

## RECENT DEVELOPMENTS IN THE POLISH ENVIRONMENTAL PROTECTION LAW

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In Poland the process of amending of existing environmental law and passing new law is going on although the main stream of new law has been passed. Actually this process is focused on transposing new Community law (new directives, regulations as well as amendments to the existing acts) to ensure that the Community law is fully effective and to eliminate any doubts as regards the interpretation of existing national provisions. In the period from January 2006 till September 2006 this activity has consisted in amending and issuing some acts in the scope of environmental protection.

### 1. Environmental Protection Law Act

The Environmental Protection Law Act (2001) plays the role of the leading act in the areas of Polish environmental law. A lot of EU directives were implemented in this Act, as it comprises both regulations of horizontal character (such as principles, access to information, public participation, financial instruments, liability, organization of environmental authorities) and sectoral ones (air, noise, control of pollutants emission). The act has been changed many times. The last amendment comes from February 2006 and it aimed primarily<sup>1</sup>:

- at the transposition of new Directive 2003/4 on public access to environmental information: this amendment: a) introduces the obligation of public authority to make accessible not only the information held by them but also the information held for them, b) increases and specifies the scope of information which should be made accessible, c) details, according to the requirements provided in article 4 of the Directive, the exception rules, d) details and amends provisions on charges, by introducing in the Act ceiling fee rates and introduces the possibility to make a charge for the transformation of information into the form indicated in the application, f) imposes new obligations on public authority which enable dissemination of environmental information, particularly by means of computer telecommunication and/or electronic technology (for this purpose an existing instrument for disseminating public information is used, i.e. 'Public Information Bulletin' which is the official computer publication established by the Act on access to public information), simultaneously the amendment provides that different lists and registers which are have to be kept by public administration are to be provided in an electronic form
- at transposition of directive 2003/15 which amends provisions of Directive 96/82/EC (Seveso II); the amended provisions: a) set down the issues of location of such establishments, by introducing the obligation to keep 'safe distance' between establishments and such areas as residential areas, buildings and areas of public use, major transport routes, b) introduce changes concerning establishment of major accident prevention policies, safety reports and emergency plans, c) introduce provisions concerning the exchange of information (the new law obligates the competent public authority to inform Commission about major – accident, their effects and results of the analyses of those events, about national experience in prevention of major accidents, and about installation which may cause such accidents
- at clarification of EPLA provisions to eliminate any doubts as regards their interpretation which have appeared upon their applying (such 'regulatory' changes concern the issue of EIA and financial instruments).

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<sup>1</sup> Ground to draft of the Act <http://orka.sejm.gov.pl/>

## 2. **Biotechnology**

### “Polish base standpoint with regard to GMOs”

In April 2006 Polish Government adopted “Polish base standpoint with regard to GMOs” which has an influence on the changes in Polish biotechnology law as well as at the position Poland will take during the authorization procedure of new GM products on the EU market. According to this standpoint<sup>2</sup>:

„*Polish Government*

- *allows carrying on operation of contained use of GMOs in compliance with the conditions determined in law*
- *opposes carrying on deliberate release of GMOs in experimental purposes at Polish territory*
- *opposes placing on the market GM products admitted under the Directive 2001/18*
- *allows the possibility of import of GM food out of EU and import such food from EU member states under the condition of its explicit/clear marking /labeling and without further possibility of its processing*
- *opposes placing on the market GM feed*
- *opposes growing GM maize, colza, sugar beet, potato and Soya*

*Considering the necessity to meet the obligations arising under Community regulations concerning GMOs on the one hand and, on the other one, taking into account people’s evidently negative attitude to GMOs, the Polish Government will resort to any available measures to change the EU law in this scope. Simultaneously, in order to apply the principles represented by this view, the Polish Government declares that, within the boundaries of law, it will make amendments in regulations already existing and those which are being developed now, in order to limit the use of GMOs in the territory of the Republic of Poland”.*

### The direction of changes

Both the above mentioned standpoint and amendments of EU law with regard to biotechnology have had an influence on the legislative process in Poland. As a result the new Act on Safety of Food and Feeding and the new Act on Feed were passed and the draft of the new GMO Law Act was prepared. In the process of preparing these acts the question of regulatory method of biotechnology problems was considered – two conceptions were taken into account – the conception of a complex regulation of GMO issues in the new GMO Law Act and the conception of existing of GMO Law Act as a regulation of the horizontal type together with sectoral Acts in which the issues of GM food, GM feed and GM pharmaceutical agents are regulated in the scope necessary to adjust to EU Regulations. The second one was chosen (it follows up hitherto way of regulation GMO problems).

At present affairs related to GMO fall under the operating range of the government administration section: ‘Environment’ excepting affairs (some tasks and functions specified by law) related to GM feed (section ‘Agriculture’), GM food and pharmaceutical agents (section: Health’)

### The draft of the new GMO Law Act (The version of the draft comes from August 2006 but it is probably not the final one)

The draft of GMO Law Act aims at complete transposition of the Directive 90/219 and Directive 2001/18 to Polish law. The draft creates severe regime of assessing the safety of ‘GMO operations’ (especially experimental release and placing on the market) so as to realize Polish approach to GMO, according to which Poland aspires to be GMO free land.

According to the draft the public authority which is competent in matters related to GMOs is the Minister for the Environment . The Minister performs his tasks with the participation and help from the Committee for GMOs, which is a consultative-advisory body. The control of the compliance with provisions of the

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<sup>2</sup>[http://gmo.mos.gov.pl/pobierz/GMO\\_RAMOWE\\_STANOWISKO\\_POLSKI.pdf#search=%22stanowisko%20rz%C4%85du%20w%20sprawie%20GMO%22](http://gmo.mos.gov.pl/pobierz/GMO_RAMOWE_STANOWISKO_POLSKI.pdf#search=%22stanowisko%20rz%C4%85du%20w%20sprawie%20GMO%22) p.14-15)

Act is also exercised by specialized bodies of public administration, namely inspectorates: Sanitary Inspectorate, the Inspectorate of Plant Protection, the Inspectorate of Environmental Protection, the Veterinary Inspectorate, the Inspectorate of Trade, the State Inspectorate of Labour, and customs administration organs – each within its own competence.

The draft regulates the issues of:

- contained use of GMM and GMO others than GMM, including rules on carrying on facilities of genetic engineering
- deliberate release of GMO in experimental purposes and placing on the market GM products (this operations come under restrictive requirements related to safety)
- the coexistence of GM crops with conventional and organic agriculture; the draft introduces the ban on growing GM crops with the exceptions provided in the Act; such cultivation is possible provided the user comply the legal requirement set out in the Act - the user has to obtain permission for the place of growing crops, comply with legal requirements related to the manner of growing crops (avoid cross contamination), monitoring of agricultural plots where the crops were grown, storing seeds and crops, informing relevant authorities of the planned crops and any changes in the actual or legal situation as well as notifying owners of neighboring land (within the area of special isolation) about the intention to grow particular crops; information on carrying on such cultivation are publicly announced
- access to information on GMO and public participation by specifying the scope of ‘GMO information’ which should be made accessible and the rules of public participation
- civil and penalty law liability (the draft provides for severe civil law liability - based on the rule of risk - for damage to a person, property or the environment resulting from operations with GMOs, regulated by the Act, including those resulting from growing GM crops.

It is still not the final version of the Acts

#### GM food

The New Act of 26 August 2006 on Safety of Food and Feeding transposes 57 directives and adjusts to EU Regulations relating to ‘food safety’ issues, including those regarding to GM food - *Regulations 1946/2003, 1829/2003, 1830/2003*. The application of these Regulations is in competence of The Ministry for Health and Sanitary Inspector. The new Act tightens penal liability for placing on the market GM food not complying with legal requirements for this kind of food.

#### GM feed

The New Act of 22 July 2006 on Feed adjusts Polish law to EU Regulations related to GM feed - *Regulations 1946/2003, 1829/2003, 1830/2003*. The application of these Regulations is in competence of The Ministry for the Agriculture and the Chief Veterinary Surgeon. The Act introduces ban on manufacturing, placing on the market and using in animal feeding GM feed. This ban will come into force at 2008, 11, August.

#### GM SEED

The amendment of 27 April 2006 to the Act on Seed Production introduces the ban on admitting GM seeds to trading in the territory of the Republic of Poland and provides that such varieties will not be registered in National Catalogue of varieties of agricultural plant species (National Catalogue is an official register of varieties of agricultural plants, vegetables and horticultural plants whose seed can be produced and traded in Poland). With regard to these provisions an objection of their disagreement with EU law was made.

### **3. Others**

Biofuels - The New Act of 26 of August 2006 on biocomponent and bio fuels, which abolished the previous one (from 2003) aims to promote renewable sources of energy and to reduce the emission of greenhouse gases. The Act transposes to Polish law Directive 2003/30/EC.

Fuel quality - The New Act of 25 of August of 2006 on monitoring and control system of fuel quality (which abolished the previous one from 2004) transposes EU directives related to quality of fuel (Directives 98/70, 1999/32 amended by Directive 2005/33) and aims at creating effective system of monitoring and control of specified kinds of fuel.

Nuclear law - The amendment to the Nuclear Law Act aims to transpose Directive 2033/122/Euratom on the control of high-activity sealed radioactive sources and orphan sources as well as provisions of The Treaty on the Non-Proliferation Of Nuclear Weapon (NPT).

#### **4. Natura 2000 – public discussed questions**

In Poland process of identification and notification of Natura 2000 has not been completed yet. The Regulation of the Minister for the Environment on SPAs has been issued in 2004. Special Areas of Conservation are still not designated (the prepared national list of pSACs was, in Commission view, not sufficient).

Actually there are two important public discussed questions concerning Natura 2000 in Poland<sup>3</sup>.

The first one concern the project: “Modernisation of the cableway Kuźnice - Kasprowy Wierch”.

The cableway was build in 1936. Both at that time and now this project has been subject to many objections. The cableway is located in the are of Tatra National Park, which is protected as ‘the area of strict conservation’. This area is also protected as SPA under the Bird Directive and as Proposed SACs (according to national law Article 6 paras.3 and 4 is applied to sites proposed in national list). Modernization of cableway is essential for safety reasons. The fact which gives rise to objections is that the Investor granted permission to increase the traffic capacity of the cableway in winter season (from 180 to 360 persons per hour one way), which in the opinion of many scientist will have definitely negative significant effects on the nature.

The Investor received the decision on the conditions of building and land development for this project in 2003 (at that time this site was not formally designated as Natura 2000 site). In the proceedings regarding the issue of the decision the environmental impact assessment (EIA) was carried out. NGOs participated in this proceedings “as a party right”. They appealed *from* the decision and then lodged a compliant to the Voivodship Administrative Court in Krakow. The court has not decided the case until now.

In 2006 the Investor received the decision about environmental determinants – it is a special decision which defines environmental conditions for the execution of the given project<sup>4</sup>. In the proceedings regarding the issue of the decision competent authority decided that there was no obligation to draw up the environmental report, as the planned project is not likely to have significant effects on the environment and on Natura 2000. Consequently decision on environmental determinants was issued without environmental report and without public participation (according to EPL Act public can participate in the proceedings when environmental report is prepared either obligatory or on the basis of authority decision). This means that neither environmental impact assessment in the meaning of Directive 85/337 nor habitat assessment (which in Polish law takes the form of EIA directive) was carried out.

After issuing this decision eleven non-governmental organizations lodged the complaint to the Commission concerning failure to comply with Community law - articles 6(3) and (4) of Habitat Directive (by authorizing this project without carrying out appropriate assessment) and articles 6 and 10a of Directive 85/337 (the infringement of provisions on public participation and access to justice). The complaint has been registered. In this case NGO lodged also a petition to the EU Parliament.

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<sup>3</sup> The information on these questions are accessible at the web page of NGO <http://www.pracownia.org.pl/prac/>, among others.

<sup>4</sup> The decision is required for projects likely to have significant effects on the environment (category I and II of the project, EIA projects) and others projects then EIA projects, which are not directly connected with or necessary for the management of the Natura 2000 site but likely to have significant effect thereon (Category III of the projects).

Investor has already received building permission and begun the project.

### Via Baltica case

The second dispute concerns the building of an expressway Via Baltica – a road which is to be constructed within the framework of the Europe Transportation Corridor and connect Warsaw with Helsinki.

The proposed road (its particular sections) would cross precious and unique nature sites of northeastern part of Polish territory. One of the proposed sections of this road - Obwodnica Augustowa - would cross the Rospuda River Valley in the Augustow Forest. The Valley is a unique and precious nature site, where rare and protected species of fauna and flora occur. This site is designated as SPA under The Bird Directive. Many scientists have taken actions in defense of the Rospuda River Valley – both in papers and television. An all-Poland campaign of collecting signatures under “The Appeal to the President of the Republic of Poland” for rescuing the Valley has been organized. The aim of these actions is to change the course of the planned expressway so as to omit the most valuable nature sites and simply choose other possible options.

The localization of the section of the road ‘Obwodnica Augustowa’ was determined in local spatial management plan and decision on the conditions of building and land development before Poland accession to UE.

At present the proceedings on issuing decision about environmental determinants for this section has been instituted and is continuing. Minister for the Environment has already approved the course of this section through the Rospuda Valley in one of two variants, i.e. a road tunnel or a ten-span flyover<sup>5</sup>. NGOs participate in these proceedings (and others concerning two other sections of this expressway), take legal action aiming at controlling the legality of issued decisions and without delay inform public opinion about legal and factual situation. Issuing this decision allows Investor to apply for building permission. This case was also followed to the Commission.

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<sup>5</sup> This information was published at the web page of NGO <http://www.pracownia.org.pl/prac/>.