of protection - natural bodies of water, field and forest ponds, clumps of trees and bushes, marshes, bogs, dunes, patches of unused flora, old river beds, rocky outcrops, slopes, gravels, natural habitats and sites of rare or protected species of plants, animals and fungi, their sanctuaries and places of reproduction or places of seasonal stay.

**Natural and landscape complexes** are fragments of natural and cultural landscape worthy of protection because of their scenic or aesthetic values

**Establishing an outstanding natural feature, a documentation site, an ecological area or a natural and landscape complex** and their elimination come into being by way of a resolution of a municipality council. Drafts of above-mentioned resolutions need to be agreed with a competent regional director of environmental protection. Abolition of such forms of nature conservation comes into being not only in the case of loss of natural values (due to which a given form of nature conservation was established), but also where it is necessary for completion of a public purpose investment or to ensure the public safety.

**Protection of species** covers specimens of species as well as habitats and sanctuaries of plants, animals and fungi. Protection of species is to ensure survival and a proper condition of protection, in Poland and in other member states of the European Union of species of plants, animals and fungi which are rare, endemic, vulnerable to risks and in danger of extinction as well as protected under the provisions of international agreements to which the Republic of

Poland is a party, as well as their habitats and sanctuaries, as well as preserving species and genetic diversity. In order to protect the sanctuaries and positions of plants or fungi which are covered by the protection of species or protection of sanctuaries, breeding sites and the regular presence of protected species of animals, protection zones may be established.

Covering by protection of species comes into being by way of the Ministry for the Environment.

**A botanical garden** is an area organized and developed, along with technical infrastructure and buildings functionally associated with it, which constitutes a place for *ex situ* protection, for cultivation of plants from different climatic zones and habitats, cultivation of plants of determined species, and for conducting scientific research and education.

**A zoological garden** is an area which is organized and developed, along with technical infrastructure and buildings functionally associated with it, where live animals belonging to wild species are kept and exhibited to the public for at least 7 days in a year.

**Animal rehabilitation centre** is a place where treatment and rehabilitation of wild animals (that require a periodic human care to restore them to their natural environment) is carried out.

Establishment and maintenance of a botanical garden or of a zoological garden requires a permission of the General Director of Environmental Protection, issued following consultation with the regional director of environmental protection of proper venue for the location of the botanical garden or the zoological garden and an opinion issued by an organization of representatives of the botanical gardens and zoological gardens, expressed within 30 days from the date of receipt of the request.

Establishment and maintenance of an animal rehabilitation centre requires a permission of the General Director of Environmental Protection.

Protected areas constitute a spatially separated area - because of the need to accomplish specific objectives and tasks of a state - an area within which the accomplishment of the objectives and tasks for which the protected area was created, has priority over all other tasks and activities of the state or non-state ones. The result of creation of a protected area are limitations upon ownership rights and other property rights, public law burdens and a system of prohibitions and exceptions from them which may be possible to invoke, stemming from a legal regime which is binding in the protected area.

**Public law orders and prohibitions:** submission of an area or an object under protection is associated with the establishment of necessary orders and prohibitions, universally applicable in the protected area. They result **either directly from a statute** (as is the case in the event of prohibitions which are in force in the national park, nature reserve and Natura 2000 sites) or **from an act on creating a particular form of nature conservation**, whose object are *inter alia* prohibitions appropriate to a given protected area, selected from a statutory catalogue of prohibitions, banning the very form. In the latter case, prohibitions introduced in a given area are tailored to individual needs and characteristics of the protected area.

In all cases (prohibitions which are binding by virtue of the law or those stemming from an act on creating a given form of nature protection) **they are not of an absolute nature**. The statute sets out cases of exemptions from the prohibitions' binding force, which are applicable by virtue of the law as well as cases of authorization to apply derogations from prohibitions by an individual authorization in certain situations set out by the law and while at the same time making a reservation of a necessity to fulfil requirements provided for by the law.

**The legal regime** of a protected area designated by the system of prohibitions varies depending on a form of nature conservation and depending on areas of strict protection, active protection

or natural landscape protection, designated within the protected area, and in the case of protection of species – depending on strict or on partial protection.

The legal regime of a protected area may prohibit human activities or human interference within a given area (for example, in areas of strict protection in national parks), it may limit them (e.g. in national parks conducting agricultural activity, walking, cycling or skiing is possible only in places designated in the protection plan) or it may simply allow certain activities by virtue of the law (for example, the existing prohibitions in the national parks do not apply to areas covered by natural landscape protection during their economic exploitation) or on the basis of an individual license allowing for a derogation from the legal regime.

A range of a permitted management of resources of nature and its components **is determined firstly by general recommendations as to how the management of natural resources should be carried out**, as defined in the Nature Conservation Act. Managing resources of wild plants, animals and fungi and genetic resources of plants, animals and fungi used by human beings should provide for their durability, optimum numerical strength and protection of genetic diversity (Article 117 of the Nature Conservation Act). Managing resources of inanimate nature should, in turn, be conducted in a manner which ensures protection of other resources, creations and nature components, efficient use of space and preservation of particularly valuable creations and components of inanimate nature (Article 121 of the Nature Conservation Act).

**These general recommendations are supplemented with case-law prohibitions** regarding, for example: (a) the burning of meadows, pastures, wastelands, ditches, roadside strips, railway routes as well as reed fields and rushes (Article 124 of the Nature Conservation Act); b) introduction of plants, animals and fungi of foreign species to the natural environment as well as transferring them in that environment (Article 120 (1) of the Nature Conservation Act); or (c) erecting building facilities near sea, lakes and other bodies of water, rivers and canals, which prevent or hinder to human beings and to wild animals to access water, with the exception of facilities serving tourism, water management, water management or fishing economy and those connected with safety of the general security and defense of the country (Article 119 of the Nature Conservation Act).

**Secondly, it is a legal regime associated with a given form of nature conservation which determines the scope of permitted management of natural resources and its components.**

The legislator, in principle, does not preclude a possibility of management of natural resources in protected areas or in relation to protected objects, and even when it comes to certain forms he expressly provides for such a possibility (e.g. agricultural and forest land, and other real property located within a natural landscape park are left in economic use). In any case, the management of natural resources and its components - if permitted at all - must be conducted in a manner that does not interfere neither with the protective purposes for which a given form of nature conservation is created, nor with the legal regime stemming from the statute, with an act on establishment of a given form of nature conservation or with conservation plans, in which e.g. places are determined to be made available for scientific, educational, recreational purposes, for various forms of management and various manners of making use of these areas.

**The most severe regime is in force in national parks and nature reserves.** The catalogue of statutory prohibitions binding in a national park and in a nature reserve is very extended and their exclusion or exemption from them has an exceptional nature. Prohibitions cover the entire spectrum of possible human intervention in park's nature, ranging from protective actions, by economic activity, to the recreational activity. These prohibitions do not apply to performing tasks arising from the protection plan or protection tasks, to conducting a rescue operation and measures connected with general security, to performing tasks of national defense in case of a



threat to state security as well as to areas covered by landscape protection in the process of their economic exploitation. Within the remaining scope, abandoning the prohibitions which are binding in national parks or in nature reserves require a consent of a competent organ.

As in the case of national parks and reserves, the legal regime of the Natura 2000 site is valid under the statute, which generally prohibits to take up any action that may worsen the condition of Natura 2000 sites, and only in exceptional cases, provided by the law and while claiming the need to fulfil specific requirements of the law, does the regime allow for a possibility of carrying out activities of this kind. In Natura 2000 sites, there are no limitations concerning activity connected with maintenance of equipment and facilities for flood safety as well as economic activity, agriculture, forestry, hunting and fishing activity, and amateur fishing, if it is not of a significant adverse impact on the conservation objectives of the Natura 2000 sites.

**With regard to other forms of spatial nature conservation**, a legal regime results from an act on creation of a given form of nature conservation, whose subject are prohibitions applicable to a given protected area, selected from a statutory catalogue of the prohibitions laid down for this type of protection. They involve different activities – from investment activity, by economic activity to the recreational one, even though agricultural lands, forest lands and other real properties are essentially left in the economic use.

**Botanical gardens, zoological gardens** and areas envisaged in a local area development plan for the expansion of existing gardens or construction of new ones are subject to protection in order to ensure their proper operation and development. Such a protection consists in prohibition of: erecting building facilities and equipment within a botanical garden and a zoological garden which are unrelated to their activities, reducing the area of a botanical garden or a zoological garden for the benefit of activities unrelated to their role and purpose, changing, within the area of a botanical garden or a zoological garden or in their neighbourhood water relations, including lowering a level of groundwaters; polluting the surface of the land, water or air within the area of a botanical garden or a zoological garden or in the vicinity thereof, erecting in the vicinity of a botanical garden or a zoological garden building facilities or equipment aimed at conducting production activities or service activities, adversely affecting natural conditions necessary for the proper functioning of the gardens.

The process of creating protected areas has a dynamic nature. The statistical data show<sup>16</sup> that quantity of areas which are subject to protection increases or decreases. For example, a number of nature reserves in the period from 2000 to 2011 has increased from 1307 to 1469, of protected landscape areas from 407 to 386, of documentation sites 103 to 157; of ecological areas from 6113 to 6952; of nature and landscape complexes from 170 to 324; of outstanding natural features from 33,094 to 36,318. During the above-mentioned period, the number of natural landscape parks rose from 120 to 121, while the number of national parks from 22 to 23. The last of the latter, the Warta Mouth National Park was created in 2001.

Currently in Poland, the Natura 2000 network covers almost one fifth of the country's land area. It consists of 845 areas of Community importance (areas of 'habitat' - the future special areas of habitats' protection) and 145 special protection areas for birds<sup>17</sup>.

Only in the case of the proposed habitats' special protection areas and areas of importance for the Community, the legislator has clearly determined their protective regime. Within the remaining scope, limitations may result from the content of local area development plans, in which, *inter alia*, the principles of protection of environment, of nature conservation and of

16 Concise Statistical Yearbook of Poland (Mały Rocznik Statystyczny Polski), Warsaw: 2012, s. 55 i następne. Dostępne na: <[www.stat.gov.pl/cps/rde/xbcr/gus/oz\\_maly\\_rocznik\\_statystyczny\\_2012.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/oz_maly_rocznik_statystyczny_2012.pdf)>.

17 See: <[natura2000.gdos.gov.pl/strona/natura-2000-w-polsce](http://natura2000.gdos.gov.pl/strona/natura-2000-w-polsce)>.

cultural landscape's protection are taken into account as well as specific conditions of site management and limitations of their use, including a prohibition of building development.

#### **2.1.4 Participatory rights of local communities (See Questionnaire 1.2)**

There is no direct right of local communities (public) to designate protected areas in the Nature Conservation Act. Although from the perspective of local self-government administration and local communities right to designate or participate in the setting up of protected areas the following provisions/rules should be pointed out:

- the right to designate protected areas by organs of local self-government administration;
- the participatory right of organs of local self-government administration in the setting up of protected areas by organs of government administration (central or regional) – phase: project approval; form: mandatory and binding opinion;
- a duty to obtain consent of an owner to create or to increase the area of a national park or a nature reserve covering areas which constitute real properties which are not owned by the State Treasury, and in the case of the lack of its consent – a possibility of expropriating the real property;
- the participatory right of NGOs in the process of designating national parks (mandatory opinion);
- the general obligation of public administration to conduct educational activities, information and promotion in the field of environmental protection (voluntary consultation, ex post information).

One may also indicate, for example, buyouts of land by private entities (associations) and an application to competent authorities with an initiative to create an area form of nature conservation. Such a situation occurred in one case known to myself.

Initiatives to create protected areas are often put forward by scientific entities, ecological organizations and researchers.

#### **2.1.5 Buffer areas and their legal regime (See Questionnaire 1.2)**

The Nature Conservation Act defines a buffer zone as a zone bordering a form of nature conservation and individually designated for the form of nature conservation in order to protect it against external threats resulting from human activities. In areas bordering a national park, a buffer zone must be determined. In areas bordering a nature reserve and a natural landscape park, a buffer zone may be determined. In the case of other forms of nature conservation no buffer zone is determined.

Prohibitions existing in protected areas are not directly related to the area of its buffer zone, since the buffer zone is not a part of the protected area. The Nature Conservation Act does not lay down specific requirements as to the scope of limitations in the design of using space within the buffer zone. It does not follow from it that a particular activity in the buffer zone is not subject to certain limitations. Even though such limitations are not normatively catalogued in the Nature Conservation Act, they result from the mere establishment of a given buffer zone.

In this context, one should indicate such effects of determining a buffer zone which include:

- a possibility of creating a zone for protection of game due to the need to protect animals in the park;
- a duty to agree on draft area development plans, within the part concerning the protected area and its buffer zone with: (a) a director of a national park within the scope of the findings of

these plans, which could have a negative impact on conservation of the national park's nature, (b) a regional director of environmental protection of proper venue as to the findings of these plans, which could have a negative impact on conservation objectives of a nature reserve or conservation of a natural landscape park's nature respectively;

- a duty to agree on draft forest management plans, simplified forest management plans and forest management tasks, in the part which regards protected area's buffer zone with: (a) a director of a national park within the scope of the findings of these plans or tasks, which could have a negative impact on conservation of the national park's nature (b) a regional director of environmental protection as to the findings of these plans, which could have a negative impact on objectives of conservation of a nature reserve;
- a duty to agree on a location decision with a director of the park or with a regional director of environmental protection in the case of a proposed investment within the area of a buffer zone of the protected area;
- limitations within the scope of land development and within the accomplishment of construction investments under the Spatial Planning and Land Development Act,, the Building Act, the Act on special rules for reconstruction, renovation and demolition of buildings destroyed or damaged as a result of the disaster.

### **2.1.6 Management plans for protected areas, administering bodies and funds (Questionnaire 1.2)**

The Nature Conservation Act treats the protection plan as the basic document drawn up for certain forms of nature conservation - national parks, nature reserves and natural landscape parks and Natura 2000 sites. Drawing up a protection plan requires that both procedural and substantive requirements of the Act are fulfilled. The procedure of drawing up the plan consists of several stages.

- drawing up a draft plan by the supervisor of the protected area;
- consultations with competent organs, concerned individuals and society;
- establishment of the plan by an organ of nature conservation.

A protection plan for national parks and the Natura 2000 sites is established by the Minister competent for environment by way of a regulation (state level).

A protection plan for the nature reserve is established by a regional director of environmental protection by way of an act of local law in the form of an order (regional level).

A protection plan for the natural landscape park is established by a voivodship assembly by way of a resolution (voivodship level).

Arrangements adopted in protection plans shape powers and responsibilities of the entities which perform specific tasks indicated by a plan, but they also have an *erga omnes* effect, to the extent in which they establish rules of behavior of the protected areas. Indications for spatial plans are also the subject to protection plans. For a national park, a nature reserve or a Nature 2000 site, until the establishment of a protection plan, so-called protection tasks are drawn up.

Only in the case of a national park and natural landscape park a matter of administration and management is satisfactory. According to the Nature Conservation Act only a national park has a legal personality. A director of a national park manages the activities of the national park. He also represents a national park outside. Supervision over the park is exercised by Ministry competent for environment. Tasks related to nature conservation, scientific research and educational activities, as well as with protection of a national park's property and with

combating offences and misdemeanour within the scope of nature conservation within the area of a national park are carried out by the National Park Service.

A natural landscape park is administered by a director. Within the area managed by the State Forests National Forest Holding which is located within the borders of a natural landscape park, tasks of nature conservation are carried out by a local forester on his own, as determined by a protection plan of a natural landscape park that is included in the forest management plan. Tasks within the scope of nature conservation, natural landscape values, historic and cultural values as well as educational activities within the natural landscape park are carried out by the Natural Landscape Park Service.

In relation to the Nature 2000 sites the Act defines a supervisor over the area that is a competent regional director of environmental protection, in maritime areas a director of a maritime office, and in areas situated within borders of a national park – a director of the park.

With regard to other forms of nature conservation (nature reserves, outstanding natural features, documentation sites, ecological areas, natural and landscape complexes) an organ establishing a given form of the conservation of nature in the act of creation sets, among others, a supervisor of the area. When private lands are included within the borders of the site, their management is carried out by the owners in the limits appointed by the law.

Financing issues connected to protected areas' management have been analysed above in paragraph 1.3.3.

### **2.1.7 The implementation of the Carpathian Convention and its Protocols in Poland (See Questionnaire 1.2)**

The Convention was ratified by Poland in 2006 (Journal of Laws of 2007, No. 96, item 634). It pursues the objective to conduct a comprehensive policy as well as cooperation for the protection and sustainable development of the Carpathian Mountains with a view to improve quality of life, strengthen local economies and communities, and conserve natural value and cultural heritage of the area.

Appropriate measures undertaken in the areas singled out in Articles 4 – 13 of the Convention seek the achievement of the above-mentioned objectives. The thematic protocols, developed and adopted also serve the implementation of the objectives of the Convention. Poland signed the agreed thematic Protocols (to the Framework Convention on the Protection and Sustainable Development of the Carpatians): on Conservation and Sustainable Use of Biological and Landscape Diversity, on Sustainable Forest Management and on Sustainable Tourism in the Carpathians. The institution responsible for the implementation of the Convention in Poland is the Ministry of the Environment.

Currently, in the Polish law does not exist a separate act (law), whose subject would be conservation and sustainable use of natural resources, including biological and landscape diversity in mountain ecosystems<sup>18</sup>, there is neither a separate legal act implementing the Carpathian Convention. This does not mean that the issue was left outside the existing legal and institutional system. Conservation and sustainable development of mountain areas (including that of the Carpathian Mountains) is carried out by various legal instruments described in the present report, including the planning, rationing and protective, financial, as well as

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<sup>18</sup> Even though work on such a special regulation (the act on socio-economic development of mountain regions of 2011) were carried out, see: M. Sobolewski, *Konwencja karpacka* [The Carpathian Convention], in: Biuro Analiz Sejmowych. Zagadnienia społeczno-gospodarcze [The Bureau of Research of the Chancellery of the Sejm. Socio-economic issues], no. 15 (129)/2012.

organizational and legal instruments contained in many different legal acts and while taking into account natural conditions, and conditions of economic and cultural nature concerning mountain areas.

In this context, and taking into consideration the fields distinguished in articles 4-13 of the Convention, one may indicate the following examples of actions/measures undertaken to protect the natural and cultural values of mountain areas, including the protection and sustainable development of the Carpathian Mountains:

(a) Integrating sustainable development of mountain areas issues into various sectorial or cross-sectorial policies, strategies, programmes and actions at state, regional or local level (e.g. into the National Strategy of the Protection and Sustainable Use of Biological Diversity and Action Program for years 2007-2013, The National Environmental Policy for 2009-2012 including Perspectives till Year 2016, the National Forest Policy, the Rural and Agriculture Development Strategy for Years 2007-2013; protection plans for 'mountains' protected areas, The National Development Strategy 2020 as well as regional policies. The level of detail in treatment of this issue in them is very diversified, sometimes they are treated directionally and too generally.

Sustainable development of mountain areas was subject of a resolution of the Sejm [the lower chamber of the Polish Parliament] of 1997 on the sustainable development of mountain areas and of mountainous areas, establishing a basis for policy in these areas. 'The Principles of socio-economic activation strategy of mountain and mountainous areas' drawn up in 1999 and submitted to the Council of Ministers constituted their development.

(b) Providing spatial order by drawing up development plans of mountain areas, spatial planning serves to coordinate the socio-economic development, including to reduce fragmentation and to ensure the ecological coherence by taking into consideration in directions of the spatial policies functional areas which are valuable from the nature point of view, including ecological corridors, as well as those of a supranational nature (e.g. ecological corridors in the Carpathian Mountains);

(c) Conservation and protection of natural values, including landscape values through the creation of protected areas in the Carpathian Mountains, such as national parks (The Babia Góra National Park, The Gorce Mountains National Park, The Tatra Mountains National Park, The Pieniny Mountains National Park, Magura National Park, Bieszczady Mountains National Park), the Natura 2000 areas, nature reserves, natural landscape parks (e.g. The Complex of the Carpathian Mountains Natural Landscape Parks in Krosno), or the protection of species (e.g. European fire salamander, wolf, lynx, brown bear)<sup>19</sup>. The legal regime associated with a given form of nature conservation and management plans drawn up for national parks, nature reserves and natural landscape parks and Natura 2000 sites, which include an assessment of the state of nature as well as the identification and the assessment of internal and external threats are aimed to ensure the effective protection of the 'mountain' protected sites.

(d) Sustainable tourism which is realized by the instruments of spatial planning, administrative law measures including management plans introduced and applied in protected areas (e.g. national parks), promotion and education actions, environment impact assessments among others.

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<sup>19</sup> 'The Carpathians mountain ecosystems are natural environment to almost 80% of mammal species and approximately 74% of the species of vascular plants in Poland. They are the place where one may encounter many endemic species. In particular mountain and high-mountain species'. See: L. Soja, *Fauna i flora polskich Karpat* ['Fauna and flora of the Polish Carpathian Mountains'] <[www.zielonekarpaty.org.pl/FAUNAIFLORAPOLSKICH.html](http://www.zielonekarpaty.org.pl/FAUNAIFLORAPOLSKICH.html)>.

- (e) Inventorying and natural monitoring of the Carpathian Mountains, in particular in areas covered by protection in the form of national parks. The natural monitoring is carried out by specialized environmental protection authorities, national parks, scientific institutions and environmental organizations.
- (f) The protection of forest complexes in the Carpathian Mountains by carrying out sustainable forest management based on forest management plans or simplified forest management plans, universal protection of forests by means of a duty of forest owners within the scope of developing balance in forest ecosystems, improving the natural immunity of forests, including *inter alia* protection of soil and forest waters, establishing of promotional forest complexes (e.g. ‘Lasy Birczańskie [‘Birczańskie Forests’]) or recognition of certain forests as particularly protected forests - ‘protective forests’. The basis for forest management in the Carpathian Mountains is conservation of nature and the concept of ‘ecodevelopment’, taking into consideration all important values and functions of forests (ecological, economic and social ones).
- (g) Sustainable agriculture, including support programmes for farmers who work the land in mountain areas and in other less favoured areas (LFAs)<sup>20</sup>. The areas situated within the Polish part of the mountain ranges, including the Carpathian Mountains were incorporated to mountain less favoured areas.
- (h) Planning and sustainable development in the field of transport and infrastructure, taking into account mountain areas, which ‘would ensure benefits connected with mobility and possibilities of commuting, while minimizing harmful effects on human health, mountain landscapes, plants, animals and their habitats’<sup>21</sup>. Legal instruments and measures aimed at ensuring the appropriate technical level of the vehicles, their environmental performance, promotion of environment and ecological means of transport<sup>22</sup> or tax policy all serve to reduce the negative impact of transport on natural and cultural values of the Carpathian Mountains as well.
- (i) Promoting the cultural heritage and folk knowledge of the local population (e.g. through manufacturing and marketing local products, artistic and handicraft produce, maintaining the traditional architecture);
- (j) Environmental Impact Assessments (EIA) and Strategic Impact Assessments (SEA) on environment –taking into consideration specificity of mountain ecosystems. Mountain areas, areas in need of special protection because of the presence of species of plants and animals or their habitats or protected natural habitats, including Natura 2000 areas and other forms of nature conservation and areas whose landscape has historical, cultural or archaeological significance, constitute one of the criteria which justify the carrying out of the EIA or the SEA; they are also included in a report on the impact of a project or of a planning document on environment.
- (k) Education and awareness which are achieved *inter alia* through access to information, educational trails, environmental education centres, educational competitions and conferences.

20 The Act of 7 March 2007 on supporting development of rural areas with the participation of the European Agricultural Fund for Development of Rural Areas’ means as well as the Regulation of the Minister of Agriculture and Rural Development of 11 March 2009 on the detailed conditions and on the mode of granting financial aid under the action ‘Supporting farming in mountain areas and in other less favoured areas (LFA)’ included in the Programme of Development of Rural Areas for the years 2007-2013.

21 [www.edukacja.mazowsze.pl/material.php?tekst=45&tytul=Aspekty\\_ochrony\\_obszar%F3w\\_g%F3rskich](http://www.edukacja.mazowsze.pl/material.php?tekst=45&tytul=Aspekty_ochrony_obszar%F3w_g%F3rskich).

22 See e.g. S. Stec, *Ekologiczna komunikacja miejska na Podkarpaciu [Ecological public transport in Podkarpacie]* [www.zielonekarpaty.org.pl/EkologicznaKomunikacjaMiejskaNa.html](http://www.zielonekarpaty.org.pl/EkologicznaKomunikacjaMiejskaNa.html).

(l) Promoting natural and cultural values of the Carpathian Mountains through projects and programmes which are carried out, for example<sup>23</sup>:

- ‘Building a Coalition for Sustainable Development of the Carpathian Mountains’ – a result: creation of a forum for cooperation of Polish non-governmental organizations, scientific institutions and local self-governments called ‘The Green Carpathian Mountains Coalition’. The Green Carpathian Mountains Coalition which was formed in 2006 as a result of the project called ‘Building a Coalition for Sustainable Development of the Carpathian Mountains’<sup>24</sup>. It constitutes a forum for cooperation of Polish non-governmental organizations, scientific institutions and local self-governments for harmonizing initiatives in the region of the Carpathian Mountains, promotion of good projects and raising awareness of the values of the Carpathian Mountains.
- ‘Nature as the future of the Carpathian Mountains’ – a grant competition organized by Liga Ochrony Przyrody Zarząd Główny [the Main Board of the League of Nature Conservation], funded by the Global Environment Facility/Small Grants Programme (GEF/SGP);
- ‘The protection of ecological (migration) corridors as a key element in the protection of biodiversity in the Carpathian Mountains’ – Pracownia na rzecz Wszystkich Istot [The Laboratory for the benefit of All Beings];
- ‘The threatened Nature – the project of conservation of the Carpathian Mountains’ biodiversity, included in the Natura 2000 network, monitoring of harmful investments by mass tourism’ - Pracownia na rzecz Wszystkich Istot [The Laboratory for the benefit of All Beings];
- ‘Optimization of the Natura 2000 network resources for the sustainable development of the Carpathian Mountains’ – Instytut Ochrony Przyrody PNA w Krakowie [The Institute of Nature Conservation of the Polish Academy of Science in Cracow];
- ‘Amber Trade Route’ – the Polish and Slovak and Hungarian programme carried out in Poland by Fundacja Partnerstwo dla Środowiska [The Partnership of Environment Foundation].
- Cross-border cooperation in the Carpathian Mountains region, whose effect include *inter alia* the established biosphere reserves (e.g., The International Biosphere Reserve ‘Eastern Carpathian Mountains’), or and agreements concluded on cross-border tourism. International conferences such as, for example, the conference concerning ‘Protection of the natural resources of the International Biosphere Reserve - Eastern Carpathian Mountains’, organized annually at the Scientific and Educational Centre of the Bieszczady Mountains National Park are also a manifestation of such cooperation.

## 2.2 Ecological connectivity and related sectors

### 2.2.1 Ecological networks and connectivity in policy documents (See Questionnaire 1.2)

The principal policy document in the discussed area is the National Strategy of the Protection and Sustainable Use of Biological Diversity and Action Program for years 2007-2013 (‘the National Strategy’)<sup>25</sup> adopted by the Council of Ministers on 25 February 2003 (amended in 2007) on the basis of Art. 111 section 1 of the Nature Conservation Act. In the Strategy legal,

23 Cited after: M. Budzyn, *Ochrona różnorodności przyrody i krajobrazu Karpat oraz użytkowanie ich w sposób zrównoważony (Conservation of the nature and landscape of the Carpathian Mountains as well as using them in a sustainable manner)*, <[www.zielonekarpaty.org.pl/OchronaRoznorodnosciPrzyrodyI.html](http://www.zielonekarpaty.org.pl/OchronaRoznorodnosciPrzyrodyI.html)>.

24 <[www.zielonekarpaty.org.pl/OchronaRoznorodnosciPrzyrodyI.html](http://www.zielonekarpaty.org.pl/OchronaRoznorodnosciPrzyrodyI.html)>.

25 See : <[biodiv.mos.gov.pl/biodiv/files/Krajowa\\_strategia\\_roznorodnosci\\_biologicznej.pdf](http://biodiv.mos.gov.pl/biodiv/files/Krajowa_strategia_roznorodnosci_biologicznej.pdf)>.

economic, social and natural determinants of protection of biodiversity, having external character (international legal determinants as well as obligations resulting from the European Union's legislation) as well as internal character (the currently binding national legal acts as well as adopted policies and strategies) were described. Strengths and weaknesses as well as opportunities and threats for protection and sustainable use of biodiversity have also been diagnosed. On this basis, in the National Strategy the following were defined:

(a) A vision of Poland with reference to natural sphere: 'The entire Polish territory, including the Polish marine areas will be characterized by a good state of the natural environment, which enables to preserve the full richness of biodiversity of the Polish nature as well as permanence and balance of natural processes - the areas with the highest environmental values will be subject to an effective legal protection and will be combined by a system of operating ecological corridors. At the same time legal, organizational and economical mechanisms will be created and will function, enabling conservation of biodiversity and its rational use. For a significant part of the country, the local natural values may be one of the primary 'flywheel' of a socio-economic development, which in conjunction with strategic development of areas of human life will improve the inhabitants' standard of living. Society will be characterized by a greater sensitivity to nature and environmental awareness, which will also be manifested in the increased activity of civil society organizations'<sup>26</sup>.

(b) Priority objective: 'The preservation of the riches of biodiversity at local, national and global levels and ensuring the possibilities for the development of all the levels of its organization (within species, between species and at the higher-than-species level), while taking into account the needs of Poland's socio-economic development and the need to ensure the appropriate conditions of life and development for its society'<sup>27</sup>.

The vision and priority objective are specified in 8 strategic goals and many specific operational objectives require integration of the actions aimed at the biological diversity conservation with the various administrative branches, including: environment (with further division to spheres of nature conservation and landscape, forestry, exploitation of mineral resources, environmental protection, promotion and education, natural monitoring, managing the protection of biodiversity, water management, agriculture and rural development, construction, spatial and housing development; tourism; education and higher education; ; transport; maritime economy and fishery; economy; national defense; culture, national heritage; work; internal affairs; justice; budget and public finances; foreign affairs.

In order to promote the protection of biodiversity, the Strategy indicates operational objectives also directly related to ecological connectivity, that is<sup>28</sup>:

- the strengthening of the protection of biological diversity and landscape in the management of space, which is implemented by: the development and dissemination of a code of the best planning practices containing principles and requirements of protection and sustainable use of biological diversity, including the scope of development of landscape's ecological functions, cohesion of the national system of protected areas, including in particular the European Ecological Network Natura 2000 and the functioning of ecological corridors, and restoration of ecological continuity of rivers,
- restoration and maintenance of a network of ecological corridors (forest corridors, river corridors and other ones) providing for the exchange of genes between local populations;

26 The National Strategy of the Protection and Sustainable Use of Biological Diversity, at. 24.

27 *Ibid.*, at. 25. The translation following: The Fourth National Report on the Implementation of the Convention on Biological Diversity – Poland, at. 40.

28 The National Strategy of the Protection and Sustainable Use of Biological Diversity, at 28 and the following ones.



- development and strengthening of a national system of protected areas, including the implementation of the European Ecological Network Natura 2000;
- development of international cooperation within the scope of conservation and sustainable use of biological diversity, including cooperation for the benefit of protection and joint management of valuable natural cross-border areas and populations of rare and protected species which can be found on both sides of a given border, as well as restoring cross-border network of ecological corridors.

The strategy is primarily addressed to government administration and local authorities, but its implementation requires the involvement of other entities (e.g. scientific research entities) and of the public, including environmental organizations treated as ‘an important partner of the government administration in its efforts to protect biological diversity’<sup>29</sup>. The effectiveness of the implementation of its provisions will be subject to periodic assessments and cyclical meetings with the participation of those involved in its implementation.

According to Article 8 of the EPL Act ‘policies, strategies, plans or programmes relating, in particular, to industry, energy, transport, telecommunications, water management, waste management, town, and country planning, forestry, agriculture, fisheries, tourism and land use shall take the principles of environmental protection and sustainable development into account.. The same, although in narrower sense, applies to nature conservation objectives. According to Article 3 point 1 of the Nature Conservation Act nature conservation objectives are implemented, *inter alia*, by taking into account the requirements of nature conservation in the national environmental policy, environmental programs and land development (spatial planning) plans on national and local level.

It constitutes a sufficient legal basis to integrate the biodiversity issues into various sectorial or cross-sectorial policies, strategies, programmes and actions at state, regional or local level<sup>30</sup>. Although it is emphasized that the level of detail in treatment of biodiversity protection-issues in them is very diversified, usually they are treated directionally and too generally – it is why this level of inclusion of biological diversity issues into policy documents is assessed as not fully satisfactory yet, but improving<sup>31</sup>.

At the state level two important policy document are worth mentioned – the first one is the The National Development Strategy 2020 - Active society, competitive economy, effective state, adopted by the Council of Ministers in September 2012, the second is The National Environmental Policy for 2009-2012 including Perspectives till Year 2016 adopted by the Council of Ministers in December 2008.

In The National Development Strategy 2020 the following were numbered among the priorities of directions of public intervention: ‘energy security and the environment’ and ‘rational management of resources’ and within this framework ‘establishment and implementation of an effective and a permanent legal and institutional system, providing for effective protection of valuable natural areas and species and providing for halting decline, and where possible, providing for enhancement of biological diversity’ (pp.119-120) and the conservation of

29 *Ibid.*, pp. 19-22.

30 See: e.g. those indicated in the National Strategy of the Protection and Sustainable Use of Biological Diversity as examples of policy documents which clearly indicate the need for conservation of Poland’s natural heritage: the National Forest Policy, the Long-term Strategy for Sustainable Development (2000), the National Strategy for Environmental Education: through Education to Sustainable Development (2000), the National Spatial Development Policy Concept (1999), the National Forest Policy (1997), the Coherent Structural Policy for Development of Rural Areas and Agriculture (1999), the National Development Strategy 2007-2015, the Rural and Agriculture Development Strategy for Years 2007-2013. Others are protection plans for protected areas, water plans, spatial managements plans and others.

31 Cf. the Fourth National Report on the Implementation of the Convention on Biological Diversity – Poland, at. 134-135.

biological diversity as a condition of fulfilling requirements of intergenerational justice, which requires halting a decrease of biological diversity and ensuring an appropriate condition of conservation for the greatest possible number of species and natural habitats (p.122). A deficit in the protection of ecological connectivity was pointed out to in the Strategy – the very deficit consists in dispersing the Polish ecological network which does not constitute a coherent system of areas which are interrelated functionally and geographically, which would guarantee the conservation and sustainable use of biological diversity in the long term and a need resulting therefrom to take action ‘for the benefit of counteracting the fragmentation of space and creating solutions favourable for the conservation (protection) of natural resources, in particular through the creation of ecological corridors to allow migration of fauna and flora in regional, national and international systems’ (p.120).

In the National Environmental Policy the preservation of the riches of biodiversity and ensuring the possibilities for the development of all the levels of its organisation, while taking into account the needs of Poland’s socio-economic development is recognized as one the objectives influencing environmental and economy sectors.

At local level the special role for the protection of biodiversity and ecological connectivity is played by spatial management (land development) plans adopted at the country, regional (voivodship) and municipality (*gmina*) level which are the basic documents to ensure the spatial order and in which the principles of environmental protection and sustainable development must be taken into account.

### **2.2.2 Ecological networks and connectivity in the Constitution and national legislation and specific tools for their implementation (See Questionnaire 1.2)**

Pursuant to Article 5 of the Constitution, the Republic of Poland ‘*shall ensure the protection of the natural environment pursuant to the principles of sustainable development*’. This task is elaborated in further provisions of the Constitution that relate directly to the environment, namely: a) Article 68 (4) ‘Public authorities shall (...) prevent any negative health consequences of degradation of the environment’; b) Article 74 ‘Public authorities shall pursue policies ensuring the ecological security of current and future generations’ (Paragraph 1); ‘Protection of the environment shall be the duty of public authorities’ (Paragraph 2); ‘Everyone shall have the right to be informed on the quality of the environment and its protection’ (Paragraph 3); ‘Public authorities shall support the activities of citizens to protect and improve the quality of the environment’ (Paragraph 4); c) Article 86 ‘Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute’; d) Article 31 (3), which allows for the limitation of constitutional freedoms and rights of people and citizens, e.g. to protect the natural environment, provided that such limitation is imposed only by statute and only in accordance with the proportionality principle.

These legislative solutions refer to ‘*the constitutional and system tradition that treats ‘the environment’ as an objective asset constituting a ‘common good’, (collective good - res omnium communis). Its use and protection should be widely available, i.e. for everyone, provided that the sustainable development principle and the requirements of inter-generation environmental ethics this principle determines are respected*’<sup>32</sup>.

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32 A. Wasilewski, ‘Dynamics of Changes and Issue of Continuation in the Contemporary Administrative Law as a Challenge to the Law Doctrine (Illustrated with an Example of the Law on Environmental Protection)’ in J. Supernat (ed.), *Between*

The Constitution does not refer directly to the concept of ecological networks/connectivity but as does it indirectly by referring in its art. 5 to the principles of sustainable development, whose essence is *'such social and economic development which extends to the process of integrating political, economic and social actions, while maintaining the environmental balance and sustainability of basic natural processes, with a view to guaranteeing the capability of satisfying basic needs of particular communities or citizens of both the present and future generations'* (article 3 point 50 of the EPL Act) and by referring to the notion of 'environment', whose element is the biodiversity.

Other national legislative acts do not refer directly to the concept of ecological networks/connectivity but they do it indirectly by defining and applying the concept of sustainable development, and by defining the aim of nature protection which is among others the maintenance of ecological processes protection of ecological balance, conservation of biological diversity at all levels of the organization – intra-species (genetic), inter-species and ultra-species. The last one, which refers to the protection of ecosystems and natural landscapes, including their diversity and their systems, has been highlighted in the Strategy for the Conservation and Sustainable Use of Biological Diversity as a distinct object of protection for two main reasons: first - economic growth resulted in that both protection of species and area protection (covering only selected areas of particular value) proved to be not effective enough, and secondly - it was found that the disappearing natural landscapes (mosaics of forest ecosystems, meadow ecosystems, field ecosystems and ecosystem related with settlement), formed in the historical process of a harmonious interaction between nature and man should be protected as humanity heritage<sup>33</sup>.

Among the most significant threats of violation of ecological balance and biodiversity at the ultra-species' level (threat to ecosystems and landscapes) the following risks may be numbered<sup>34</sup>:

- continuing urbanization and development of the country leading, among others, to liquidation of natural and semi-natural wildlife, to impaired functioning of ecosystems including their communication and to disharmony of landscape;
- various processes (eutrophication, drainage, soil acidification, contamination with toxic compounds and more), which causes changes in the characteristics of natural habitats/biotope/ecosystems and changes in natural assets;
- land use changes, including the reduction or abandonment of traditional agricultural production methods and phenomena of succession caused thereby, resulting in the transformation of landscape structure, liquidation and fragmentation of habitats/ecosystems as well as in unification and destruction of habitats' mosaic;
- negative pressure of human beings on species seen as conflicting (species requiring protection, which at the same time may cause economic and social problems, such as beavers, cormorants, otters), which reduces the size of their population;

*Tradition and Future in the Science of Administrative Law. Między tradycją a przyszłością w nauce prawa administracyjnego. A jubilee book dedicated to Professor Jan Boć*, (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2009) p. 771.

33 The State Strategy for the Conservation and Sustainable Use of Biological Diversity along with an action programme, Warsaw, 2003. Document approved by the Council of Ministers on 25 February 2003, p. 13.

34 The State Strategy for the Conservation and Sustainable Use of Biological Diversity along with an action programme, Warsaw, 2003. Document approved by the Council of Ministers on 25 February 2003.

- overexploitation of populations of selected wild animals' species, which results in reduction of the size of their population and in destruction of the ecological balance (it regards especially the catching alive of predators such as fish);
- progressive synanthropisation of fauna and flora and penetration of alien species, which results in loss of native species, weaker from the competitive point of view;
- genetic modification of species and their release into the environment, whose effects are, in most cases, yet to be recognized.

What is of essential importance to protection of biodiversity, including ecosystems and landscapes is protection of aquatic ecosystems, coastal waters of sea, rivers and their valleys, lakes, ponds and wetlands, protection of forests, protection of natural and landscape values, sustainable development of agriculture and rural areas.

### ***Ecological connectivity in the Act of 27 April 2001 Environmental Protection Law (EPL Act)***

The EPL Act) has a nature of a general statute supplemented with the provisions of a number of special statutes whose object is to protect a selected element of environment (for example, the Water Law Act) or environmental protection against a specific threat to the environment (e.g. the Act on Waste).

*Scope and purposes of protection:* The legislature defines the notion of **environment** in art. 3 point 39 of the EPL Act as the *whole of natural elements including but not limited to those converted in the course of human activity, and in particular the earth's surface, minerals, water, air, landscape, climate and other elements of biodiversity, and inter-relations between said elements.*

The EPL Act prescribes the principles governing environmental protection and the use of environmental resources with regard to the **principle of sustainable development**, including but not limited to the rules for determining the conditions for protecting environmental resources, the conditions for releasing substances or energy into environment, the costs of using environment, the responsibilities of administrative authorities, liability and sanctions.

By the notion of environmental protection, the legislator means taking or abandoning actions, which allows to maintain or restore **environmental balance** (art. 3 point 13 of the EPL Act) understood as *the state in which there is, in a specific area, a balance in the relationship between: humans, items of flora and fauna, and habitat conditions created by the items of inanimate nature;* (art. 3 point 32 of the EPL Act). This protection consists in particular in: the protection includes, in particular: **reasonable managing of environment** and environmental resources **in line with the principle of sustainable development**, preventing pollution, restoring items of the environment to a favorable status (Article 3, paragraph 13 of the EPL Act).

*Mechanisms which may serve to protect ecological networks/connectivity and biodiversity in the EPL Act:*

- A principle of a comprehensive environmental protection (protection of one or more elements of the environment, while taking into account the other elements).
- An obligation to adopt different planning acts in the field of environmental protection (the state ecological policy, environmental protection programs and further ones) on the one hand and on the other hand, a duty to take into account the principles of environmental protection and sustainable development in the strategic documents, in particular in the area of industry, power industry, transport, telecommunications, water management, waste management, land management, forestry, agriculture, fisheries, tourism and land use (principle of integration).

- State environmental protection monitoring system which constitutes a system of measurements, assessments and forecasts of the state of environment as well as the collection, processing and dissemination of information on environment.

- Duties within the scope of taking into account the principles of environmental protection and sustainable development **in land development (spatial planning)**, in accordance with article 71 of the EPL Act: *the principles of sustainable development and environmental protection form the basis for compiling and updating concepts of land development (also referred to as land-use planning or spatial planning) for the country, strategies of voivodship development, land development plans for voivodships, studies of municipalities [gmina] land development (land-use planning) conditions and directions, and local area development plans (land-use planning). In the above-mentioned concepts, strategies, plans, and studies, in particular: 1) solutions required to prevent pollution, provide protection against pollution, and restore the environment to an appropriate state are specified; 2) conditions for implementation of projects allowing optimal environmental protection effects to be achieved are determined. At the same time, the purpose and manner of land use shall assure preservation of its landscape values to the maximum practicable extent. In a study of municipality [gmina] land development (land-use planning) conditions and directions, and local area development plans (land-use planning), in assigning lands for particular purposes and in determining responsibilities relating to land development in the structure of land use, **the proportions allowing environmental balance and proper living conditions to be preserved or restored are specified.***

Requirements of a studies of municipality [gmina] land development (land-use planning) conditions and directions, and local area development plans (land-use planning) concerning conditions of maintaining nature balance and rational management of environmental resources, are determined on the basis of **environmental and physiographic studies**, accordingly to **the type of document prepared, features of individual elements of nature, and their relationships (art. 72 of the EPL Act).**

*An environmental and physiographic study is understood as the documentation prepared for the purpose of the studies of municipality [gmina] land development (land-use planning) conditions and directions, and local area development plans (land-use planning) as well as of a land development plan for a voivodship, characterizing respective elements of nature within the area covered by the study or plan and their mutual relationships.*

It is the documentation of a key importance to environment protection in the process of creating a plan, not only because it is carried out on the basis of comprehensive tests and field measurements, remote sensing data analysis, archival cartographic, planning, inventory and study materials but also because its end effect was an assessment of the usefulness of environment for different types of use and identifying areas for performing respective functions<sup>35</sup>.

According to § 1 of the Regulation of the Minister of the Environment's regulation of 9 September 2002 on environmental and physiographic studies ecophysiographic studies are drawn up while taking into account: 1) adjustment of function, structure and intensity of land use to nature conditions, 2) ensuring the sustainability of basic nature processes in the area covered by the land development plan, 3) providing conditions for sustainability of environmental resources, 4) eliminating or reducing risks and adverse impacts on environment, 5) determining the directions of the rehabilitation of degraded areas.

35 J. Perzanowska, M. Makomaska-Juchiewicz, G. Cierlik, W. Król, S. Tworek, B. Kotońska, H. Okarma, Ecological corridors in Małopolska [Lesser Poland], p. 47.

The cartographic and descriptive part of the basic study includes<sup>36</sup>: 1) **identification and characterization of the condition and functioning of the environment, documented and interpreted spatially, among other things within the scope of**: a) respective elements of nature and their mutual relationships and processes occurring in environment, b) the nature structure of an area, including biodiversity, c) the nature relationships of the area with its wider environment, d) nature resources and their legal protection, e) the landscape values and their legal protection, 2) **diagnosis of the condition and functioning of the environment**, including: a) assessment of the condition of protection and use of nature resources, including biodiversity, b) assessment of the condition of landscape values' preservation and possibilities for their development, c) assessment of conformity of the existing use and development of the area with nature features and considerations, 3) **a preliminary forecast of further developments occurring in the environment**, consisting in determining the directions and a potential intensity of transitions and degradation of the environment, which may be brought about by the existing use and development, 4) **determining nature predispositions to developing functional and spatial structure**, in particular by indicating areas which should primarily fulfil nature features; 5) **an assessment of the usefulness of environment**, consisting in determining the opportunities and constraints for different types and forms of use of the area, 6) **determining the environmental and physiographic conditions**, which include in particular: a) determining the usefulness of respective lands for development of individual utility functions, including industrial, leisure and recreational one, agricultural, forest, health and resort, and communication one, b) identification of areas whose use and management, due to the features of environmental resources and their role in the nature structure of the area should be subordinated to the needs of providing for the proper functioning of the environment and for preserving biological diversity, c) determining limitations resulting from the need to protect environmental resources, or from presence of nuisance and environmental threats as well as indication of areas where those limitations occur.

- Duties within the scope of taking into accounts principles of environmental protection and sustainable development **in the carrying out of an investment** (e.g. a duty to build communication lines, overhead and air pipelines, cable lines and other linear facilities in a manner to ensure freedom of movement of animals; a duty to use land economically while carrying out the investment, a duty consisting in that an investor takes into account the protection of environment in the area where work is carried out - that is to take into account soil, greenery, landform features and water relations; making the transfer of newly-built building or rebuilt one, a group of buildings or installations into use conditional on their fulfilment of environmental protection requirements, e.g. in the case of the issue of a permit to use a road).

- An environmental compensation mechanism by which a set of activities, including in particular construction works, earthworks, infill and land-reclamation work, afforestation, reforestation or creation of flora clusters, leading to **the restoration of a natural balance** or creating flora clusters, leading to the restoration of the natural balance within a given area, to compensation of damages inflicted in the environment through the carrying out of the venture and **the preservation of landscape values** is meant.

- The obligation within the scope of ecological education, research and advertising, including a prohibition of advertising or of other types of promotion of a product or service

36 See § 6 of the Ministry of the Environment's regulation of 9 September 2002 on environmental and physiographic studies, Journal of Laws 2002.155.1298.

which contains contents promoting a consumption model which is contrary to the principles of environmental protection and sustainable development.

- Standards of environmental quality, emission standards, ecological permits as well as a system of fees and administrative penalties related therewith.
- System of civil liability, administrative liability and criminal responsibility in environmental protection law.

### ***Ecological connectivity in the Act of 16 April 2004 on nature conservation (The Nature Conservation Act, NCA)***

Scope and purposes of protection: The object of protection is *nature* including in principle all resources of nature and its elements (animate and inanimate ones as well as landscape), including in particular those referred to in art. 2 (1) of the NCA - wild plants and animals, natural habitats, habitats of protected species of plants and animals, of plants and animals leading a nomadic life –under other provisions, inanimate nature, landscape and greenery in towns (cities) and villages (nature in the broad sense). The concept of nature and the scope of protection becomes narrower when the accomplishment of objectives of nature conservation comes into being by way of creating forms of nature conservation provided for by a statute. In the latter case what is subject of protection are resources of nature and its elements having specific values, which are evaluated on the basis of objective criteria laid down in a definition of the respective forms of nature conservation (nature in the strict sense).

The scope of protection defined by the notion of nature is subject to further specification by means of legal notions contained and defined by the statute, such as a notion (relevant for the present analysis) of **natural environment** (landscape with creations of inanimate nature as well as with natural and transformed habitats along with plants, animals and fungi appearing in them), or **biological diversity** (biodiversity) - the diversity of living organisms appearing in the ecosystems, within species and between species as well as a diversity of ecosystems.

Nature conservation within the meaning of the Act denotes behavior, proper use and restoration of natural resources and its respective elements in order to: **maintain ecological processes and ecosystems' stability, preserve biological diversity (biodiversity), preserve geological heritage, ensure continuity of plant and animal species' existence along with their habitats, protect greenery in towns (cities) and villages, maintain or rehabilitate natural habitats, and natural resources and its elements to an appropriate state, as well as to develop natural resources and its elements and to develop appropriate human approach towards nature.**

### *Mechanisms that may serve to protect ecological networks/connectivity in the Nature Conservation Act:*

- A duty to take into account the requirements of nature conservation, including protected areas, in various planning documents including primarily in to take them into account in land development plans; cohesion between protection plans for sites and spatial management plans is ensured by means of the obligation to include the decisions made in the protection plan for national parks, nature reserves, natural landscape parks and Natura 2000 sites in the spatial management plans adopted at the country, voivodship and municipality [*gmina*] level.
- A duty to consider the requirements of nature conservation while conducting economic and investment activity (e.g. carrying out earthworks and other works related to the use of mechanical equipment and technical facilities in a manner which least damages trees or bushes – article 82 par. 1 of the NCA; a prohibition of erecting, close to sea, lakes and other bodies of water, rivers and canals, buildings which prevent or hinder people and wild animals to access water, with the exception of facilities for water tourism, water management, water management

and fisheries as well as facilities connected with public security and defense of the country; rationing, by way of permits, works consisting in regulating waters and in the construction of floodbanks as well as irrigation works, construction drainages and other earthworks changing water relations in areas of special natural values such as areas of natural landscape and ecological values – articles 118 and 119 of the NCA).

- Providing for inclusion of resources, creations and elements of nature into forms of protection, including the establishment of the Nature [*Natura*] 2000 sites' network, natural landscape parks, created *inter alia* because of the landscape values, or landscape protected areas, which serve as ecological corridors.

- Developing and implementing findings of protection plans for protected areas, programs of protection of species, habitats and migration routes of protected species as well as a national strategy of the Protection and Sustainable Use of Biological Diversity.

For example the subject of protection plans of Natura 2000 sites is *inter alia* maintaining the integrity of the Natura 2000 sites and of cohesion of the Natura 2000 sites' network, in particular relating to other forms of nature conservation, coinciding with the Natura 2000 site and to land development, including in particular the location of building sites possible without damage to the Natura 2000 site, technical and communication infrastructure, tourism and education infrastructure as well as areas which should be afforested and areas excluded from afforestation.

- An environmental compensation mechanism, which, when it comes to the Natura 2000 sites is to serve, *inter alia*, to ensure consistency and a proper functioning of the Natura 2000 sites' network, and when it comes to national parks or nature reserves, it is to serve *inter alia*, to restore and maintain the natural balance and to preserve landscape values.

- Conducting educational, informational and promotional activities in the field of nature conservation.

- Conducting scientific research on issues related to nature conservation.

- Protection of green areas (greenery) and reforestations by imposing legal restrictions on their removal in the form of authorizations and a system of fees and administrative pecuniary penalties and for removing trees and shrubs.

- Natural monitoring of biologic and landscape diversity carried out within the scope of a state environmental monitoring.

### ***Ecological connectivity in the Act of 18 July 2001, the Water Law Act***

***Scope and purposes of protection:*** The object of protection is surface (fresh) waters and groundwaters. The provisions of the Act apply to inland waters and maritime coastal waters. The provisions of the Act apply also to waters of the territorial sea within the scope of planning in water management, protection against pollution from land-based sources and from flooding.

Water protection regulations are based on the water management principle, in particular: the shaping and protection of water resources, water usage and water resource management pursuant to the principle of sustainable development. Other principles of water management provided for in the legislation include: **rational and comprehensive treatment of surface waters and groundwaters, taking into consideration their volume and quality**, special use of groundwaters, planning, universality of protection, prevention, increased protection of water against pollution with substances that are particularly harmful for the aquatic environment and the legal restriction of activities that may pose a risk to waters.

Moreover, water management takes into consideration the principle of common interests, reflected in cooperation between public administration, water users and representatives of local



communities in order to maximise social benefits. Water management should take into account public interests but at the same time it should prevent, if possible, any decline in the environmental functions of such water and deterioration of the state of land ecosystems and wetlands that directly depend on the water. Water management is comprised of, among other things:

- (a) the shaping and protection of water resources;
- (b) water resource management, which is implemented taking into account the division into river basins and water regions; river basins constitute the main spatial unit for water management, which determines, among other things, the legal and organisational system for water protection;
- (c) water usage (including common, ordinary and special).

All waters are protected, regardless of who owns them, as they constitute an integral part of the environment and provide habitats for animals and plants. The aim of water protection is to maintain or improve the quality of waters and biological relations in the aquatic environment and wetlands. It is implemented through specification of water quality requirements, control over their observance, reaction to their violation, establishment of statutory orders and bans related to water use, specification of emission standards as well as establishment of 'safeguard zones' and 'safeguard areas'.

*Mechanisms to protect ecological network/connectivity in the water law:*

- Taking into account water protection requirements in planning documents, including in land development plans; cohesion between water management plans and spatial management plans is ensured by means of the obligation to include the decisions made in the river basin management plans, the flood risk management plans and the drought impact prevention plans for river basins in the spatial management plans adopted at the country, voivodship and municipality [*gmina*] level.
- Taking into account the requirements of the protection of water in economic activity and investment<sup>37</sup>.
- Creation of special areas of conservation of water (water intake protection zones, protected areas inland water reservoirs), which are well established for the protection of water resources from degradation and which are related to the introduction of the ban in these areas, orders and constraints<sup>38</sup>.
- Development and implementation of management plans arrangements that serve include: achieving or maintaining at least good water status and water-dependent ecosystems, improvement of water resources put into reducing the amount of water or ground substance and energy which may adversely affect the water. In the Water and Environmental Program of the State (one of the key planning documents in the field of water) are included, among others

37 E.g. in designing, erecting and maintenance of water facilities one should be guided by a principle of sustainable development, and in particular, by maintaining good condition of waters and biocoenosis specific to them, by a need to preserve the existing terrain and biological relationships in the environment water and wetlands, weirs should allow fish migration, as long as it is justified by local environmental conditions, the prohibition of sewage into the water or the land where this would be inconsistent with the terms of the existing forms of nature protection.

38 Such as: prohibition of certain activities in the areas of indirect protection of water supplies; the prohibition of sewage into the water or the land where this would be inconsistent with the terms of the existing forms of protection zones and protected areas; a ban on erecting buildings and performing work or other activities in the areas protection, which can cause permanent land or water pollution, in particular locating investments classified projects likely to have significant effects on the environment.

appropriate steps to maintain the habitat in good condition, to the extent that it depends on the status of water<sup>39</sup>.

- Information system on water management (the so-called water registry).
- Regulating water permits interference with the status of water (required for example in the case of water regulation and changes in the lie of the land in areas adjacent to the waters, affecting water flow conditions, long-term lowering of the level of groundwater table).
- Monitoring of waters in order to obtain information on the condition of surface waters and groundwaters as well as of the protected areas.

### ***Ecological connectivity in the Act of 28 September 1991 on Forests***

***Scope and purposes of protection:*** The Act on Forests shall apply to forests, irrespective of their form of ownership. For the purposes of the Act, **a forest** is land:

- (a) of contiguous area greater than or equal to 0.10 ha, covered with forest vegetation (or plantation forest) – designated for forest production, or constituting a nature reserve or integral part of a national park, or entered on the register of monuments;
- (b) associated with forest management, but occupied in the name thereof by buildings or building sites, melioration installations and systems, forest division lines, forest roads, land beneath power lines, forest nurseries and timber stores; or else put to use as forest car parks or tourist infrastructure.

The Act on Forests sets out the principles for the preservation (retention), protection and augmentation of forest resources, as well as for the management of forests and other elements of the environment in reference to the national economy. Forest management is conducted according to the principles of: universal protection of forests, **stability of forests' maintenance, continuity and sustainable use of all functions of forests, expansion of forest resources.**

The purpose of the Act is the shape of the business of forest management to meet the criteria of sustainable forest management. **'Sustainable forest management'** is understood as *an activity seeking to shape the structure of forests and make use of them in a manner and at a rate ensuring the permanent protection of their biological diversity, a high level of productivity and regeneration potential, vitality and a capacity to serve – now and in the future – all the important protective, economic and social functions at local, national and global levels, without harm being done to other ecosystems.*

***The mechanisms which may serve to protect ecological network/connectivity in the Act on Forests:***

- Carrying out sustainable forest management based on forest management plans or simplified forest management plans, whose aim is *inter alia* the protection of forests, especially those that, with their associated ecosystems, constitute natural fragments of native nature, or else those particularly valuable in terms of: the preservation of the diversity of nature, the preservation of forest genetic resources, valuable features of the landscape. With a view to sustainable forest management being achieved, the State Forests are obliged to: (a) initiate, coordinate and make periodic assessments of the condition of forests and forest resources, as well as to forecast potential changes in forest ecosystems; (b) to engage in the periodic, large-scale inventorying of the condition of forests, as well as update records as regards forest resources; as well as to run a data bank on forest resources and the condition of forests.

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<sup>39</sup> For example, to protect, conserve and restore habitats and natural habitats and of wild fauna and flora; complex hydrological system protection by protecting the spring areas and erosion prevention.

- Forest owners' duty to ensure **the permanent maintenance of forest cover**, as well as continuity of utilisation<sup>40</sup>
- Realization of universal protection of forests by means of a duty of forest owners within the scope of developing **balance in forest ecosystems, improving the natural immunity of forests**, including *inter alia* protection of soil and forest waters.
- Establishment of **promotional forest complexes** aimed at the promotion of sustainable forest management and the protection of natural resources in forests: promotional forest complexes shall be functional areas of ecological, educational and social importance.
- Recognition of certain forests as particularly protected forests (**'protective forests'**). Forests may be *inter alia* considered protective forests where they constitute seed stands, refuges (sanctuaries) for animals or sites for plants subject to legal protection or where they are of particular natural or scientific significance.
- Development of the National Programme for **the Augmentation of Forest Cover** by the Minister of the Environment.
- A duty to take into account the findings of forest management plans in area development plans. In local area development plans an account is to be taken of the findings of forest management plans as regards the boundaries and areas of forests as regards the boundaries and areas of forests, including protective forests. A local area development plan is also to determine land designated for afforestation.
- A permanent prohibition on access to forests which are owned by the State Treasury, which constitute, among others, refuges (sanctuaries) for animals or areas threatened by erosion.

***Ecological connectivity in the Act of 3 February 1995 on the Protection of Agricultural and Forest Land (the Land Protection Act)***

*Scope and purposes of protection:* The statutory protection covers **agricultural land**<sup>41</sup> as well as **forest land**<sup>42</sup>.

The Act regulates the principles of protection of agricultural and forest land as well as those of restoration and improvement of use quality of the land. By **rehabilitating** the Act is to mean *giving or restoring to degraded or devastated land utility values or natural values by appropriately shaping the lie of land, improving the physical and chemical properties, regulating water relations, soil restoration, strengthening embankments and constructing or constructing necessary roads.*

*The mechanisms which may serve to protect ecological network/connectivity in the Act on the Protection of Agricultural and Forest Land:*

- quantitative protection of agricultural and forest land by preventing and reducing their use for non-agricultural and non-forest purposes;
- quality protection implemented by preventing the degradation and devastation processes of agricultural and forest land, land rehabilitation, restoration of land use value, preservation of

<sup>40</sup> It consists, in particular: in preserving forest vegetation (plantations) in forests, as well as natural marshlands and peatlands; in tending and protecting forest, including against fire; in making rational use of forest in a manner permanently ensuring optimal discharge of all the functions thereof.

<sup>41</sup> Arable land, land for fish ponds and other water reservoirs reserved solely for agricultural purposes, the land beneath the buildings belonging to the farm, the land beneath the buildings used in agricultural production, rural parks, mid-field trees and bushes, allotment gardens, botanical gardens, land underneath water and wastewater infrastructure for village purposes, the land rehabilitated for agricultural purposes, bogs and ponds, land under approach roads leading to the very land.

<sup>42</sup> Land defined as forests in the Act on Forests, land rehabilitated for forest management purposes, land under approach roads leading to the very forest land.

peat bogs and ponds as natural water reservoirs, limiting changes in natural lie of the land surface.

### ***Ecological connectivity in the Act of 13 October 1995 Hunting Law***

***Scope and purpose of protection:*** The Act covers the protection of wild game which in their free state constitute the national joint property. The Act defines **hunting** as an element of protection of natural environment and denotes the protection of wild game (game) and the management of their resources in **accordance with the principles of ecology and the principles of rational agriculture, forestry and fishing management**. The aim of hunting is *inter alia* protection, preservation of diversity and management of wild game and the protection and development of the natural environment in order to improve the living conditions of game. Meanwhile, **hunting management** constitutes activity within the scope of protection, breeding and taking of animals.

#### ***The mechanisms which may serve to protect ecological network/connectivity in the Hunting Law:***

- principles of managing wild game populations which require, *inter alia*, preservation of existing natural bodies of water, reconstruction and the creation of the new one, rational use of chemicals in agriculture and forestry, **maintaining ecological corridors (routes) for animals**; maintaining age and gender structure as well as numerical structure of the population of animals which are relevant to **ensure balance of ecosystems**, game protection from the risk posed by traffic of motor vehicles on national and voivodship roads;
- creation of hunting district while taking at the same time into account the principles of optimum fulfilment of the needs for protection, preservation and development of preferred species of game, avoiding to divide water reservoirs, determining the course of boundaries in a manner which follows natural or clear field signs.

### ***Ecological connectivity in the Act of 19 February 2004 on Fishery***

***Scope and purpose of protection:*** The purpose of the Act is to ensure the rational exercise of fishery, including the protection of living marine resources.

#### ***The mechanisms which may serve to protect ecological network/connectivity in the Act on Fishery***

- scheduled restocking of Polish marine areas - carried out in order to maintain and restore fish stock
- a possibility of establishing permanent protection districts or protection districts for a specified period of time.
- ability to set sizes and periods of protection of marine organisms and on a detailed manner or carrying out marine fishery.

### ***Ecological connectivity in the Act of Inland Fishery Journal of Laws 2009.189.1471 as amended).***

***Scope and objectives of protection:*** Subject to protection is fish and other aquatic organisms. The Act sets out the principles and conditions for protection, breeding, pisciculture and fishing in inland waters, in waters which are in water facilities and in facilities intended for breeding and pisciculture.

#### ***The mechanisms which may serve to protect ecological network/connectivity in the Act on Inland Fishery:***

- protection and restoration of fish stock in waters, with the exception of fish species that are protected under the provisions on nature conservation, carried out by the **rational management of resources, including undertaking actions to maintain, reconstruct or restore the proper state of the resources and of nature relationship between their respective elements in accordance with the principles of sustainable development;**
- rationing of entry into waters fish of foreign species and fish which is not recognized as foreign, but brought about negative impact on environment while taking into account protection of biological diversity.

### ***Ecological connectivity in the Act of 27 March 2003 on Spatial Planning and Land Development (SPLD)***

***Scope and purpose of protection:*** The Act defines the scope and manners of conduct in matters of allocating land for **determined purposes and of establishing the principles of their development while adopting spatial order and sustainable development as the basis for these actions.**

***Spatial order*** under the Act is understood as *such a development of space, which fits together into a harmonious whole, and takes into account in ordered relations all circumstances and functional socio-economic, environmental, cultural and compositional and aesthetical requirements.*

‘The basis of the principle of sustainable development is to mark off within the entire planning space, i.e. within the area covered by a study, or a local area development plan, the areas where investment may be allowed without provoking negative effects by way of disturbing natural balance and compromising basic natural processes in close, but also in a very distant future’<sup>43</sup>.

Space management in accordance with the principles of spatial order and sustainable development determines a possible extent of establishing the boundaries of areas and conditions for their development, including the prohibition of building development which must take into account the requirements of environmental protection. The principle of sustainable development in spatial planning is also rightly seen as a direct instrument of principles of protection and management of sites/areas not covered by formal legal protection, and requiring special principles of using natural resources<sup>44</sup>.

### ***The mechanisms which may serve to protect ecological network/connectivity in the Act on Spatial Planning and Land Development:***

- A duty that in national plans (the concept of spatial development for the country), in regional plans (strategies of voivodship development) or in the local ones (in a study of municipality [gmina] conditions and directions of land development and in local area development plans) – inter alia spatial order requirements, landscape values, environmental protection requirements (including water management and protection of agricultural and forest land) as well as requirements of protection of cultural heritage and monuments as well as of contemporary culture assets be taken into account<sup>45</sup>.

43 See J. Perzanowska, M. Makomaska-Juchiewicz, G. Cierlik, W. Król, S. Tworek, B. Kotońska, H. Okarma, *Ecological corridors in Małopolska [Lesser Poland]*, p. 47.

44 A Strategy of Implementing a Country Ecological Network ECONET-POLSKA. Strategia wdrażania krajowej sieci ekologicznej ECONET-POLSKA, A joint publication edited by A. Liro, p. 60.

45 These general criteria are subject to further specification regarding the plans adopted at the national, regional or local level in which the following issues are taken into account, or specified: the requirements from within the scope of protection of monuments; determinants resulting from the state of environment, including the state of the agricultural and forestry production; quantity and quality of water resources; requirements of protection of nature and of cultural landscape; the system of protected

- A duty to agree on a draft plans with environmental protection organs.
- Strategic environmental impact assessment carried out before the adoption of development plans at each level.

Of particular importance are the local are development plans whose object is to determine the purpose of land, distribution of public-purpose investment and specifying manners of development and conditions of building development of land which alone are of binding nature.

**A local plan constitutes an act of local law and the findings contained therein develop along with other provisions, a manner of performing the ownership right of a real property.**

In the absence of a local area development plan a determination of manners of development of an area as well as of conditions of building development comes into being by way of a decision on the site location of a public-purpose investment or a decision on building conditions and site management, which *inter alia* determines the conditions and detailed rules for the development of an area and its building resulting from separate provisions, including that within the scope of conditions and requirements for the protection and development of spatial order, protection of the environment and human health as well as protection of protection of cultural heritage and monuments as well as of contemporary culture assets have to be considered.

In order to determine the spatial policy of a municipality, including local principles of spatial planning **a study of conditions and directions of a municipality's land development** is drawn up, taking into account the principles set out in the concept of spatial development for the country, findings of a strategy of voivodship development and of a voivodship area development plan as well as in a strategy of a municipality's development provided that the municipality possesses such a study.

**The study takes into account determinants resulting, *inter alia*, from:** current purpose land development and links of the area to the mains; the state of spatial order and the requirements for its protection; the state of environment, including the state of agricultural and forestry production space; size and quality of water resources and requirements of protection of environment, nature and cultural landscape; the state of cultural heritage and monuments as well as of contemporary culture assets; the presence of facilities and areas protected under separate regulations; tasks which serve the carrying out of the supra-local public purposes (to which one should include protection of environment). **The study defines in particular:** directions of changes in the spatial structure of the municipality and of the land purpose; directions and indicators regarding development and use of the areas, including areas excluded from building developments, areas and principles of environmental protection and its resources' protection, nature conservation, protection of cultural landscapes and health resorts; areas and principles of protection of cultural heritage and monuments as well as of contemporary culture assets; directions and principles of development of agricultural and forestry production space, areas requiring transformation, rehabilitation or restoration, other problem areas, depending on conditions and needs.

**The findings of the study are binding for a municipality's authorities in preparation of local plans.** In turn, a local area development plan shall compulsorily include *inter alia*: a) purpose of areas and lines demarcating areas serving different purposes or having different management principles, b) principles of protection and development of spatial order, c) principles of protection of environment, nature and cultural landscape; d) principle of protection of cultural heritage and monuments as well as of contemporary culture assets; e) limits and

areas, including the areas of environmental protection, of protection of natural and cultural landscape, protection of health resorts as well as requirements of protection of cultural heritage and monuments as well as of contemporary culture assets.

methods of developing areas or facilities subject to protection, as determined on the basis of separate provisions; f) special conditions of areas' development and restrictions on their use, including a prohibition on building development; g) rules for modernization, expansion and construction of communication systems and technical infrastructure. Depending on the needs, borders of recreational and holiday areas (which may also often function as ecological corridors<sup>46</sup>) are also determined<sup>47</sup>.

### ***Ecological connectivity in the Act of 7 July 1994 Building Law***

Scope and purpose of protection: The Act governs the activities which include the design, construction, maintenance, and demolition of building objects (works), and defines the rules of operation of public administration organs in those areas of activity (Article 1 of the Act). The Act is to provide guarantees of the right to real property development by a person holding a relevant legal title (the right to use the real property for building purposes) subject to compliance of the planned building project with the provisions of law, including provisions of environmental protection laws.

The mechanisms which may serve to protect ecological network/connectivity in the Building Law Act:

- Environmental protection, including protection of elements of natural and cultural environment as well as conservation of protected areas along with their buffer zones constitutes a criterion for legal assessments in cases involving the matters of design, construction, maintenance and demolition of building objects as well as in the activities of public administration organs conducting proceedings in this area.
- Re-assessment of environmental impact carried out within the scope of the issue of a building permit.

### ***Ecological connectivity in the Act of 3 October 2008 on access to information about environment and its protection, public participation in environmental matters and environmental impact assessments (The Act on access to information about environment)***

Scope and objectives of protection: The Act sets out the rules and procedures regarding: rendering accessible information about environment and its protection, environmental impact assessment, transboundary environmental impact, public participation in environmental protection matters.

The basic mechanism which serves to protect the ecological network/connectivity in the above-mentioned Act are the strategic environmental impact assessments and individual environmental impact assessments (for more, see point III.11 of the study).

### ***Ecological connectivity in the Act of 13 April 2007 on the prevention and remediation of environmental damage***

Scope and objectives of protection: The Act introduces a mechanism of public law proprietary liability in the case of a threat of damage to environment or in the case where there appears damage to environment caused by an activity of an entity making use of environment, posing a

46 J. Perzanowska, M. Makomaska-Juchiewicz, G. Cierlik, W. Król, S. Tworek, B. Kotońska, H. Okarma, *Ecological corridors in Małopolska [Lesser Poland]*, p. 47.

47 Requirements of a study of municipality [*gmina*] land development (land-use planning) conditions and directions, and local area development plans (land-use planning) concerning conditions of maintaining nature balance and rational management of environmental resources, are determined on the basis of **environmental and physiographic studies**, accordingly to **the type of document prepared, features of individual elements of nature, and their relationships (art. 72 of the EPL Act)**.

threat of environmental damage or by another business entity making use of environment, if the threat or damage relates to protected species and protected natural habitats and it was caused by fault of an entity making use of environment.

By **damage to environment** the following is meant: *a negative, measurable change in the state or function of elements of nature, assessed in relation to the initial state, which was caused directly or indirectly by the activities carried out by an entity making use of environment: in the protected species or protected habitats, in waters, in surface of the ground.*

*Mechanisms which may serve to protect ecological network/connectivity in the above-mentioned Act* are duties to undertake **corrective actions or preventive actions** in the case of a threat or where damage to the environment arises (for more, see point III.9 of the study).

### **Landscape**

Landscape protection is provided by the Nature Conservation Act, according to which:

- landscape protection consists in maintaining the characteristic features of the given landscape;
- natural environment which is subject to protection by the above-mentioned Act consists in landscape along with creations of inanimate nature and the natural and transformed natural habitats along with plants, animals and fungi appearing therein;
- landscape values are ecological, aesthetic or cultural values of an area as well as the lie of the land, creations and elements of nature connected therewith, developed by natural forces or human activity;
- external or internal threat is a factor that may cause adverse changes to landscape values within the areas or facilities which are subject to legal protection.

*The mechanisms which may serve to protect ecological network/connectivity in the Nature Conservation Act* serve directly to protect landscape values which fall under the concept of 'nature conservation'. Among them we may distinguish those that are primarily focused on the protection of the landscape;

- creation of parks and protected landscape areas or natural and landscape complexes (the latter protect elements of natural and cultural landscape worthy of protection because of their scenic or aesthetic values) and a protection regime associated with these forms of nature conservation, other forms of nature conservation such as a national park or a nature reserve (within which areas covered by landscape protection are singled out) also serve to maintain landscape values,
- protection plans for protected areas whose object is, *inter alia*, landscape development,
- determination by the Minister competent for transport by way of a regulation technical and natural conditions of setting of reforestation within the roadway, manners of their protection and the choice of species of trees and shrubs; the minister, while issuing a regulation is guided, *inter alia*, by the need to protect landscape and biodiversity,
- natural monitoring of biological diversity and landscape diversity, which consists in observation and assessment of the status and changes occurring in the elements of biological and landscape diversity,
- rationing of the carrying out, in the areas of landscape values, works consisting in regulation of waters and construction of floodbanks as well as well as irrigation works, construction drainages and other earthworks changing water relations in areas by way of a permit issue by an organ of environmental protection.



**At the same time landscape protection is provided by other acts, in which the protection of landscape constitutes the criterion for legal assessments.** The following issues may serve as an example:

- **the EPL Act**, which defines the notion of environment and it also covers the landscape by the very notion, which means that the protection of the landscape is also carried out by varied environmental instruments provided for by statute. The EPL Act also defines the notion of environmental mitigation by which it means a series of actions, aimed inter alia at preserving landscape values; it also introduces a general duty to take into account landscape values in spatial planning and in implementing investments;
- **the Spatial Planning and Land Development Act**, in which a duty to take into account and to include into spatial plans requirements of culture landscape protection was determined;
- **the Act on access to information about environment**, according to which the protection of areas whose landscape has historical, cultural or archaeological importance is a prerequisite to adjudicate on a duty to carry out SEA or an EIA, or lack thereof in a given case; protection of landscape is object of strategic environmental impact assessments (SEA) and individual environmental impact assessment (EIA) and reports drawn up within their framework on the impact on the environment or the environmental impact assessment;
- **the Act on Environmental Damage** which defines the corrective actions as those actions that lead, inter alia, to restoration of natural balance as well as of landscape values in a given area;
- **the Act on Forests**, according to which a permanently sustainable forest management is carried out while taking into account an aim in the form of protection of forests, especially forests and natural forest ecosystems, which constitute fragments of native forests or forests especially valuable because of the landscape values;

A special role in protection of the landscape is also played by the Law on the Protection of Monuments and on Monuments' Care (see more at point III.4 of the study).

Landscape protection is also object to protection of the following conventions ratified by Poland: the Framework Convention on Protection and Sustainable Development of the Carpathians in 2003 and the European Landscape Convention of 2000.

### ***Transport***

In order to reduce the negative impact of transport on environment a number of regulations are introduced in the Polish legislation, which relate to: 1) ensuring the least possible impact of an investment on transport infrastructure on environment, 2) ensuring the appropriate technical level of the vehicles, their environmental performance, 3) promotion of ecological means of transport 4) tax policy.

From the point of view of ecological network/connectivity of special significance are duties within the scope of taking into account environmental protection requirements in the investment process. The basic instruments are strategic environmental impact assessments (SEA) at a stage of planning road infrastructure or railway infrastructure and individual environmental impact assessment (EIA) at the stage of location decisions, construction decisions or decision permitting the use of the road.

*Mechanisms which may serve to protect ecological network/connectivity are included in respective laws of the various road investments:*

- **in the Act of 28 March 2003 on Railway Transport**, according to which a decision on location of the railway line includes in particular the conditions resulting from the legally protected

needs of environmental protection, of monuments' protection as well as of culture assets' protection;

- *in the Act of 16 December 2010 on Public Mass Transport (Journal of Laws Dz.U.2011.5.131)* which: (a) defines the term 'sustainable development of public mass transport', understood as a process of transport development taking into account public expectations which regard ensuring universal access to public transport services, leading to the use of different means of transport, as well as promoting environmentally friendly means of transport, equipped with modern technical solutions, and (b) requires that a plan for sustainable development of public mass transport be drawn up, at whose development one should inter alia take into account the impact of transport on environment;

- *in the Act of 10 April 2003 on Special Rules of Preparation and Carrying Out Investments Within the Scope of Public Roads*, which requires environmental protection requirements be taken into account in the course of the investment process and while issuing investment decisions (in proceedings for granting permit to carry out a road investment or on a permit to use a road);

- *In the Act of 21 March 1985 on Public Roads*, which introduces the institution of the **road traffic safety audit** as a mechanism of managing road safety in the trans-European road network. Road traffic safety audit is to be carried out during the investment process and in the course of decisions issued in its framework<sup>48</sup>. In carrying out road traffic safety audit in particular **the designed passageways for animals and other environmental protection facilities** are to be taken into account.

### **Tourism**

Several acts regulate legal issues connected to the protection of tourist attractions (values). The basic legal act is the Act of 29 August 1997 on Tourist Services, the other ones are the Spatial Planning and Land Development Act, the Environmental Protection Law, the Nature Conservation Act, the Act on Forests, the Act on the Protection of Monuments and Preservation of Monuments as well as the Act of 28 July 2005 on Health Resort Care, on Health Resorts and on Areas as well as on Health Resort Communes, the Act on Information of Environment<sup>49</sup>.

The notion of tourist values is not used in legal acts but **it is defined in relation to the legal notions such as 'qualities of environment, landscape values, architectural values, monuments, cultural landscape, contemporary cultural assets'**<sup>50</sup>. In this context, measures of protection of tourist values are the measures which are defined in the above-mentioned laws, which directly regulate the issues of tourism in protected areas (natural, health resort or monument protection areas) or outside such areas or which indirectly protect tourist attractions by protecting environmental, landscape, architectural, historical, cultural landscape values, or contemporary culture values.

According to the typology of legal measures protecting tourist attractions proposed in the literature, in addition to instruments of spatial planning, the following measures are indicated to: administrative law measures introduced and applied in special areas (prohibitions, area management, planning acts) and outside such areas (in the form of orders, prohibitions or limitations); environmental impact assessments or assessments of impact on the Natura 2000

48 A decision on environmental conditions, a decision on permission for the execution of a road investment, the decision on a building permit or before the carrying out of the works is declared, a decision on a permit to use a road or a notice of completion of the construction or reconstruction of a road.

49 Cf. W. Radecki, Protection of tourist values in the Polish law, LEX a Wolters Kluwer; Warszawa 2011, p. 33, 321.

50 *Ibid.*, p. 35.

site (area); public participation in the protection of tourist values as well as legal liability for threat or violation of tourist values<sup>51</sup>. **Protection of tourist values is also linked to the promotion of sustainable tourism, a notion, which, even though not used in the acts of law, derives from the concept of sustainable development**<sup>52</sup>.

In this context, the previously described mechanisms aimed at protection of ecological connectivity in the above-described acts constitute at the same time an instrument for protecting tourist values and for pursuing sustainable tourism, including the implementation of everyone's right to enjoy the environment without any installation in order to meet the personal needs as well as household needs goods, including those connected with leisure and sports. Additionally, one may point out to:

- as **specified in the EPL Act**: (a) obligation to indicate, in local plans, areas which are designed for recreational and leisure purposes, (b) the ability to restrict or prohibit the use of boats on water bodies and on flowing water, if it is necessary to ensure adequate acoustic conditions in the areas intended for recreational and leisure purposes, (c) increased fees which are incurred in relation to disposal of waste within the recreational and leisure areas;
- the following **principles which are indicated in the Nature Conservation Act**: a) the principles of making available protected area, including restrictions on the use of national parks and nature reserves to cases where it will not adversely affect nature, (b) the principles of charging a fee to enter a national park or a nature reserve, (c) the principles of drawing up protection plans of a national park, a nature reserve as well as a natural landscape park, which areas and places being made available for tourist, recreation, sports, amateur fishing and fishery purposes are indicated as well as manners of making them available;
- a **right (due to everybody) to common use of inland surface public waters, of internal maritime (sea) waters along with internal maritime waters of the Bay of Gdańsk [Zatoka Gdańska], and the waters of the territorial sea**, unless the regulations provide otherwise, common use of waters serves to meet the personal needs, household needs or agricultural ones without the use of special technical equipment, and it serves leisure, tourism, water sports and, under the terms of separate provisions, amateur fishing. (cf. article 34 (1) and (2) of the Water Law Act);
- making forests owned by the State Treasury **commonly available** (guaranteed by the Act on Forests) even though with a possible limitation of such an access by a permanent or temporary prohibitions on access to forests owned by the State Treasury because of the nature conservation needs.

### **2.2.3 Integration of ecological connectivity in key processes and sectors (See Questionnaire 1.2)**

The issue of the integration of ecological networks in sectors has already been discussed with regard to the sectors of: transportation, land use, water management, forestry, fishery, tourism and agriculture.

Some remarks of integration of ecological networks in energy policy may be mentioned here. According to the State Environmental Policy until 2030 adopted by the Council of Ministers on 10 November 2009, the basic energy policy directions include, among other things: improving energy efficiency, developing renewable energy sources, including biofuels, and reducing the impact of energy on the environment. Implementing actions in accordance with these directions,

<sup>51</sup> *Ibid* p. 41-43.

<sup>52</sup> *Ibid*, p. 24.

the energy policy will seek to increase the country's energy security **while maintaining the principles of sustainable development.**

Support will be provided to sustainable use of respective forms of energy from renewable sources. The main objectives of the energy policy in the field of renewable energy sources include on the one hand increasing the share of renewable sources of energy in the final energy consumption and achieving, in 2020, a 10% share of biofuels in the transport fuel market, increasing the use of second-generation biofuels, **and on the other hand, protection of forests against their excessive exploitation in order to obtain biomass and sustainable use of agricultural areas for the purposes for the purposes of renewable energy sources'] including biofuels, so as not to lead to competition between renewable energy and agriculture, and to maintain biodiversity.**

Ensuring the protection of environment, including biodiversity in the investment process is primarily carried out by way of the strategic environmental impact assessment (SEA), which are carried out at the stage of spatial planning as well as by individual environmental impact assessments (EIA) and/or assessment of impact on Natura 2000 sites, which are carried out at the stage of issuing investment permits to carry out the planned investment projects, which may always or potentially exert significant effects on environment as well as other projects whose implementation may have significant effects on Natura 2000 sites and which are not directly related to the protection of the area or which do not result from such protection (in which case an assessment is limited to the possible impact of the investment on a Natura 2000 site).

SEA and EIA, as well as assessments of the impact on a Natura 2000 site provide the most comprehensive warranty of protection of natural values, including biodiversity.

Completion of ventures likely to have (always or potentially) significant effects on environment requires obtaining a special decision, i.e. a decision on environmental conditions of consent for the completion of the venture. The investor is required to obtain a decision on the environmental conditions before applying for further investment decisions defined by the law (e.g. location decision and a building permit) and the environmental conditions for the proposed venture set out in it bind the organs issuing decisions at consecutive stages of the investment process. Within the framework of the proceedings for decision on environmental conditions EIA including assessment of impact on Natura 2000, if necessary, sites is carried out.

Meanwhile, within the framework of the proceedings for a building permit, a so-called re-assessment of the impact on environment may be carried out.

Completion of ventures unlikely to have (always or potentially) significant effects on environment but whose implementation may have significant effects on Natura 2000 sites and which are not directly related to the protection of the area or which do not result from such protection requires the obtaining of a permission. Within the framework of the proceedings for this decision assessment of impact on Natura 2000 is carried out.

In both cases the investor also bears a duty to obtain the required regulatory permits to make a specific use of environment (for example, a permit to remove trees and shrubs, a permit for derogation from prohibitions applicable in a protected area, water permit, etc.)

**In cases where the proposed investment does not require an environmental impact assessment or assessment of its impact on a Natura 2000 site, integration of environmental protection requirements in the investment process is guaranteed** firstly by a legal duty to take them into account in location proceedings or in building permit proceedings , and secondly – by a duty to agree on investment decisions with environmental protection organs (obligation to agree on a location decision for ventures located in protected areas or their buffer zones with

nature protection organs); thirdly - by an investor's duty to obtain additional permits required by law for a specific use of the environment (see above).

By way of an example one may indicate the Building Law Act's regulations and manifestations of the integration of environmental (natural) requirements at the design, construction and operation of a building object, at the stage of issuing a building permit as well as at the demolition stage, contained therein:

(a) Integrating environmental requirements (natural) for the design, construction and operation of a building facility is carried out by:

- a duty to design and construct a building facility together with associated building devices to ensure compliance with the basic requirements concerning, *inter alia*, the protection of the environment;
- a duty to draw up a design project in accordance with the arrangements set out in the decision on environmental conditions (if it is required);
- duties of a site manager, which include taking over the construction site from an investor and ensuring its adequate protection, together with the protected elements of the natural and cultural environment located thereon,
- a duty to use a building facility in a manner consistent with the requirements of environmental protection;
- if it is found that a building facility may pose a threat to human life or health, safety of the property, or the natural environment, or spoils the appearance of the surrounding area, the competent organ orders, by decision, to remove those non-compliances within the prescribed period.
- a possibility of suspension of carrying out construction works carried out without a required building permit or in a manner likely to cause threat to environment.

(b) Integrating environmental (natural) requirements when issuing building permits

According to the Building Law Act, performing construction works is rationed by way of a building permit or a notification or it is not subject to legal rationing at all (the Act defines the cases in which a building permit is not required). These principles are modified by imposing, *ex lege* or by virtue of a decision, a duty to have a building permit due to the need to protect the environment. By way of an example, one may indicate to:

- a duty to always obtain a building permit in the case of ventures which require an environmental impact assessment, as well as ventures requiring an impact assessment on a Natura 2000 site, and in each case following an assessment of the venture's impact on environmental or an assessment of the venture's impact on a Natura 2000 site;
- possibilities to impose a requirement to obtain a building permit for completion of a specific building facility or notifiable construction works, if their completion may result in deterioration of environment's state or the state of monument's preservation;
- a duty to obtain a building permit for constructions works used to dam water and control the flow of water with the damming heights below 1 meter, located inside navigable rivers and the area of national parks, nature reserves, and national scenic areas, and their buffer zones;
- a duty to obtain a building permit for construction of specific land drainage systems, located within the area of national parks, nature reserves, and national scenic areas, and their buffer zones;

(c) Integrating environmental (natural) requirements at the demolition of buildings

- possibilities of imposing an obligation to obtain a permit for demolition of building facilities (where the Act does not require such a decision) if demolition of these facilities may result in deterioration of water relations and the state of environment;

- a possibility of obtaining a permit for demolition of a building facility only after carrying out an assessment of the venture's impact on environmental or an assessment of the venture's impact on a Natura 2000 site, if it is required by law.

#### **2.2.4 Conservation of cultural landscapes and historic sites in national legislation (See Questionnaire 1.2)**

Firstly, provisions on conservation of cultural landscape and historical sites are first of all included in the Constitution, including in its preamble, in which an obligation to bequeath to future generations all that is valuable from an over one thousand years' heritage, as well as in art. 5 {The Republic of Poland shall safeguard (...) the national heritage (...)}, in art. 6 [(The Republic of Poland shall provide conditions for the people's equal access to the products of culture which are the source of the Nation's identity, continuity and development (para. 1); the Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage (para. 2)], and in art. 73 (the freedom to (...) enjoy the products of culture, shall be ensured to everyone).

Secondly, such provisions are also contained in international agreements ratified by Poland: the Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985); the European Convention on the Protection of the Archaeological Heritage (La Valetta, 1992); the Convention concerning the Protection of the World Cultural and Natural Heritage (Paris 1972); the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention and in the Protocol for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954).

Thirdly, provisions on conservation of cultural landscape and historical sites are subject to the ordinary law along with executive act issued and on the basis thereof. Of important role is the Spatial Planning and Land Development Act as well as the Act on the Protection of Monuments and Preservation of Monuments.

Under **the Spatial Planning and Land Development Act** requirements of protection of cultural heritage and monuments as well as contemporary culture assets are to be taken into account at every level of spatial planning. 'Contemporary culture assets' constitute *'cultural assets which are not historical monuments, such as monuments, sites of remembrance, buildings, their interiors and details, complexes of buildings, urban and landscape planning schemes, which constitute recognized achievements of contemporary generations if they are characterized by high artistic or historical value'* (Article 2, point 10 of the Spatial Planning and Land Development Act).

Projects introduced and changes applied to local area development plans need to be agreed on with a competent voivodship building conservation officer as to issues of shaping building development and land development, whereas location decisions require an agreement with a voivodship building conservation officer in respect of areas and facilities covered by forms of protection of monuments. Two provisions of the Act on the Protection of Monuments and Preservation of Monuments correspond with such a duty. Article 4 states that *the protection of monuments consists, in particular, in that organs of public administration undertake actions aimed at taking into account protection tasks in spatial planning and land developments as well as at development of environment* and art. 18 of the Act on the Protection of Monuments and Preservation of Monuments, which contains a duty to take into account the protection of monuments and preservation of monuments in the process of preparation of any studies, plans and decisions in the field of spatial planning and development.

Integrating requirements of preservation of monuments in spatial planning or in the proceedings on the issue of a location decision comes into being by: 1) taking into account a national programme for the protection of monuments and preservation of monuments (adopted by the Council of Ministers), 2) determining solutions necessary to prevent threats to monument, to ensure their protection in the process carrying out investments and to restore monuments to their best possible conditions, 3) determining the purpose and principles of area development taking into account preservation of monuments.

**The basic legal act in this area is the Act of 23 July 2003 on the Protection of Monuments and Preservation of Monuments (Journal of Laws 2003.162.1568).**

The Act defines the subject, scope and forms of protection of monuments and of their preservation, the principles of creating the national program for the protection of monuments and preservation of monuments, the financing of conservation and restoration works, and organization of monuments' protection organs.

The Act defines the basic legal notions, including the notions of: 'a monument', 'a real property with historic designation', 'a movable historic object', 'an archaeological monument', 'a historic urban and rural layout', 'a historic building complex' and the notion of 'a cultural landscape', **which means *space historically shaped by human activity, containing products of civilization and elements of nature.*** Important, from the point of view of monuments' protection is also a definition of the notion of 'surroundings', which means *any area designated around a monument or beside it for the purpose to protect the scenic value of the monument as well as for its protection against harmful influence of external factors.*

The Act sets out an exhaustive list of legal forms of protection of monuments of conservation character. These are: an entry in the register of monuments, recognition as a historic monument, creation of a cultural park, establishment of protection in a local area development plan or in a decision on location of a public purpose investment, a decision on building conditions, a decision on authorization of completing a road investment, a decision on location of the railway line or decision on authorization of completing an investment within the scope of an airport for public use.

**A cultural park provides for the fullest protection of the cultural landscape.** A cultural park may be created by a municipality council by way of a resolution, following consultation with a voivodship building conservation officer. The purpose of creating a cultural park is **to protect a cultural landscape and to preserve the landscape areas, distinctive from a landscape point of view and which have real properties with historic designation characteristic of the local building and settlement tradition.** Such an aim is accomplished by way of limitations which the area is subjected to. They relate to conducting investment activity, conducting business activity, making use of the property, placing signs, advertisements, or disposal of waste.

**Protection of monuments is also subject to further acts, such as:**

- the Act of 21 August 1997 the Real Property Management Act, which enables expropriation of a real property for tasks related to preservation of monuments;
- the Environmental Protection Law Act in the section devoted to the Earth's surface protection; the Earth's surface protection was determined as the provision of the best possible land quality, *inter alia* through preserving cultural values, with regard to archaeological heritage;
- the Nature Conservation Act, which *inter alia*, subject removal of trees and shrubs from areas covered by protection of monuments to legal rationing by way of permission of a competent voivodship building conservation officer with a simultaneous duty to pay a fee for removal of trees raised by 100% (Article 85 (6) of the Nature Conservation Act).

### 2.2.5 Land use compatible with biodiversity conservation in national legislation (See Questionnaire 1.2)

The Constitution of the Republic of Poland guarantees a right to ownership, which may only be limited by means of a statute and only to the extent that it does not violate the substance of such right. A premise for restricting the very right may *inter alia* be protection of environment (art. 31 (3) of the Constitution of the Republic of Poland).

Provisions on forms of land use compatible with the principles of environmental protection and conservation of biodiversity are contained in different acts – both environmental ones as well as others. Some of them have been already mentioned in previous parts of the report.

The starting point should be the provision of art. 6 (1) and (2) of the Spatial Planning and Land Development Act, in which **the principle of a limited right to develop the land to which one has their legal title was expressed**<sup>53</sup>:

*The findings of the local area development plan shall develop, along with other provisions, a manner to perform a right of real property ownership (para. 1)*

*Everyone has the right, within the limits provided for the law, to develop the area to which they have a legal title in accordance with the conditions set out in a local area development plan or in a decision on building condition and site management land, if it does not violate the public interest as well as the third parties' interest protected by the law (...)' (para. 2)*

**These limitations result**, therefore, firstly – **from findings of the local plan**, secondly - **from the other provisions**, including *inter alia* the provisions of: the Polish Civil Code (pursuant to art. 140 of the Civil Code, *Within the limits specified by statute and the principles of community coexistence the owner may, to the exclusion of other persons, use the thing in conformity with the social and economic purpose of his right, in particular he may collect profits and other proceeds from the thing. He may dispose of the thing within the same limits*) the Environment Protection Law Act, the Nature Conservation Act, the Water Law Act, the Building Law Act, the Real Property Management Act, the Act on the Protection of Agricultural and Forest Land, the Act on the Protection of Monuments and Preservation of Monuments; thirdly – due to **the need to implement the public objectives**, among which Real Property Management Act enumerates construction and maintenance of facilities and devices serving environmental protection as well as protection of endangered species of animals or plants and natural habitats; their implementation may result in the expropriation of the property.

*(a) Limits resulting from local plan:* The Spatial Planning and Land Development Act adopts **spatial order** and **sustainable development** as the basis for planning activities. Spatial plans developed at different levels and with different degrees of detail are decisive as to the directions of use of a given area, including its use for agricultural purposes, as well as for forestry, industrial, construction, infrastructure, recreation, and natural purposes. A special role in this respect is played by **a local area development plan**, in which the purpose of a given land, distribution of public-purpose investment and specification of manners of development and conditions of building development of land are determined. In its absence it occurs in a so-called location decision.

As it was described above **the findings of a concept of land development for the country**, which sets out the objectives and aims of **sustainable development** of the country including the requirements from within the scope of environmental protection and monuments' protection, including the areas which are subject to protection as well as **the findings of a land**

53 Maciej Kruś, Zbigniew Leoński, Marek Szewczyk, Law on spatial development, LEX, 2012.



**development plans for a voivodship**, which is an instrument for development and carrying out a regional spatial policy from the perspective of the region **are taken into account in a local area development plan** (the so-called principle of a three-stage, internally consistent system of spatial planning acts<sup>54</sup>).

A local area development plan, whose adoption is preceded by drawing up of a study of municipality [*gmina*] land development conditions and directions (see above), which is drawn up in relation to environmental and physiographic studies (see above), conditions for maintaining the balance of nature and the rational management of environmental resources are ensured, by taking into account the needs for nature conservation, for protection of air, water, soil, earth, protection against noise, vibration and electromagnetic fields, environmental and landscape values and climatic conditions, by providing a comprehensive solution to problems of building development of towns (cities) and villages, with a particular emphasis on water, waste water, waste management, transport systems and public transport as well as designing and shaping the greenery area.

Consequently, the effect of the adoption of a local plan, or the changes thereto may be qualified limitations in the use of a real property or a part thereof, for reasons connected with the protection of environment (e.g. its presence of the area covered by protected areas' plan), which allows the owners to lay certain claims (for damages, for having the real property bought out, the realization of these claims may also occur through the exchange of real properties) on the basis of art. 36 of the Spatial Planning and Land Development Act.

*(b) Limits results from the Environmental Protection Law Act: The EPL Act in its art. 130 and in subsequent ones introduces a mechanism of legal protection in the event of a **limitation of use of a real property in relation to environmental protection**, which may come into being by: 1) the introduction of restrictions in accordance with the Law on Spatial Planning and Development, 2) granting protection to areas or sites pursuant to the provisions of the Nature Conservation Act, 3) determining the conditions for using water of a water region or catchment area and establishing protected areas of inland water reservoirs pursuant to the provisions of the Water Law Act; 4) designating quiet areas in an agglomeration and quiet areas in open country.*

Protection is achieved by a right to demand a buy-out of a real property or to demand damages. A source of limitations and the basis for seeking the aforementioned claims is the establishment of a restricted use area and of industrial zones - these institutions, however, do not serve the conservation of biodiversity.

An example of a regulation regarding compatible land use may also be the provisions addressed to entities making use of environment, particularly when carrying out an investment. For example, in accordance with articles 74 and 75 of the EPL Act *in the preparation and performance of an investment, prudent utilisation of land shall be ensured. Meanwhile, during construction works, an investor implementing the project shall have regard to environmental protection at the site, including but not limited to the protection of soil, greenery, natural landscape, and water regime. In performing construction works the use and conversion of natural elements is permitted solely insofar as it is required to complete a particular investment. Where protection of natural elements is not practicable, actions aimed at remedying the harm inflicted shall be taken, in particular through environmental mitigation.*

The scope of these responsibilities is defined in detail in a building permit.

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<sup>54</sup> Maciej Kruś, Zbigniew Leoński, Marek Szewczyk, Law on spatial development, LEX, 2012.

*(c) Limits results from the Nature Conservation Act:* A duty of legal persons and other organizations and of natural persons is to exercise nature care which constitutes the national heritage and treasure (art. 4 (1) of the Nature Conservation Act).

The purpose of nature conservation is, *inter alia*, to **maintain ecological processes and stability of ecosystems, conservation of biodiversity, protection of landscape values, greenery in towns (cities) and villages as well as tree coverages** and its implementation comes into being by way of different legal instruments that shape the limits and the exercise of the ownership right either in the form of **limiting possible use of a real property, including the exclusion of a certain activity in a given area** or of a necessity to **adjust the current method of use** so as to allow the completion of the above-mentioned nature conservation purposes. In addition, considerations of nature conservation may **constitute a premise for expropriation of property** (for example, in the case of owner's permission to establish a national park).

An example may be provided by art. 36 (1) and (2) of the Nature Conservation Act, according to which in Natura 2000 sites there is no limiting of economic activity, agriculture, forestry, hunting and fishing activities, nor amateur fishing, if it does not exert a significant adverse impact on the conservation objectives of the Natura 2000 sites. However, conducting such activities in Natura 2000 areas included in national parks and nature reserves, is allowed only to the extent that this does not infringe prohibitions which are in force in these areas. In this context, it must be noted that in a park area of strict, active and landscape protection are designated. Prohibitions applicable in the park do not apply to areas covered by landscape protection during their economic use by organizational entities, legal or natural persons as well as during the exercise of the ownership right in accordance with the provisions of the Polish Civil Code.

Another example is the rationing of removal of trees and shrubs from the area of the real property through authorizations.

Regardless of the restrictions on the use of real properties by the owners (holders of perpetual usufruct) restriction in the use of specific natural areas may be of a universal character. For example, in accordance with Art. 12 (1)-(3) of the Nature Conservation Act, an area of a national park may be made available in a manner which does not adversely affect nature in the national park. In the plan of protection of the national park, and by the time of its preparation - in protective tasks - **places which may be made available and the maximum number of persons that may at the same time stay in these places** - are determined. A fee is charged for entrance to a national park or in some of its areas and for making a national park or some of its areas available. In turn, in accordance with art. 15 point 6 of the Nature Conservation Act in national parks and in nature reserves it is forbidden to use, destroy, willfully damage, pollute and introduce changes to natural objects, areas, and resources creations, as well as elements of nature.

*(d) Limits results from the Water Law Act:* The Act regulates water management in accordance with the principle of sustainable development, in particular the development and protection of water resources, water use and water resources' management. Water management is carried out according to the principle of **rational and comprehensive treatment of surface waters and groundwaters', including their quantity and quality. The Act defines a water ownership right and duties** of water owners and of other real property owners, which could result in restrictions on the use of a real property. Water, as an integral part of the environment as well as **habitats for animals and plants** are subject to protection regardless of whose property they are.

In order to ensure adequate water quality the Water Law Act also provides the basis for establishment of **protection zones of water intakes** and **protected areas of inland water reservoirs**, where can orders, prohibitions and restrictions may be introduced which are intended to preserve the value, quality and usefulness of water to meet the needs of the populace.

*(e) Limits results from the Act on Forests:* Forest Act applies to the forest, regardless of their form of ownership. The Act sets out the principles of forest management – the universal protection of forests; the persistent maintenance of forests; continuity and the sustainable use of all forest functions; ongoing augmentation of forest resources. These principles as well as the principle of sustainable forest management, jointly with the provisions of Act on the Protection of Agricultural and Forest Land set limits on the use of forests and forest land, including, for example by limiting a possibility of allocating forest land for purposes other than agricultural or forestry ones or limiting the admissibility of changing a forest into an agricultural use.

The Act on Forests introduces the principle of making forests owned by the State Treasury universally accessible to the populace, but it also allows restrictions on access to such forests for reasons relating to the protection of nature (such as for the protection of animal refuges [sanctuaries]).

### **2.2.6 Ecological forestry management and afforestation in national legislation (See Questionnaire 1.2)**

Forestry management and afforestation is regulated in the Act on Forests. As it has already been pointed out the Act is applied to forest regardless of the form of their ownership.

The Act on Forests sets out principles for the retention, protection and **augmentation of forest resources**, as well as for the management of forests and other elements of the environment in reference to the national economy. These principles are universal protection of forests, permanence of forests' maintenance, continuity and **sustainable use** of all functions of forests, as well as the augmentation of forest resources and permanently sustainable forest management. One of the rules is the augmentation of forest resources. In accordance with Art. 14 of the Act on Forests, it proceeds through the afforestation of land and the raising of forest productivity in the manner provided for in a forest management plan. Wasteland areas may be designated for afforestation, as may agricultural land (farmland) unsuited to agricultural production and agricultural land whereof agricultural use is not being made, as well as other land suitable for afforestation.

The areas to be afforested and their distribution, and the means of achievement of afforestation, are set out in **the national programme for the augmentation of forest cover drawn up by the minister competent for the environment, and subject to the approval of the Council of Ministers.**

The designation of land for afforestation is regulated in a local area development plan, or a decision on building conditions and site management.

It is assumed that in the case of land at which implementation of the provisions of the national programme for the augmentation of forest cover is envisaged, the determination of land designated for afforestation occurs in a local area development plan, which is drawn up compulsorily (in accordance with art. 14 (7) of the Spatial Planning and Land Development Act, a local plan shall be mandatory, if this is required by separate provisions). However, for the remaining areas, designation of areas for afforestation occurs in a local area development plan

drawn up optionally or, in its absence, in a decision on building conditions and site management, issued on the basis of the Act on Forests<sup>55</sup>.

The duty that land be afforested shall be borne by district forest managers, in respect of land administered by the State Forests, or by the owners or perpetual users of other land who may obtain grants from the central budget allocated with a view to covering in whole or in part the costs of afforesting land.

### **2.2.7 Forest management plans (See Questionnaire 1.2)**

Forest management<sup>56</sup> is carried out on the basis of the mandatory forest management plans which include a description and assessment of the state of the forest and the objectives, tasks and manner of carrying out forest management or simplified forest management plans.

**A forest management plan** is drawn up for forests owned by the State Treasury.

**Simplified forest management plans** are drawn up for forests not constituting the State Treasury ownership, as well as for forests forming part of the State Treasury Agricultural Property Resource, with the reservation that:

- in the case of fragmented forests with areas of up to 10 ha that do not constitute the ownership of the State Treasury, tasks as regards forest management are as set out in a decision of a starost heading a given district, on the basis of inventorying of the condition of the said forest;
- in the case of fragmented forests with areas of up to 10 ha which come within the State Treasury Agricultural Property Resource, tasks in respect of forest management on the basis of the inventorying of the condition of forests are determined by a district forest manager.

### **2.2.8 Illegal harvesting and logging (See Questionnaire 1.2)**

Illegal logging can be sanctioned by civil, administrative and criminal sanction.

**The civil liability** is applied when a damage occurs (traditional or environmental) or there is a threat that it might occur due to environmental impacts (even legal ones). The art. 323 of EPL Act should be pointed out to:

*Everyone who through unlawful impact on the environment is exposed to hazard of a damage or has suffered a damage may demand from the liable subject for this danger or violation restitution of the lawful state and undertaking preventive measures, especially through installing installations or equipment safeguarding against the danger or violation; in the case there it is impossible or excessively difficult, he may demand that the activity causing the danger or violation be discontinued (Sec. 1).*

*If the danger or violation concerns the environment as a public good, the State Treasury, territorial self-governing unit as well as an ecological organization can file the above mentioned claims (Sec.2).*

It is possible to use this Article in case of illegal harvesting and logging, especially when occurring in forest.

**Administrative liability** is regulated in the Nature Conservation Act. Pursuant to art. 83 and the subsequent ones of that Act, removal of trees or shrubs from an area of a real property may in principle come into being after obtaining a permit issued by the competent organs. Exceptions are specified by the Act (e.g. such a duty does not apply to forests due to the fact

55 Cf. Zalewski M.A., Afforestation of agricultural land. Legal aspects, [in:] Prawo i Środowisko [Law and Environment] of 2000, no. 2, pp. 44-53.

56 Articles 18-25 of the Act on Forest.

that the rationing of logging trees in forests takes place under the Act on Forests; neither does it apply to fruit trees or trees, whose age does not exceed 10 years). The sanction for illegal logging and destruction of green areas or trees or shrubs caused by improper performance of earth-moving or improper use of mechanical equipment or of technical equipment and the use of chemicals in a way that is harmful to flora is **an administrative fine**, which is administered by an executive organ of a municipality.

**Criminal liability:** in this context, it is possible to apply the Penal Code, which Defines offenses against the environment or the Code of Offence, especially:

- **Article 158 of the Code of Offence**, which sanctions cutting down trees in a forest or the extraction of timber from a forest in a different manner, at variance with a forest management plan, a simplified forest management plan or a decision defining the tasks of forest management or without a required permit. Showing all features of the very offense is punishable by a fine (predicated in the amount from 20 to 5,000 PLN) and forfeiture of harvested timber. By the judgment of 15 May 2006 in the case file no. P 32/05, the Polish Constitutional Tribunal ruled that Article 158 § 2 of the Code of Offence which sanctioned cutting down trees without a required permits, and in particular provides for mandatory forfeiture of timber obtained in that way, is not inconsistent with art. 2, art. 21 para. 1 and art. 64 of the Constitution of the Republic of Poland. In reasons of the judgment the Tribunal noted that the Act on Forests introduces a restriction to the rights of forests' owners dictated by the needs of environment protection, constituting a specific constitutional value. As an element of environment, forests are in fact much more than the object of the ownership property right and other property rights. They represent the national asset of a great social importance. The Tribunal further found that 'the limitations contained in article 158 of the Code of Offences apply only to those of forest owners who do not respect the rules of the forest reflecting the common good (environmental protection). Forfeiture of the harvested timber at the same time does not mean interference in the ownership of the forest, which remains unaffected. Punishing the alleged offender under Article 158 of Code of Offence is always associated with a reduction in the state of his possession. The difference between a fine and forfeiture of timber regards only that the fine requires a certain pecuniary performance, while, forfeiture of timber denotes a detriment in nature. Actually, limitation of ownership is apparent here – since it constitutes an onerousness which is part of the sanction for violation of the rules set out in the Act on Forests. Without an onerousness in the form of forfeiture of wood it would not be possible to achieve the objectives of sanctions'.

- **Art. 290 of the Penal Code** which relates to felling trees in somebody else's forest. Such a felling is treated as theft. This provision is designed primarily to protect the economic interests of the forest's owner, to a lesser extent it aims to conserve nature;

- **art. 181 and 187 of Penal Code**, which are provided in the chapter 'Crimes against the environment.' The first of these articles penalizes making damages in flora in large sizes. Such an action is punishable by imprisonment from 3 months to 5 years. Later in this article destruction of or damaging plants against the rules in force in the area covered by the protection is penalized. It is punishable by imprisonment for up to 2 years The same penalty is envisaged for destruction or damage to a plant, covered by species' protection, regardless of the existence of the protection zone. Unintentional actions are punishable by appropriately lower penalties. The art. 187 of the Penal Code in turn, penalizes serious damage, or significant reduction of natural value of a legally protected area or facility, causing serious damage. Such an action is punishable by a fine, restriction of liberty or imprisonment for up to 2 years Negligent action is punishable by restriction of freedom.

### 2.2.9 Restoring damaged sites and ecosystems (See Questionnaire 1.2)

The Polish Constitution establishes in Article 86 that *Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.*

The EPL Act provides and defines ‘the polluter pays principle’ in Article 7 according to which: *Whoever pollutes the environment, he shall pay the costs of remedying the effects of said pollution. Whoever is likely to pollute the environment, he shall pay the costs of preventing said pollution.*

Specification of these rules comes into being inter alia in provisions regarding liability (civil, administrative, penal) in environmental protection law.

#### **Restoring damaged sites and ecosystems can be imposed by:**

(a) *civil courts on the basis of the provisions of:*

- the Civil Code (traditional damage) – art. 222 § 2 according to which the court may impose the obligation to restore the state compliant with the law and to cease infringements (*actio negatoria*) of ownership in a manner other than by depriving the owner of actual control over the thing; **under such obligation there may be a person who infringed the ownership ‘in a manner other than by depriving the owner of actual control over the thing’.**

- the Environmental Protection Law Act – art. 323 of Environmental Protection Law Act according to which: ***Everyone*** who through unlawful impact on the environment is exposed to hazard of a damage or has suffered a damage may demand from the liable subject for this danger or violation **restitution of the lawful state and undertaking preventive measures**, especially through installing installations or equipment safeguarding against the danger or violation; in the case there it is impossible or excessively difficult, he may demand that the activity causing the danger or violation be discontinued (Sec. 1). If the danger or violation **concerns the environment as a public good**, the State Treasury, territorial self-governing unit as well as an ecological organization can file the above mentioned claims (Sec.2).

- the Atomic Law Act – art. 100 and the following ones which regulate the issue of civil liability for nuclear damage; in the case of nuclear damage, if it regards environment, viewed as common property, it is to be compensated in the form of reimbursement of the cost of recovery measures (undertaken to restore the environment to its unimpaired status) implemented by properly authorized organs or by other entities on the basis of the decision by these properly authorized organs. It also includes the reimbursement of the costs of countermeasures.

**Recovery measures (undertaken to restore the environment to its unimpaired status)** are all properly applied measures to reinstate or repair all damaged or destroyed components of the environment or – whenever justified – to introduce their equivalent substitutes. Meanwhile **countermeasures** are all appropriate measures undertaken in the aftermath of nuclear incident to prevent the nuclear damage to environment, viewed as common property, or to mitigate it.

- the Act on Forests – art. 11 according to which *the organisational entity, natural or legal person liable for damage arising in forests shall be obliged to redress it, in accordance with the provisions set out in the Civil Code*, in this case damages or restitution, which would be the most desirable solution from the forests’ protection viewpoint.

(b) *or by the competent environmental protection bodies on the basis of the provisions of:*

- **the Environmental Protection Law Act** – art. 362 according to which an environmental protection organ may, by decision, impose on **an entity using environment that**

**adversely affect the environment a duty** to: 1) reduce the effects on and threats to the environment; 2) restore the environment to the favourable status.

In the decision, the environmental protection organ may prescribe the extent to which the effects on the environment are to be reduced and the favourable status to which the environment is to be restored; the actions aimed to reduce the effects on the environment or to restore the favourable status of the environment; the time limit for fulfilling the very duty. Where the duty to take the actions cannot be imposed, the environmental protection organ may oblige the entity using the environment to pay the equivalent of the harm inflicted by disturbing the status of the environment to the budgets of relevant municipalities (a so-called administrative redress).

- **the Act on the prevention and remediation of environmental damage, which transposes the Directive 2004/35/EC.**

This Act governs public law property liability for the threat of damage to the environment or damage to the environment caused by **actions of an entity using environment posing the risk of environmental damage** to the environment or other actions of an entity using environment if a threat or damage relates to protected species and natural habitats protected and occurred through fault of an entity using environment (a perpetrator of a damage). At the same time damage to environment within the meaning of the law is *a negative, measurable change in nature or a function of natural elements, assessed in relation to the initial state, which was caused directly or indirectly by the activities carried out by an entity using environment: **in the protected species or in protected natural habitats, in waters and in the surface of ground (of the Earth)***. Beyond the scope of this Act is damage to other parts of environment, to which the above-cited art. 362 of the Environmental Protection Law Act relates.

According to the Act in the case of threat of damage or in the case of damage in environment **corrective actions** are undertaken (they denote *all actions, including actions to reduce or temporary action undertaken to repair or replace in an equivalent manner the natural elements or their functions which have been subject to damage, in particular treatment of the soil and water, restoring the natural terrain, reforestation, afforestation or creating clusters of vegetation, destroyed species' reintroduction, leading to removal of threats to human health and restoring the balance of nature and landscape in the area*) or **preventive actions** (actions taken in connection with the event, the action or omission causing an immediate danger of damage to the environment, to prevent or reduce damages, in particular to eliminate or reduce emissions).

Under such an obligation is a perpetrator of the damage (or perpetrators who are jointly and severally liable), or also (jointly and severally with the perpetrator) a person holding the surface ground if the immediate threat of damage to environment or damage to environment was caused by his consent or knowledge. The holder may be exempt from this obligation if immediately after obtaining knowledge of the direct threat of damage to environment or damage to environment, he provided for notifying the very fact to the competent organ.

The scope and manner of carrying out preventive measures, the state to which the environment is to be restored, the scope and manner of implementation of corrective actions and the date of their execution is specified in an administrative decision.

Exceptionally, preventive or corrective actions are taken by administrative organ in the situation of absence of an offender or in the necessity to take immediate actions because of the threat to life or health of humans or the possibility of irreversible damage to the environment. In the latter case, the costs of action undertaken shall be borne by the perpetrator of damage or of a threat of the damage.

- **In the context of the issue of restoring damaged sites (area) and ecosystems, one may also indicate the provisions of the Act on the Protection of Agricultural and Forest Land, which governs the principles of protection of agricultural and forest land as well as rehabilitation and improvement of land utility value.**

By *rehabilitating* the land, the Act is to mean giving or restoring to degraded or devastated land utility values or natural values by appropriately shaping the lie of the land, improving the physical and chemical properties, regulating water relations, soil restoration, strengthening embankments and reconstructing or constructing necessary roads.

The principles of rehabilitation and land use are the subject of Chapter 5 of the Act (articles 20 - 20a), in which the following principles were adopted:

- a person causing loss or reduction of the utility values of the land is bound rehabilitate the land at its own expense;
- in the case of the devastation and degradation of land by unidentified persons, in the case of natural disasters or mass movements of land, rehabilitation of land for agricultural purposes or other purposes shall be made by the competent organ while using public funds (from the budget of the voivodship or using state budget funds) or of persons interested in carrying out activities on rehabilitated land;
- rehabilitation and land development is planned, designed and implemented at all stages of industrial activity;
- land rehabilitation is carried out as they become totally redundant for a limited period to carry out industrial activities and it ends not later than 5 years after the cessation of the activity.

### **2.2.10 Illegal construction (See Questionnaire 1.2)**

According to Art. 48 para. 1 as well as Art. 49 b para. 1 of the Building Law Act, a competent organ orders, by way of a decision, to demolish a building facility (work) or any part thereof that is under construction or has been constructed without a valid building permit or despite an objection raised by the competent organ. A decision to demolish a facility (work) is issued by a competent building control authority.

However, in certain cases there is a possibility of **legalisation of illegal construction** (art. 48 and the following ones of the Building Law Act). It regards the cases, where a construction project is compliant with the planning and spatial development regulations and it is not contrary to the applicable regulations, including technical and building regulations, to the extent that makes it impossible to bring the work or a part thereof to a condition that is in accordance with the law. **At that time, a competent organ issue a decision to suspend building works and the interested entity is to present, the relevant documentation in order to obtain a decision on approval of a building permit design and - if in case the building have not been completed - also a decision to resume construction works.**

**In the cases of illegal construction works, a sanction** is a the legalisation fee whose rate is subject to an increase by a factor of 50 in respect of fines incurred for carrying out construction works in manner not compliant with arrangements and conditions set out in a building permit. The amount of such fees may even exceed the cost of constructing a building facility.

An investor's failure to pay the legalisation fee results in a decision on demolition (the judgment of the Voivodship Administrative Court of 1.02.3012, file no. II SA/Kr 1432/11).

The one who, despite a decision to demolish a facility or a decision on suspension of construction works continues construction works, exposes himself to penal responsibility - a fine, restriction of liberty or imprisonment for up to 2 years. In the case where construction



works are continued despite the suspension of their exercise, issuing a decision to demolish is mandatory.

Pursuant to the Polish legal order a penal sanction is provided for as well. In accordance with art. 188 of the Penal Code, the one who, in the area covered by protection for natural or landscape reasons or in the buffer zone thereof, in defiance with the provisions, erects a new one or expands the existing building facility or conducts business activity posing threat to environment, shall be punishable by a fine, by a penalty of liberty restriction or by a prison sentence of up to 2 years.

### **2.2.11 Effective implementation of EIA and SEA procedures and public participation (See Questionnaire 1.2)**

The issue of EIA and SEA of plans and projects having a significant effect on environment or on the Natura 2000 is subject of the Act on access to information about environment and of the Nature Conservation Act. The last one does not regulate the procedure of the assessment but only indicates which kinds of plans and projects should be subject of the habitat assessment. These Acts implement three directives: EIA directive, SEA directive and art. 6 of the Habitat directive.

According to the Act, a strategic impact assessment is required in relation to three categories of documents: 1) land development plans (at all levels of their preparation); 2) act concerning planning in the fields of industry, power industry, transport, telecommunications, water management, waste management, land management, forestry, agriculture, fisheries, tourism and land use, drawn up or adopted by administrative organs which set up the framework for the subsequent implementation of ventures likely to have significant effects on environment, 3) all others whose implementation may bring about significant effects on the Natura 2000 site, if they are not directly related to the protection of the Natura 2000 site or do not result from this protection. By way of an exception, the carrying out of the SEA may be abandoned, but only in the case of documents of 1 and 2 category, if their implementation does not result in a significant impact on the environment and upon fulfilling additional requirements.

**An individual assessment of the impact on environment and on the Natura 2000 site** (if the implementation of the venture is likely to affect such an area) is required in relation to eligible projects - those likely to always or potentially significantly affect the environment (in the case of the latter, a case by case examination is carried out to decide whether the assessment will be required). When it comes to other projects whose implementation may significantly affect the Natura 2000 site, and which are not directly related to the protection of the area nor they result from such protection, every single time an examination is carried out as to whether an impact assessment on the Natura 2000 site will be required.

Under the Polish legal order, an environmental impact assessment jointly with an assessment of impact on the Natura 2000 site (if it is required in a given case) in relation to eligible projects is carried out in the framework of a specific administrative proceedings which ends with a special 'environmental decision' - a so-called **decision on environmental conditions of approval to carry out an investment** (see point III.3.2. of the study).

Assessments of the impact on the Natura 2000 site are carried out in the framework of proceedings for issuing authorization or a permit to projects implementation or for an ecological permit (e.g. a permit to remove trees).

**The EIA and SEA procedure consists of several stages. One of them is the stage of public consultation.** In each case when an environmental impact assessment and/or assessment of the impact on the Natura 2000 site is carried out, public participation is guaranteed.

Public involvement in SEA is realised through a common right to submit comments and motions and guaranteed by: a) the obligation to inform the public about: the beginning of work on a draft document and about its subject and scope, the opportunity to access the relevant documents, the opportunity to submit comments and motions within a specified deadline, of at least 21 days, the body that is responsible for addressing these comments and motions and about a procedure regarding trans-border environmental impact, if such a procedure has been initiated; b) the obligation to consider submitted comments and motions; c) the obligation to inform the public about the adoption of the document and the opportunity to acquaint themselves with the document and the justification (the latter should include information on how and to what extent any submitted comments and motions have been considered).

Public involvement in EIA and/or habitat assessment can be realized in two forms. Firstly by a common right to submit comments and motions as guaranteed by the list of obligations of the relevant body. Secondly by participating in decision making processes ‘with the rights of a party’. The second option is opened only to environmental organisations. They can not only participate in the proceedings ‘with the rights of a party’ conducted by the body of first instance but also file an appeal against the decision issued in this proceedings and a complaint to an administrative court, if justified by the organisation’s statutory aims, also if the organisation did not participate in the proceedings conducted by the body of first or second instance respectively. These provisions provide organisations with a special procedural position with regard to administrative bodies and administrative courts.

### **2.2.12 Ecotourism in national legislation (See Questionnaire 1.2)**

The notion of ecotourism is not mentioned in legal acts, but it is currently a subject of discussion in the legal literature in the field of environmental protection law.

In the study of Wojciech Radecki entitled ‘Protection of tourist values in the Polish law’<sup>57</sup>, the Author distinguishes the notions of sustainable tourism or ecotourism, which is derived from the concept of sustainable development. According to the Author, the concept of ecotourism corresponds in the most closely manner with the legal protection of tourism values and means ‘*developing tourism while respecting tourist values, both natural and cultural ones*’<sup>58</sup>. The notion of tourist values is a collective term for diverse values<sup>59</sup>: recreational, sightseeing, specialist (including those natural elements which enable to practice mountain hiking or climbing, horse riding, sailing, hunting tourism), historical, architectural, scenic, cultural, natural ones. Some of them are legal notions (landscape values, architectural values, natural, social, cultural values, ecosystems valuable because of their ability to meet the needs of tourism and recreation) and are subject to legal protection.

The Author on the basis of ordinary legislation sees the possibility of constructing a subjective right to use environment as a tourist, whose content would be: access to forests owned by the State Treasury guaranteed in the Act on Forests, universal use of waters guaranteed in the Water Law Act and access to areas particularly valuable in terms of nature guaranteed in the Nature

57 W. Radecki Wojciech, ‘Protection of tourist values in the Polish law’ LEX a Wolters Kluwer, Warsaw: 2011, pp.24-29.

58 *Ibid.*, p. 29.

59 *Ibid.*, pp. 29-36.

Conservation Act<sup>60</sup>. The equivalent of such a right would be a duty of the state to protect it by means of protecting tourist values<sup>61</sup>. In any case, the limits of the right to use the environment for tourist purposes are determined by the provisions of the Act on Forests, the Water Law Act or the Nature Conservation Act, as well as in the further provisions that were subject to previous considerations, such as, for instance, the Act on the Protection of Monuments and Preservation of Monuments.

As a result, the already presented mechanisms of protecting ecological connectivity and biodiversity set out in the described acts may constitute a part of the promotion of ecotourism.

One may also indicate the respective provisions which may constitute a direct expression of the promotion of ecotourism:

- the provisions of the Nature Conservation Act, which constitute the basis for conferring protection to areas because of such their values which fall within the concept of tourist values, with the simultaneous determination of principles of making them available (e.g. rules which regard availability of national parks);
- the provision of art. 2 (1) point 6 of the Water Law Act, which defines water management as an activity which serves to satisfy the needs connected with tourism, sport and recreation, along with art. 34 of the Water Law Act, in which an everybody's entitlement to use inland surface public waters, maritime (sea) internal waters and waters of the territorial sea for purposes of recreation, tourism, water sports was expressed;
- provisions of the Water Law Act regarding determination and protection of bathing resorts (art. 34a and the subsequent ones of the Water Law Act);
- authorising the Council of Ministers to designate inland waterways (navigable) as well as the principle that sports and tourist boats are exempt from charges for the use of waterways (art. 66 and art. 144 of the Water Law Act).

## 2.3 Hunting

### 2.3.1 Hunting laws and their exemptions (See Questionnaire 1.2)

Legal issues regarding hunting is the subject of the Act of 13 October 1995 the Hunting Law and of executive acts issued on the basis thereof (for example, the regulation of Minister for the Environment that determines, by means of a regulation, game animals hunting seasons in the Polish territory or in the part thereof). It is therefore the subject to regulation at the national level.

The Hunting Law Act contains express authorization to local organs to adopt acts (decisions or acts of local law - **sub-national law**), which may constitute a derogation from the statutory provisions (national law) concerning the protection of wild game:

- a speaker of a voivodship assembly, following a consultation with the Polish Hunting Association [*Polski Związek Łowiecki*], may allow for exceptions to the prohibition on scaring (starting) game animals in the absence of alternative solutions, and if it is not harmful to maintain wild populations of game animals in a relevant conservation state (art. 9a of the Hunting Law Act)
- a starost [*starosta*] may give consent, for a period of up to 6 months, to detain game, to a person who came into its possession as a result of being orphaned, of an accident or other injury

<sup>60</sup> *Ibid*, p. 79.

<sup>61</sup> *Ibid*, p. 79.

to the animal's body, taking into consideration the need to undertake the necessary care and treatment (art. 9 para. 2 of the Hunting Law Act).

- a voivodship regional council may, by way of a resolution, shorten hunting seasons, determined by the Minister for the Environment in the territory of the voivodship.

There is one Judgment of the European Court declaring the incompatibility of hunting law and the Nature Conservation Law with the bird directive. There is also one judgment of the European Court in which the Court has declared that the Nature Conservation Act infringe the bird directive and the habitat directive.

**The first one is the judgment of the Court of 15 March of 26 January 2012, European Commission v Republic of Poland (Case C-192/11) in which the Court declares that by not applying national conservation measures to all species of naturally occurring birds in the wild state in the European territory of the Member States, which are entitled to protection under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and also by not correctly defining the conditions to be complied with in order to be able to derogate from the prohibitions laid down by that directive, the Republic of Poland has failed to fulfil its obligations under Articles 1, 5 and 9(1) and (2) of that directive.**

The infringement consist in:

- inappropriate transposition of Article 1 of Directive 2009/147 by reason of the fact that it failed to ensure species protection for bird species occurring in the wild within the European territory of the Member States. Under the Polish law, the only bird species covered by species protection were those which have been recorded within Polish territory and listed in Annexes I and II to the Regulation of the Minister for the Environment of 28 September 2004 concerning protected species of animals occurring in the wild;

- inappropriate transposition of Article 5 of Directive 2009/147 by reason of the fact that the prohibition on keeping empty eggshells and on holding birds which belong to species the hunting and capture of which are prohibited covers only species of birds which have been recorded in Poland;

- inappropriate transposition of Article 9(1) of the Directive for the following reasons: (1) the introduction, in the Law of 16 April 2004 on nature conservation, 3 of the possibility of establishing derogations on grounds other than those mentioned in that article; (2) the fact that the provisions of the Law on nature conservation exceeded the scope of the conditions defined in the third indent of Article 9(1)(a) relating to the prevention of serious damage to crops, livestock, forests, fisheries and water; (3) the authorisation, in the Regulation of the Minister for the Environment concerning protected species, of a derogation which is not mentioned in Article 9(1) of the Directive and which relates to activities connected with the rational management of farming, forestry or fisheries; (4) the authorisation, in the aforementioned Regulation, of a general derogation, at variance with Article 9(1) of the Directive, in relation to the cormorant (*Phalacrocorax carbo*) and the grey heron (*Ardea cinerea*) occurring in the vicinity of fish ponds which have been designated as breeding areas

inappropriate transposition of Article 9(2) of the Directive for the following reasons: (1) failure to introduce, in the provisions of national law, mandatory monitoring with regard to derogations which have been granted; that charge regarded *inter alia* art. 44 of the Hunting Law Act, which had not contained provisions relating to control of shooting permits or permits to live catching game for the purposes connected with scientific research and education, to rebuild population, settlement and reintroduction of game species or to necessary actions undertaken for breeding purposes, also in protective periods given the absence of any other satisfactory solution as well

as provided that it is not detrimental to maintenance of populations of given species in the state favourable for protection in their natural range of occurrence, 2) failure to set out in national law the conditions of risk in relation to the derogations granted; (3) failure to define any conditions whatsoever for the application - within the meaning of Article 9(2) of the Directive - of the general derogation relating to the cormorant (*Phalacrocorax carbo*) and the grey heron (*Ardea cinerea*) occurring in the vicinity of fish ponds which have been designated as breeding areas and are listed in Annex II to the Regulation of the Minister for the Environment concerning protected species.

*The Nature Protection Act, the Hunting Act and the Regulation of the Minister for the Environment of 28 September 2004 concerning protected species of animals occurring in the wild has been changed.*

**The second one is the judgment of the Court of 15 March 2012 *European Commission v Republic of Poland* (Case C-46/11) declaring that, by failing to transpose correctly the conditions governing the derogations laid down in Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Republic of Poland has failed to comply with its obligations under that provision.** The case concerns the wrong transportation of at. 16 (1) of the Habitat directive to the Nature Protection Act. According to the court:

- two regulations of the Minister for the Environment in relation to protected species of plants and animals occurring in the wild, their paragraphs 7(1) and 8 respectively which allow for a general derogation from the prohibitions serving the protection of species (as, for example, the prohibition of intentional killing, capture, and so forth) in connection with activities linked to the operation of rational agricultural or forestry holdings or of fisheries were not in compliance with Article 16(1) of Directive 92/43/EEC, which does not provide for any possibility of such a derogation;

- Article 52(2)(5) of the Law on the protection of nature which provide the possibility of providing for a derogation, for purposes of the 'prevention of serious damage, in particular in agricultural or forestry holdings or in fisheries', from the obligations connected to the protection of animal species is more extensive in scope than the derogation provided for in Article 16(1)(b) of Directive 92/43/EEC;

- the possibility, provided for under Article 56(4)(2) of the Law on the protection of nature, of a derogation from the prohibitions concerning species protection in the case where this 'results from the need to restrict serious damage on a holding, in particular an agricultural farm, forestry holding or a fish farm' is more extensive than that provided for in Article 16(1)(b) of the habitats directive;

- the regulation of 28 September 2004 concerning protected species of animals living in the wild permits the killing, capture and so forth of otters (*Lutra Lutra*) living in the environs of fish ponds designated as breeding areas is not in compliance with the Directive which treat the otter as a species in need of strict protection under the terms of Annex IV to Directive 92/43/EEC.

*The Nature Protection Act and Regulation the Minister for the Environment of 28 September 2004 concerning protected species of animals occurring in the wild **has been changed.***

### **2.3.2 Bans on hunting for specific species (See Questionnaire 1.2)**

In relation to animals belonging to species covered by strict protection and partial protection, numerous (albeit relative) prohibitions were introduced, including a prohibition of: intentional killing; intentional maiming and capture, transport, acquiring, detention, as well as possessing

live animals, destruction of their habitats and refuges (sanctuaries); destruction of their lairs, winter shelters and other shelters, dissection of specimens; intentional scaring (starting) and harassment, photographing, filming and observation which may cause scaring or harassment of animals, moving from places they regularly reside in to other places; moving animals born and bred in captivity to natural sites.

*L. Lynx lynx* (lynx) - protected in 11 Natura 2000 sites in the Polish Carpathian Mountains, it is covered by strict protection.

*Ursus actos L.* (bear) - it is defined as a priority species, it is covered by strict protection.

*Canis lupus L.* (wolf) – it is protected in 9 Natura 2000 sites, it is defined as a priority species, it is covered by strict protection.

*Rupicapra rupicapra L.* (chamois) - a priority species, it is subject to protection in the Natura 2000 ‘Tatra’ site, it is covered by strict protection.

*Tetrao urogallus L.* (capercaillie [*a Eurasian grouse*]) - a species on the verge of extinction, it is subject to strict protection.

*L. lutra* (otter) – it is not at risk, it is covered by a partial protection.

*Lepus europaeus* (brown hare) - it is not a protected species in Polish territory, it is a game species.

## 2.4 Cross-border cooperation

According to art. 9 of the Constitution, the Republic of Poland shall respect international law binding upon it. Additionally ratified international agreements consist sources of universally binding law of the Republic of Poland and those ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes (Article 87 and Article 91 of the Constitution).

International cooperation concerning nature-related issues were so far essentially solved by the Republic of Poland by means of concluding international agreements and conventions as well as bilateral agreements with the neighbouring countries.

The key role for the protection of biodiversity is played by the CBD, ratified in 1995 and by the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, ratified in 2003, both being international agreement on a global scale. However, there are other multilateral international agreements and conventions on a global, regional and local level influencing effectiveness of undertaken activities on biodiversity protection at a global or regional level by solving problems concerning chosen aspects of environment (protection on wetlands<sup>62</sup>, endangered species of wild flora and fauna<sup>63</sup>, wildlife and natural habitats<sup>64</sup>, bats<sup>65</sup>, landscape<sup>66</sup>, sustainable development of the Carpathians<sup>67</sup>) or other sectors (e.g. protection of object of the world’s natural heritage<sup>68,69</sup>).

62 The Convention on Wetlands of International Importance, especially as to Waterflow habitat (Ramsar Convention), ratified in 1978.

63 The Convention on the International Trade in Endangered Species of Wild Flora and Fauna (The Washington Convention), ratified in 1989.

64 The Convention on the Conservation of European Wildlife and Natural Habitats (The Bern Convention), ratified in 1995.

65 The Agreement on the Conservation of Bats in Europe, ratified in 1996.

66 The European Landscape Convention, ratified in 2004.

67 The Framework Convention on the Protection and Sustainable Development of the Carpathians, ratified in 2006.

68 The Convention concerning the Protection of the World Cultural and Natural Heritage (The Paris Convention), ratified in 1976.

International cooperation on the environment including biological diversity is also being developed by other forms of activities, including those informal ones. The example is a cooperation between Poland, Hungary, Slovakia, the Czech Republic realized within the initiative called The Vysehrad Group, aimed at protection of environment, including the issues of sustainable development, climate changes, nature and biodiversity protection<sup>70</sup>.

#### **2.4.1 Cross-border cooperation in bordering protected areas (See Questionnaire 1.2)**

In Poland provisions on cross border cooperation are provided in art. 6 (2) of the nature conservation Act, according to which: *By way of an agreement with the neighbouring countries, border areas precious from the natural point of view may be established in order to provide for their joint conservation.*

Such areas are not separate forms of nature conservation.

Cross-border environmental issues were so far essentially solved by the Republic of Poland by means of concluding bilateral agreements with the neighbouring countries. The example multilateral agreements is the Framework Convention of 22 May 2003 on the Protection and Sustainable Development of the Carpathians and the Agreement on the establishment of the West Polesie Transboundary Biosphere Reserve which included a larger number of signatories<sup>71</sup>.

##### Cooperation with Lithuania

Poland concluded the following agreements governing cross-border cooperation with Lithuania:

1. The Agreement of 24 January 1992 between the Ministry of Environmental Protection, Natural Resources and Forestry of the Republic of Poland and the department of Environmental Protection of the Republic of Lithuania on cooperation in the field of Environmental Protection. It governs the general principles of cooperation for the benefit environmental protection and provides a framework for future specific agreements.

2. The Agreement of 13 January 1995 between the Ministry of Environmental Protection, Natural Resources and Forestry of the Republic of Poland and the Ministry of Forest Management of the Republic of Lithuania on cooperation in the field of Forestry.

In the agreement, the Parties agreed on what the subject of their special interest within the scope of forest protection is. They established targets of protection actions and methods for their implementation, indicated to forms of cooperation between the two countries.

3. The Agreement of 7 June 2005, between the Government of the Republic of Poland and the Government of the Republic of Lithuania on cooperation in the field of use and protection of inter-state waters.

The Agreement provides that the Parties will carry out economic, scientific, technical and organizational cooperation in the field of use and protection of inter-state waters and the catchment areas associated therewith and that they will jointly coordinate and plan activities affecting these waters. In the detailed provisions the Parties established principles of water

69 The catalogue of binding multilateral agreements on global, regional and subregional scale are provided online at the following website: [www.mos.gov.pl/artykul/2516\\_umowy\\_wielostronne/9055\\_umowy\\_wielostronne.html](http://www.mos.gov.pl/artykul/2516_umowy_wielostronne/9055_umowy_wielostronne.html).

70 Cf. Fourth National Report on the Implementation of the Convention on Biological Diversity – Poland, at 102 and online [www.mos.gov.pl/kategoria/2520\\_zaangazowanie\\_ministerstwa\\_srodowiska\\_w\\_inicjatywy\\_miedzynarodowe/](http://www.mos.gov.pl/kategoria/2520_zaangazowanie_ministerstwa_srodowiska_w_inicjatywy_miedzynarodowe/).

71

[www.ekoportal.gov.pl/opencms/opencms/ekoportal/prawo\\_dokumenty\\_strategiczne/Konwencje/wspolpraca\\_dwustronna/index.html](http://www.ekoportal.gov.pl/opencms/opencms/ekoportal/prawo_dokumenty_strategiczne/Konwencje/wspolpraca_dwustronna/index.html).

protection, objectives to be implemented to ensure the aim of protection, principles of liability for damages which might arise, the need of impact assessments concerning cross-border influence on inter-state waters, principles of exchange of information and data, the establishment of the Polish and Lithuanian Commission on Inter-State Waters.

#### Cooperation with Belarus:

1. The Agreement of 25 January 1996 between the Ministry of Environmental Protection, Natural Resources and Forestry of the Republic of Poland and the Ecology State Committee of the Republic of Belarus on cooperation in the field of forestry

It is currently the only binding Agreement on the issues in question. In the very document, the Parties recognized the fundamental importance of forests for the sake of retaining environmental equilibrium, protection of ecosystems and their impact on lives and on development of civilization. The Parties arranged that they would establish and develop cooperation concerning forestry. It will be carried out *inter alia* by means of creating specially protected areas, restoration of forests, preservation of genetic resources, improvement of forest monitoring methods, exchange of information, the use of forests for tourism development. In order to implement the Agreement the Parties arranged to establish the Polish and Belarusian Permanent Working Group on Cooperation in the Field of Forestry whose meetings were to be held at least once a year. It is hard to find signs of the activities of the Group.

#### Cooperation with Russia

The Republic of Poland and the Russian Federation have concluded one agreement of the general nature concerning protection of environment.

1. The Agreement of 28 August 1993 between the Government of the Republic of Poland and the Government of the Russian Federation on cooperation in the field of environmental protection.

In the agreement the Parties arranged to develop and strengthen cooperation in the field of environmental protection, solving environmental problems and rational use of natural resources. At the same time, they will carry out the assumptions of the sustainable development concept. The aim of the cooperation as viewed by the contracting Parties is to improve environmental conditions, to increase environmental safety in both countries, at the Baltic Sea and to prevent environmental pollution.

#### Cooperation with Ukraine

The Polish and Ukrainian cooperation is governed essentially by two agreements:

1. The Agreement of 24 January 1994 between the Government of the Republic of Poland and the Government of Ukraine on cooperation in the field of environmental protection.

In the Agreement the Parties expressed their conviction that prevention, combating pollution at the source were of fundamental importance and recognized the 'polluter pays' principle. They considered that the cooperation in the field of environmental protection was mutually beneficial and that it contributed to the strengthening of good neighbourly relations as well as that ensuring mutual environmental safety was particularly necessary in border areas. The Agreement identified the issues that were the primary subject of cooperation such as *inter alia*: protection of the Earth's atmosphere, water, wildlife (including organizing protected natural areas), creation of a system of the resources' rational use, improving a system for environmentally safe disposal and use of waste. In order to implement the Agreement, the



Parties established the Joint Commission for Cooperation in the field of environmental protection.

2. The Agreement of 10 October 1996 between the Government of the Republic of Poland and the Government of Ukraine on cooperation in the field of water management at the inter-state waters.

The Agreement defined the object and scope of cooperation in the field of water management at the inter-state waters. The Parties undertook to confer with each other about and to cooperate in the development of plans and programs relating to water management as well as to agree on projects of ventures to be undertaken at the inter-state waters. The Contracting Parties also established principles of water resources' use, protection of waters against pollution, protection of state borders running along the river beds, principles concerning exchange of information. Under the Agreement, the Polish and Ukrainian Commission on Inter-State Waters was established.

#### Cooperation with Slovakia

1. The Agreement of 18 August 1994 between the Government of the Republic of Poland and the Government of the Slovak Republic on cooperation in the field of Environmental Protection.

In its introduction, the Agreement contains a statement that cooperation in the field of environmental protection, especially in the border areas is mutually beneficial and helps to improve good neighbourly relations. Article 1 thereof contains information about establishing comprehensive cooperation aimed at improving conditions of environment, especially of the border environment. Article 2 thereof indicates areas of particularly intense cooperation including *inter alia* cooperation concerning the functioning of the Polish and Slovak biosphere reserves. In the following provisions the Parties agreed on necessity to cooperate in order to reduce and eliminate the risks posed by cross-border pollution, necessity of the establishment of common areas with specific natural and cultural values as well as they arranged mutual information and consultation obligations. The Parties established that they would consult their positions in the field of environmental policy before presenting them at the international stage. At the same time, a Commission was set up to facilitate the implementation of the signed Agreement.

2. The Agreement of 14 May 1997 between the Government of the Republic of Poland and the Government of the Slovak Republic on water management at inter-state waters.

In the very Agreement the Parties agreed on what they understood by the notion of 'inter-state waters'. They further arranged that water management ventures and works at inter-state waters as well as other activities that may have had an impact on the waters would be the subject of the Agreement. In Article 3 thereof the Parties declared that they had the right to a fair and rational use of inter-state waters and they defined their rights and obligations. In the following provisions of the very Agreement the Parties agreed on principles of the protection of inter-state waters against pollution, principles of liability for inter-state waters' pollution, necessity to inform each other about planned, designed and implemented projects that may have affected the inter-state waters. In order to implement the provisions of the Agreement, the Parties established a relevant joint commission.

3. The Agreement of 17 July 1997 between the Ministry of Environmental Protection, Natural Resources and Forestry of the Republic of Poland and the Ministry of Agriculture of the Slovak Republic on cooperation in the field of forestry.

The Agreement outlines a framework for economic cooperation as well as for scientific and technology cooperation in the field of forestry. It defines the basic directions of the very cooperation and its forms.

#### Cooperation with the Czech Republic

1. The Agreement of 7 July 1958 between the Government of the Peoples' Republic of Poland and the Government of the Republic of Czechoslovakia on water management at inter-state waters.

Cooperation of the Republic of Poland and the Czech Republic at the inter-state waters has been carried out under the 1958 Agreement between the Government of the People's Republic of Poland and the Government of the Republic of Czechoslovakia on water management at inter-state waters. The Agreement constitutes a mutual obligation to cooperate in the field of water management at the inter-state waters. The primary objective of the Agreement is to ensure the rational management and protection of inter-state waters and to improve their quality, as well as to ensure the preservation of ecosystems, and their restoration if necessary.

In order to coordinate and carry out the tasks the Polish and Czech Commission on Inter-State Waters was appointed and its composition includes five working groups. Each group has two directors, one from each country.

The cross-border cooperation is carried out on the basis of working groups' meetings and Negotiations of Plenipotentiaries of the Governments of the Republic of Poland and the Czech Republic. The negotiations take place at least once a year, alternately in the territory of both countries. The minutes of the Commission's meeting shall be drawn up two counterparts, in Polish and in Czech language.

2. The Agreement of 15 January 1998 between the Government of the Republic of Poland and the Government of the Czech Republic on cooperation in the field of environmental protection.

This is an agreement which specifies the most general principles of cooperation in the field of environmental protection. The Parties undertake therein to create conditions for the continuous improvement of the quality of environment, paying particular attention to maintaining and improving the quality of the environment in the border areas. The Parties arranged that they would jointly determine areas of high threat to environment and areas of particular natural landscape advantages. The Contracting Parties shall develop and implement joint programs, exchange information about conditions of environment, sources and levels of pollution, environmental programs, legislation, scientific research findings, and new technical and technological solutions applied which proved beneficial to the environment.

#### Cooperation with Germany

The fundamental environmental agreements concluded between the Republic of Poland and the Federal Republic of Germany are as follows:

1. The Agreement of 19 May 1992 between the Republic of Poland and the Federal Republic of Germany on cooperation in the field of water management at inter-state waters.

In the agreement the Parties undertake to cooperate in the field of water management at the inter-state waters within the scope of economy, science and technology. The Parties' cooperation is to be carried out within the framework of a joint committee set up under the Agreement and direct co-operation of the bodies of institutions. The Agreement indicates what the parties understand under the notion of inter-state waters. The Parties mutually undertake to inform and consult each other in the field of water management and to reduce pollution of inter-

state waters. To this end, the Parties undertook to plan and build new water conservation devices with the use of modern technology.

2. The Agreement of 7 April 1994 between the Government of the Republic of Poland and the Government of the Federal Republic of Germany on cooperation in the field of environmental protection.

Pursuant to this Agreement, the cooperation of the Parties in the field of environmental protection is to take place on the basis of equal rights, mutuality and reciprocal benefits. The aim of the cooperation is continual improvement of the environment conditions. The Contracting Parties declared to cooperate primarily within the scope of protection of air, water, soil and wildlife including forest protection. Furthermore, the Parties declared that cross-border cooperation in the field of environmental protection should provide development of border areas which would not be bothersome to environment. Under the Agreement, the Parties shall jointly identify areas of particular risk and areas of special environmental advantages in the border areas and jointly determine actions to protect these areas. In order to improve the ecological situation in the border areas, the Parties undertook to promote direct cooperation between local and government authorities. The further provisions of the Agreement concern actions aimed at preventing, reduction and combating significant adverse cross-border impact on environment. The Parties agreed to promptly inform each other about any extraordinary cases of cross-border environmental pollution.

#### Biosphere reserves

Poland, together with its neighbours, created four biosphere reserves on the basis of international agreements.

**The East Carpathian Biosphere Reserve** – the Protocol on cooperation in the establishment of an international biosphere reserve in the Eastern Carpathians was signed by the Ministers of Poland, Ukraine and Slovakia competent in the field of environment on 27 September 1991, i.e. even before the signing of the relevant international agreements on cooperation in the field of environmental protection. The Biosphere Reserve was fully recognized by UNESCO (The ‘Man and Biosphere’ Programme) in 1998 following the official recognition of the areas in Ukraine as a part of a trilateral Biosphere Reserve ‘Eastern Carpathians’. This is the first trilateral biosphere reserve in the world. In 2004, the Biosphere Reserve consisted of 6 contiguous protected areas, and having a grand total area of over 210 thousand hectares it is the largest (outside Russia) mountain biosphere reserve in Europe.

The cooperation in the area of the Carpathian Mountains contributed to drawing up, on 22 May 2003, of the Framework Convention on the Protection and Sustainable Development of the Carpathians (Poland ratified the Convention in 2006). According to the Polish Ministry of Environment the purpose of the Convention is to carry out a comprehensive policy and cooperation for the benefit of conservation and sustainable development of the Carpathians in order to improve the quality of life, to strengthen local economy and local communities as well as conservation of natural and cultural heritage of the area. The Convention sets out the general policy goals which promote an integrated approach to the protection of natural and cultural heritage of the Carpathians.

**The Cross-border Biosphere Reserve of Western Polesie (Polesie Zachodnie)** - its creation was made possible thanks to the agreement signed on 28 October 2011 in Kiev by the Ministers of Poland, Belarus and Ukraine. The Cross-border Biosphere Reserve of Western Polesie combined three valuable natural complexes of biosphere reserves: Western Polesie (the Republic of Poland), Pribużskoje Polesie (the Republic of Belarus) and Szacki (Ukraine). The

entire Biosphere Reserve of Western Polesie covers an area of 140 thousand hectares, whose main part is the Polesie National Park - a wetland of international importance.

**Tatra Biosphere Reserve** – it was founded in 1992 on the border between Poland and Slovakia. In 1993, it was entered on the UNESCO Biosphere Reserves' list.

**Karkonosze Biosphere Reserve** – it was founded in 1992 on the border between Poland and the Czech Republic. In 1993, by way of a decision of the UNESCO MaB's ('Man and Biosphere' programme) International Committee in Paris, it was entered on a list of biosphere reserves as the Karkonosze/Krkonose Bilateral Biosphere Reserve. Its area covers the previous area of national parks: the Karkonosze National Park and the area Krkonosského národního parku situated on the other, Czech side of Karkonosze (which was created in 1963). The Reserve's area constitutes 60.5 thousand hectares, of which 55 thousand hectares are located in the Czech Republic and 5.5 thousand hectares in the Polish territory.

The possibility of designating transboundary protected areas have been regulated in art. 6(2) of the Nature Conservation Act according to which: By way of an agreement with the neighbouring countries, border areas precious from the natural point of view may be established in order to provide for their joint conservation.

The procedure of designating transboundary protected areas have been regulated in the Act. However, within the legal provisions' framework, one may find the rules programming cooperation at international level aimed at protecting environment. The above-discussed biosphere reserves do have such a transboundary nature. They are created on the basis of an international agreement concluded on behalf of the Polish government (intergovernmental agreements).

Poland acceded to the Convention on 19 January 1993, which was ratified by the President on 10 March 1993<sup>72</sup>. On the basis of the Framework Convention the following international agreements were entered into:

- (a) The Agreement between the Government of the Republic of Poland and the Government of the Czech Republic on transfrontier cooperation of 8 September 1994.
- (b) The Agreement between the Government of the Republic of Poland and the Government of the Slovak Republic on transfrontier cooperation of 8 August 1994.
- (c) The Agreement between the Government of the Republic of Poland and the Government of the Republic of Lithuania on transfrontier cooperation of 16 September 1995.
- (d) The Agreement between the Government of the Republic of Poland and the Government of the Russian Federation on transfrontier cooperation of 2 October 1992.
- (e) The Agreement between the Government of the Republic of Poland and the Government of the Republic of Belarus on the main principles of cross-border co-operation of 24 April 1992.

In each of the above-mentioned Agreements the Contracting Parties undertook to carry out transfrontier (cross-border) cooperation in the following areas:

- (a) Planning and land management;
- (b) Protection and shaping of the environment (or alternatively the use of natural resources);
- (c) Tourism, recreation and sport.

Within the scope of the implementation of the Regulation 1082/2006, Poland adopted the Act of 7 November 2008 on the European grouping of territorial cooperation as well as the implementing regulation of 17 June 2009 on the manner of keeping the Register of European Grouping of Territorial Cooperation.

72 <[www.prawoipartnerstwo.pl/stara/publikacje/Wspolpraca.pdf](http://www.prawoipartnerstwo.pl/stara/publikacje/Wspolpraca.pdf)>.

The list of the European Groupings of Territorial Cooperation (EGTC), whose establishment was reported to the EU Committee of the Regions as at 3 October 2012, does not contain any grouping whose member would be Poland. Creation of the European Groupings of Territorial Cooperation (EGTC) between Polish and Slovak regions has been underway.

### **3 Case Law (See Questionnaire 1.3)**

Chosen rulings concerning respective problems which are subject to the present study have been discussed below, as an example of a practical application of the provisions presented herein.

#### *(a) Protecting trees and shrubs*

#### **II SA/Kr 1111/12 – the Judgment of the Voivodship Administrative Court in Kraków of 2012-10-16**

In the present case a complaint was filed against a decision imposing a fine for removing trees without a permit issued under the Nature Conservation Act. The complainant pointed out to a low degree of damage of his ac, to the fact that he had twice applied to be able to log trees, but because of the lack of consent of the co-owners, the consent was not granted to him, and to the reasons for removal of trees resulting from the need to remove a state of threat to life and property.

The court dismissed the complaint, assuming that the fine for removing trees without a permit belonged to the category of so-called administrative tort, which means that it is imposed in the case of such a state of facts with which the statutory law associates liability. An administrative organ is only to **establish the facts and if it finds a violation of law, it has a duty to apply strictly specified sanctions. Reasons or motives which guide a person who removes a tree are irrelevant to the existence of the liability**, nor is of any importance his the state of awareness of the illegality of such an action<sup>73</sup>.

#### *(b) The procedure of creating forms of nature conservation (agreement requirement and its scope)*

#### **IV SA/Po 1279/11 – the Judgment of the Voivodship Administrative Court in Poznań**

The present ruling relates to a duty to agree on with the relevant communal councils draft legal acts on creation of a form of nature conservation (in the present case: of a protected natural landscape area). The court assumed in this ruling (as well as in several other one) that the object of an agreement is not only to designate areas in a geographic sense, i.e. to determine their location and borders, that is to designate of a protected natural landscape area by indicating it in the field, but also establishment of other requirements set out by statute, concerning the protected natural landscape area, including arrangements concerning protection of ecosystems and prohibitions that will take effect in the area. From Art. 23 para. 3 of the Nature Conservation there stems that the subject to an agreement is a draft regulation, and therefore the entire regulation, with all of the arrangements contained therein. Moreover, any amendment to a regulation issued on the basis of the Nature Conservation Act, even in the case where by the means of the regulation the areas of protected natural landscape are not increased, and other arrangements regarding the area are changed, requires to be agreed with the relevant communal councils.

<sup>73</sup> An administrative pecuniary fine which goes towards a budget of a municipality may be spread out or redeemed on the basis of the Act of 27 August 2009 on public finance (Journal of Laws, 2009.157.1240).

*(c) Integrating requirements of protection into spatial plans (taking a study of municipality land development conditions and directions as an example)*

**II SA/OI 177/12 – the Judgment of the Administrative Court in Olsztyn on 17.04.2012,**

In this case, the Court annulled the resolution of the communal council on the adoption of the ‘Study of town and municipality land development conditions and directions’ because of a breach of the provisions of the Nature Conservation Act and prohibitions binding in the protected area. A part of the area covered by the ‘study’ was located in the area of a nature and landscape complex, established by a regulation of a competent organ (hereinafter referred to as ‘the Regulation’). The very ‘Regulation’ prohibits, inter alia, to change a manner of land use in the area covering the above-mentioned nature and landscape complex. However, in the ‘study’ it was allowed that in areas situated within the limits of the complex, a use of land different from the then-current manner of land use, be implemented, allowing, for example, building development concerning individual recreation as well as building development associated with the tourist services, including hotels, guest houses, motels as well as catering and trade accompanying such building development. Therefore, the provisions of the ‘study’ within the scope of the adopted directions of development, in its section concerning land located within the border of the nature and landscape complex grossly violated the provisions of the regulation on the establishment of the nature and landscape complex by allowing - contrarily to the prohibition contained in the ‘Regulation’ - for a change of the use of land.

The court emphasized that the provisions of ‘Regulation’ (this also applies to other acts creating forms of nature conservation – B.I.) contain legal norms of general and abstract nature, and they are not individually addressed to a particular recipient, therefore, they constitute a source of law whose provisions must be strictly observed by organs resolving issues related to the development of a given area covered by such provisions. It is also the Spatial Planning and Land Development which determines the very duty. According to the Act the study takes into account the conditions resulting from the requirements of environmental protection and nature conservation. The court also emphasized that the arrangements of ‘study’ were binding for the communal organs in the preparation of local plans. As a result, a communal council, being bound at the adoption of the local plan by the ‘study’ will be able to include the contested provision of the study in the plan, allowing the building development of the area, despite prohibitions in force in the act of creating forms of nature conservation.

*(d) Limitations to completing an investment within a natural park’s area*

**IV SA/Wa 1981/11 – the Judgment of the Voivodship Administrative Court in Warsaw of 05.04.2012.**

In the present case, the Court dismissed a complaint against a decision of an organ of nature conservation denying to agree on (within the scope of nature conservation) a draft decision to establish building conditions for an investment consisting in the construction of a single-family residential building, of a well and a self-contained septic tank for liquid waste.

The planned investment was in fact contrary to the provisions of the voivod’s regulation on the establishment of a natural landscape park, in which a prohibition on construction of new buildings within a strip 100 metres wide from banks of rivers, lakes and other bodies of water, with the exception of facilities serving water tourism, water management and fisheries management. A facility which was planned to be build (regardless of its nature – a holiday house, or year-round house) may not be included among the exemptions excluding the application of the prohibition, because definitely, as rightly stated by arranging organs, it was not a facility serving water tourism, water management or fishing management.

*(e) Carrying out works in areas of high natural value, regardless of whether the subject area is covered by a form of nature conservation.*

### **II OSK 2000/10 – the Judgment of the Supreme Administrative Court of 13.01.2012**

In the present case, the dispute concerned a decision of an environment protection organ in which it refused to agree on the terms and conditions of carrying out works for the ‘Tylmanowa Small Hydroelectric Plant in Dunajec River at km 144+850’ venture because of the threat to the natural environment of Dunajec River valley, to which the implementation of the above-mentioned plant could have lead to. Its location was provided for within the borders of a protected landscape area and the buffer zone of a natural landscape park as well as of the Natura 2000 site, and a potential Natura 2000 site, which was proposed to be covered by protection because of the rare and valuable species of fish as well as due to precious natural habitats associated with mountain rivers.

According to the complainant, there was no basis for the application of Art. 118 of the Nature Conservation Act and for issuing the decision in question. According to that provision, carrying out works involving regulation of waters, as well as construction of floodbanks as well as irrigation works, construction drainages and other earthworks changing water relations in areas of special natural value, particularly in areas where there are complexes of flora having special value from the point of view of nature, in areas of landscape and ecological value, in areas of mass bird breeding (hatching), of protected species’ appearance as well as spawning places, winter habitats and places of mass migration of fish and of other aquatic organisms, **comes into being on the basis of a decision of the regional director of environmental protection**, who establishes the terms and conditions of carrying out works. This provision applies regardless of whether the endangered area is covered by a form of nature conservation.

In the present case, the organs assumed that the objective scope of works related to the completion of the hydroelectric power plant would cause a change of water relations and consequently, destruction of fish habitats existing in Dunajec River and change of habitat conditions for the River’s flora and fauna. Meanwhile, the construction of a weir on the River, separating populations of aquatic organisms into two subpopulations: above and below the barrier, would prevent them from communication and from moving freely, which will affect the fish population in the river. Due to the objective scope of the work it was reasonable to issue a decision (in this case a refusal to grant a permission) under art. 118, para. 1 of the Nature Protection Act.

*(f) A protective regime covering a national park’s buffer zone*

### **II OSK 1893/10 – the Judgment of the Supreme Administrative Court of 16.12. 2011.**

The case concerned an investment consisting in reconstruction of four sections of the existing ditch of particular drainage, with a total length of about 351 metres, into a submerged pipeline of a 800 millimetre diameter within the borders of a buffer zone of a national park. A director of the park refused to agree on a decision on building conditions because of the negative (adverse) impact of the investment on the biological life of aquatic organisms, as well as amphibians, reptiles, insects and birds, as well as on migration of the animals which usually move along watercourses and their accompanying trees and shrubs.

In this case, the Court considered which protective regime was in force in the area of the park’s buffer zone, in particular bearing in mind that in the Nature Conservation Act no prohibition towards buffer zones was specified within the scope of exercise of an ownership right towards a real property situated therein, as was the case in relation to an area of a national park itself

(which was made in art. 15 of the Nature Conservation Act). In the Court's opinion, such a circumstance does not mean that there are no restrictions concerning building development in the area. A purpose of a buffer zone specified by statute constitutes the basis for formulating restrictions in the area of exercising an ownership right to real properties located in the buffer zone. The buffer zone is to protect the park from external threats. External threats are factors that may cause adverse effects to physical, chemical or biological features of resources, creations and elements of protected nature, landscape values and the course of natural processes resulting from natural causes or from human activities, having their origin outside the borders of areas or facilities which are subject to legal protection (Article 5 para. 29 of the Nature Conservation Act). Given the purpose of buffer zones, the Court held that in a buffer zone of a national park one might locate only such investments which did not pose a threat to the very park resulting from human activities. Such circumstances were clearly not a case in the present case.

*(g) Restrictions on the possibility of building development of an area given the need to preserve the coherence of environmental/ecological connectivity*

## **II OSK 1261/11 – the Judgment of the of the Supreme Administrative Court**

In the present case the subject of control was a protection plan for a natural landscape park introducing restrictions on land use options, which was challenged by the owner of a real property located within the park's borders and covered by a plan of forest land plot.

The court determined that the area of the contentious plot constitutes a fully developed forest ecosystem, with a set of species typical for its respective components. When describing the very ecosystem the Court stated, *inter alia*, that it constituted **an integral part of large-volume forest complexes, interrelated spatially, functionally and from a scenic point of view**. Along with the neighbouring plots it linked Wawer and Otwock forests with the Sobieski Forest complex, allowing **free migration of animals and plants**. Forests complexes, which include the discussed area, constituted a natural heritage and a landscape heritage, including the areas valuable from the nature point of view, positions of endangered species of plants and animals, areas important for the conservation of biological diversity, ensuring migration of species, with a unique value to science, as well as areas which were important from the point of view of ensuring the Warsaw residents adequate quality of life and appropriate environmental conditions for recreation.

The court also noted that forests had a protective function and, along with other green areas formed a peculiar natural system, ensuring **the ecological cohesion** of the capital city of Warsaw with its surroundings and related with valuable natural areas in the Mazowieckie Voivodship.

Therefore, in the protection plan, including *inter alia* on the disputed plot of land, a natural and cultural landscape zone of the strictest discipline of protection was designated. A change of use of the disputed plot of land from the forest purposes to non-forest purposes would lead to interruption of the natural ties and to isolation of two forest complexes, important to the capital city of Warsaw, thereby reducing their biological resistance. It would render migration of animals and plants impossible, limit the mixing of genes which in turn could lead to reduction and weakening of respective populations, in particular that of animals or plants covered by protection. Moreover, it would lead to a disruption of the nature system of the capital city of Warsaw. Allowing for continued human pressure at the expense of valuable natural areas in such an urbanised area could threaten **the ecosystem balance**, both within the Masovian



Natural Landscape Park, as well as within the area of of protected areas' system of Mazowieckie Voivodship.

Therefore, as the Court of First Instance held, provisions contained in the disputed protection plan for the national park were justified.

#### **IV SA/Wa 1457/10 – the Judgment of the Voivodship Administrative Court in Warsaw of 15.10.2010**

In the present case, a complaint was filed by a director of a natural landscape park against a decision of the environmental protection organ on the arrangements of the draft decision on building conditions for an investment consisting in the construction of individual recreation building as well as an outbuilding. In the complaint, the director of the park alleged that the proposed building development would go beyond a compact settlement of the W. village into the open meadows and agricultural land, and thus it would extend that line in the direction of a nature reserve, creating a precedent for building development of adjacent meadow and field land plots to be used for recreational construction. This in turn poses a threat to the nearby bird species such as the lesser spotted eagle, red kite, the black stork, corncrake. In addition, the claimant submitted that the area of the land plot in question is located in a proposed special area of the Natura 2000 habitats and in an area of Natura 2000 special bird protection area. The investment area is also situated on the way of migration of animals, mostly vertebrates - cervids, wild boars, wolves and lynxes. The claimant also invoked the need to protect the landscape, due to Poland's ratification of the European Landscape Convention. In conclusion of the complaint, the director [...] of the Natural Landscape Park alleged to the appeal organ that the latter failed to examine merits of the case.

The court considered the complaint to be justified, inter alia, due to the failure to make in-depth findings in the present case, treating certain issues in the contested decision in a hackneyed manner, also in the light of information provided by the Director of the National Park, depicted on a map presented at the hearing, which showed the course of an ecological corridor in the area, with a route of migration of large mammals marked thereon.

The court also referred to the scope of the present assessment of habitats and accepted that under the EU legislation, a potential significant impact on the environment does not includes the negative effect only.

#### **II OSK 1073/11 – the Judgment of the Supreme Administrative Court of 10/09/2012**

The case concerned an envisaged investment consisting in the construction of a residential building, which due to its location, could have posed a **threat to the continuity of protected ecosystems, habitats in Natura 2000 sites**. The dispute concerned the interpretation of art. 33 of the Nature Protection Act adopted by the Court of First Instance, according to which at the assessment of impact of a venture on the 'Natura 2000' protection site, the entirety of ventures **envisaged** in respect of the area covered by protection must be taken account of, while extending the concept of '**envisaged ventures**' also to ventures potentially possible to be undertaken.

The Supreme Administrative Court did not share that view. He stated that in this case, taking into account the by nature conservation organ future (potential) risks which may occur in the future in this area, which together with the venture in question could have adversely affected the conservation objectives of a given Natura 2000 sites was not possible. It was for the fact that it was not possible to further specify when and how ventures which as of a day of issuing an order of the nature conservation organ appealed against were not indicated whatsoever – neither as to

the nature nor size – and could have caused a negative impact on a given Natura 2000 site to a significant extent.

The Supreme Administrative Court did not either share the position of the Court of first instance that a positive agreement on a decision on building conditions could create a ‘precedent for a future building development of plots, in the first place those directly adjacent to the area of investment, and then further plots from the neighbourhood’, which according to the Court of first instance might in the future (in connection with the implementation of further investments of such a type) endanger **the continuity of protected ecosystems, habitats**. The Supreme Administrative Court acknowledged that the implementation of each new building in the area would be subject to a statutorily required environmental impact assessment, including assessment of impact on the Natura 2000 site. Such a potential threat only could not have, according to the Supreme Administrative Court, constituted a basis for the assumption of a significant impact on Nature 2000 and thus resulting in an impediment to implementation of the envisaged investments whose implementation in the legal and factual state had no significant effects on the Natura 2000 site.

*(h) The scope of a report on the impact of a venture on environment*

**II SA/Gd 864/10 – the Judgment of the Voivodship Administrative Court in Gdańsk of 24.03.2011.**

In the present case, the Court held that in light of the ‘Law on Access to Information about Environment’ it was not sufficient to present in a report on the venture’s environmental impact only the applicant’s variant as well as a variant consisting in the fact that the venture would not be undertaken. The variant consisting in not undertaking the venture may not be considered as a reasonable alternative option to the applicant’s option. The intention of the legislator was to create conditions for a wider choice than just to be able to choose between the pursuit of the venture and its abandonment. **It was about a choice between variants exerting, in different ways, influence on environment.**

*(i) Integrating environmental protection requirements in the investment process by requiring that a decision be agreed on with nature conservation organs within the scope of nature conservation requirements*

**IV SA/Po 751/10 – the Judgment of the Voivodship Administrative Court in Poznań of 10/03/2011.**

If a nature conservation organ has agreed on terms and conditions of the venture’s implementation by way of a decision, the authority competent to issue a decision on the environmental conditions may not, in the decision on the environmental conditions of the venture determine these conditions in a different manner.

*(j) A requirement of fair and more complete environmental impact assessment*

**II OSK 708/11 - the Judgment of the Supreme Administrative Court 2012-07-10**

In the present case, the dispute concerned the feasibility of implementation of the venture consisting in constructing an airport along with a paved runway with infrastructure (port buildings, a hangar, an access road, a parking lot) in the light of the requirements laid down in art. 33 para. 1 and 2 of the Nature Protection Act, that is whether it would significantly adversely affect the species whose protection the ‘Natura 2000’ site was designated for.

According to the courts hearing and determining the case (that is to the Court of First Instance and the Supreme Administrative Court) the organ issuing a positive decision on the

environmental conditions for the envisaged investment did not explain all the circumstances, including the conclusions resulting from the report on the environmental impact of the envisaged investment. Therefore, the courts have found it necessary to reassess all of the conclusions of the report in terms of the conditions set out in the report, which allowed the implementation of the venture from the point of view of existing and proposed Natura 2000 sites, including applications which showed that: 1) the intended location of the airport was situated in the proposed Area of Special Protection of Birds ‘Natura 2000’ Bagno Całowanie PL 085, 2) construction of the airport would introduce permanent changes to the landscape, 3) at the stage of construction of the airport local animal microhabitats might be damaged; impact on fauna of invertebrates and small vertebrates during the construction phase might be radical, but short-lived; it was recommended that construction works be carried out outside the bird breeding season, 4) the envisaged construction of the airport was a threat to bird populations settled in the area and birds migrating through the valley of the Vistula River; 6) in the case of the period of the airport’s exploitation, the number of executed air operations, which must take into account the seasonality in the life cycle of birds (hatching seasons, migration), would have a significant impact 8), due to the location of the airport as a whole in the ‘Natura 2000’ site, it should be assumed that logistics base would be kept to the minimum; 9) determination of the intensity of performed airport operations should be preceded by performing a second expert’s opinion regarding acceptable daily number of flights, and determining the intake passages taking into account the main migration routes and altitude of migratory birds’ flight, 10) one should provide for a temporary reduction or suspension of flights during a particular hatching intensity (this would result from continuous monitoring of designated sites in Bagno Całowanie).

*(k) The objective scope of an obligation to perform ‘a nature assessment’*

**II SA/Bk 433/09 - the Judgment of the Voivodshipe Administrative Court in Białystok of 24/09/2009**

Assessment of the potential, direct or indirect impact of the envisaged venture on the Natura 2000 site’s status should be made not only for the investment plans whose implementation will take place within the limit of such an area, but also for those to be taken outside it, and sometimes a considerable distance away.

*(l) Environmental impact assessment at the stage of investment legalization*

**II SA/Kr 1173/12 - Joined the Administrative Court in Kraków on 13.11.2012.**

In the present case, an investor performed an investment consisting in the expansion of the ski station of the chair lift, artificial snowmaking system and lighting which belongs - under the law - to projects which could to have significant effects on environment.

The investor did not have a required building permit nor a required decision on environmental conditions, within whose framework an environmental impact assessment was to be carried out.

The dispute concerned *inter alia* a possibility of carrying out proceedings to issue a decision on the environmental conditions and an impact environmental assessment within their framework at the stage of legalization proceedings, and thus in a situation where one does not have to deal with **an envisaged venture but with an already completed one.**

According to the Court, adopting a position that the completion of an investment makes pointless the proceedings to issue a decision on the environmental conditions of approval for a particular investment and carrying out environmental impact assessment and therefore excluding the possibility of legalizing the completed ventures which is likely to have significant

effects on environment, regardless of whether a venture completed in such a manner violates requirements within the scope of environmental protection or not, would result in unequal treatment of investors. This is for the fact that it would mean that implementing - without a building permit - an investment not covered by the duty to carry out a prior assessment of a venture's impact on environment or an assessment of the venture's impact on the Natura 2000 site - the investor could have legalized it, and carrying out, without a building permit, an investment that required such a prior assessment - the investor could have not legalized it, regardless of the impact such an already-completed investment could have had on the environment.

One may not - according to the Court - accept such an interpretation which would allow the legalization of ventures likely to have significant effects on the environment without the need to obtain a decision on environmental conditions and possibly without an environmental impact assessment prior to obtaining a 'legalization decision'.

Therefore, the court hearing the matter fully approved a position as to the possibility of carrying out an assessment of a venture's impact on environment or an assessment of the venture's impact on the Natura 2000 site for the venture, which had already been completed. According to the Court, the purpose of the Building Law Act's provisions concerning legalization of 'illegal constructions' in the first place was not to 'punish' investors, but above all to enable them to keep the already completed investments, if such investments did not violate the rules of substantive law and therefore above all if they did not violate the provisions of local plans (decisions on building conditions), technical conditions and provisions within the scope of protection of the environment. At the same time the Court rejected the view that the environmental impact assessment of an already completed venture would have resulted in a non-compliance with the provisions and objectives of the Directive 2011/92/UE. According to the Court, the Directive 2011/92/UE imposing an obligation to assess the impact of certain projects on the environment before they are granted an investment permission does not mean that performing such an assessment is always excluded after the completion of the investment, and in particular in the procedure of legalization of an already completed investment.

The court also noted that in general the vast majority of judicial decisions supported the view of the possibility to issue a decision on the environmental conditions after the completion of an investment.

## ANNEX: QUESTIONNAIRE

(Prepared by Dr. Mariachiara Alberton)

### 1 GENERAL PART

#### 1.1 Introductory questions:

- Provide brief information on the form of constitutionalized division of power of your country (i.e. federal/unitary model)
- Describe briefly how are the legislative and administrative competences in the field of environmental/landscape protection/ land use and spatial planning/water/hunting/agriculture/transport/tourism/energy?/mining? divided among different government levels
- Describe briefly what are the bodies in charge of nature protection (for legislation, implementation and enforcement). At what level (state/regional/local) are monitoring and controlling authorities been established for nature and forest protection? How are they financed? (Public, e.g. state, funds?)

#### 1.2 Questions on legislative/administrative frameworks relevant for biodiversity and ecological connectivity

##### **Protected areas:**

- How have European directives (i.e. Habitats directive, Birds directive, Water framework directive, Environmental liability directive, EIA and SEA directives) been implemented in your country? (For non EU countries: have legislation similar to the mentioned directives been approved in your country?) Draft laws?
- What are the provisions for the implementation and management of Natura 2000? (See in particular artt. 3 and 10 of the Habitats directive and national reports on implementation)
- Who is in charge of establishing protected areas (i.e. strict nature reserves, wilderness areas, national parks, national natural monuments, habitat/species management areas, protected landscapes, managed resource protected areas. See IUCN categories of protected areas)? What is the procedure for designating such areas? What is the legal basis? What is the different protection regime of those categories in your country? List existing categories of protected areas in your country and compare them with IUCN categories.
- Are protected areas mostly established by State/Regions/local governments/administration?

- Have local communities the right to designate protected areas? Is this an autonomous right or dependent on province/regional/state authorisation? If not, how can local communities participate in the setting up of protected areas? In which phase (initiative, project definition, project approval, ex post information) and with what powers (ex. voluntary consultation, mandatory opinion, mandatory and binding opinion etc.)?
- Are protected areas in the process of being established in your country? What is their regime? (See IUCN categories of protected areas)
- Do national laws contain specific provisions concerning the surroundings of protected areas? (Thus ensuring that critical areas are buffered from the effects of potentially damaging external activities). What is the legal regime therein provided?
- Have management plans for protected areas been established at state/regional/local level?
- Who is in charge of administering and managing protected areas (see IUCN categories of protected areas)? Public enterprises, state controlled institutions, private organisations?
- On what basis are protected areas financed? (state/regional/local funds?)

#### **Ecological connectivity and related sectors:**

- Are ecological networks/connectivity mentioned as concepts in the Constitution?
- Are ecological networks/connectivity included in other national legislative acts? (please consider the following sectors: environmental protection, i.e. nature and biodiversity, water management and protection; hunting and fishing; forest; landscape; land use and spatial planning; agriculture; transport; tourism).
- Which are the specific (national) tools mentioned therein for implementing ecological networks? (For example: develop sustainably managed agricultural landscape; promote sustainable forest management and prevent deforestation/degradation; develop spatial plans that reduce habitat fragmentation and destruction; address ecosystem issues in the river basin management plans for river districts; achieve good ecological status of waters; sign cooperation agreements with other management authorities)
- Are ecological networks integrated in key processes and sectors? (E.g. In the agriculture sector, priority given to agricultural management, connectivity, land abandonment; in the transport sector a balance is assured to green and grey networks; in climate change policies, priority is given to adaptation measures and connectivity; in water management, the principles and objectives of the Water Framework Directive 2000/60/EC are implemented, etc.).
- Does national legislation include provisions on conservation of cultural landscape and historic sites? Provide reference and examples
- Does national legislation include provisions on compatible forms of land use (with the conservation of biodiversity)? Provide reference and examples
- Is legislation on ecological forestry management, afforestation enacted? Describe briefly contents

- Are forest management plans obligatory?
- Are illegal harvesting and logging punished in your country? Who may issue fines/sanctions in these cases? Are there penal or administrative sanctions?
- Do provisions on restoring damaged sites and ecosystems exist? Are they enforced? Who is under such an obligation?
- Is illegal construction sanctioned in your country? Are there penal or administrative sanctions? Who may issue these sanctions?
- Are plans or projects having a significant effect on the environment subject to EIA/SEA (or equivalent) procedures?
- Is public participation prescribed as part of the procedure?
- Is ecotourism promoted in the legislation?

### **Hunting:**

- At what level are hunting laws approved (state/regional)?
- Can hunting sub-national laws contain exemptions from national laws?
- Are hunting laws in compliance with the bird directive?
- Are bans on hunting imposed for the following species: European Lynx (*Lynx lynx* L.), Brown Bear (*Ursus arctos*, L.), European Wolf (*Canis lupus*, L.), European Otter (*Lutra lutra*, L.), Chamois (*Rupicapra rupicapra*, L.), Western Capercaillie (*Tetrao urogallus*, L.), European Hare (*Lepus europaeus*, Pallas)?

### **Cross-border cooperation:**

- Do provisions on cross-border cooperation for the management of bordering protected areas exist in your country? If yes, have any cross-border cooperation agreements been concluded? Please describe their scope and purpose
- Who is in charge and what are the legal tools/procedures to designate a transboundary protected area?
- Have cooperation been developed in your country on the basis of the 'European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities' and related Protocols?
- Has legislation similar to the European Regulation 1082/2006 on Grouping of Territorial Cooperation (EGTC) been implemented in your country (for non EU countries)? Have initiatives related to nature protection and ecological connectivity been promoted through this tool (For EU; and through similar tool for non EU countries)?

### 1.3 Case law

Is there any case law in the above-mentioned sectors concerning ecological connectivity/networks? Please quote and summarise existing cases

## 2 PILOT AREAS

Analysis of regional and local institutional framework and legislation (beside the national institutional framework and legislation) affecting the biodiversity protection and ecological connectivity of selected pilot areas (for specific guiding questions see above: 1. General Part of the Questionnaire):

- a) Analysis of regional/local institutional frameworks and legislation affecting biodiversity protection and ecological connectivity in pilot areas;
- b) Analysis of cross-border cooperation instruments affecting biodiversity protection and ecological connectivity in pilot areas;
- c) Analysis of relevant case law related to biodiversity protection and ecological connectivity in the pilot areas (if any)

Sectors of analysis:

- Protected areas and biodiversity;
- Landscape;
- Land use planning and control (spatial planning, land use and management within the transport sector);
- Environmental impact assessments and strategic environmental assessments;
- Agriculture and agro-environment;
- Forestry;
- Water;
- Hunting;
- Tourism.