THE AVOSETTA MEETING IN KRAKOW , JANUARY 13 AND 14, 2006
NATURE PROTECTION – NATURA 2000

dr Barbara Iwańska, dr Paweł Czepiel

Department of Environmental Protection Law, Jagiellonian University, Krakow

Objectives of the meeting:

- to understand the interaction of national and EC nature protection law, its achievements and failures
- to identify points of non-implementation and elaborate proposals for reforming national law and practice
- to identify weaknesses of the EC law and practice and elaborate proposals for reform

I. General background of the MS relevant for nature protection

Please describe shortly: the legislative competencies with regard to nature protection

- Poland is a unitary country - the Parliament is the authority with legislative competence whereas executive bodies (e.g. the Minister for the Environment, the Cabinet) and bodies of territorial self-governments (of communes, districts, voivodeships) have the authority within limits laid down in the laws.
- Sources of law: the Constitution, acts, ratified international agreements, ordinances issued basing on the acts in order to implement the same, and the so-called local law, i.e. acts issued by bodies of territorial self-governments within limits and basing on the scope of competences granted in the acts. According to the Constitution the EU law prevails over acts.
- Nature conservation is a subject of the Act on Nature Conservation (the general act) and specific acts (e.g. the Act on the protection of animals, and the protection of agricultural and forest land).
  Basing on those acts and within limits laid down therein executory acts are issued (e.g. designation of the Natura 2000 area by way of an ordinance of the Minister for the Environment; creation of some "national" forms of the conservation of nature by resolutions of commune councils).

The executive competencies with regard to nature protection:

- bodies of the government administration – central and territorial ones – the Minister for the Environment, the voivode,
- bodies of self-government administration – starost, village mayor
- consultative and advisory bodies: the National Board for Nature Conservation, the Voivodeship Board for Nature Conservation, the National Park Scientific Board, the Landscape Park Board,

The characteristics of your natural resources

- Diversified natural environment; in the territory of Poland there have been preserved species and types of habitats which are vanishing in Western Europe, populations of many species are more numerous and in a number of ecosystems here there has been preserved a bigger number of natural components (T. Cofta, Wartości polskiej przyrody, http://www.polska.pl/przyroda/wartosci/article,Czego_nam_zazdroszcza,id,100123.htm)

The major threats for nature:

- extensive agriculture – ceasing of land use caused its overgrowing and withdrawal of certain species from those territories; at present, after Poland's accession to the EU, one can notice intensification of agriculture which is a result of the common agricultural policy – sowing progressively larger areas with crops which are not always favourable for local species, increasing the use of pesticides in crops;
- forest economy – absence of balance between economic goals and the goals of nature conservation;
- decreasing of the area of natural and semi-natural habitats – fragmentation of habitats caused by urban development and intensification of agriculture in the form of transition into homogenous crops;
- absence of a complete nature catalogue.

II. Natura 2000

1. Identification and notification of special areas of conservation (SACs) and special protection area (SPA's) in MS

a) Article 4(1) Dir 92/43 and 4(1) Dir 79/409

*How were the areas identified which went into the national list of candidate areas for SACS (Article 4(1) of Directive 92/43)**?** Which criteria were used, if any?*

Procedure (Act on Nature Conservation)

- The Minister for the Environment prepares a draft list of special areas of conservation Natura 2000 pursuant to regulations of the EU law; the draft list requires opinions to be given by bodies of the commune self-government competent with respect to the territory (30 days, absence of response denotes absence of comments);
- the draft list is delivered to the Commission upon having obtained the consent of the Cabinet.

Criteria for selecting SACs (see: Ekologiczna Sieć Natura 2000 – problem czy szansa (ed.) M.Makomaska-Juchiewicz, S.Tworek, Kraków 2003, p.41 – 54)

- basic criteria for natural habitat (set out in Annex III of the Directive): degree of representativity; subjective area; degree of conservation of the structure and functions of the natural habitat;
- basic crteria for a given species (set out in Annex III of the Directive): size and density of the population of the species present on the site in relation to the populations present within national territory; conservation of the features of the habitat which are important for the species; isolation of the population;
- general criteria for the natural habitat and for the species habitat (set out in Annex III and provisions of the Directive): priority status; rarity and high threat; geographical range; the state's special responsibility for the preservation of a particular habitat or species; occurrence of a higher number of habitat types and/or species types; location of the area;
- additional criteria of designating sites as special areas of conservation in Poland based on three above – e.g. occurrence of at least one type of habitat listed in Enclosure I with the Habitat Directive in the given territory if its area on the said site constitutes over 2% of the total area of the country; occurrence of at least one species listed in Enclosure II of the Habitat Directive on the given site if the size of its population on the said site as compared to the size of the population in the country exceeds 2%.

- at present the Ordinance of the Minister for the Environment of 16th May, 2005 on types of natural habitats and plant and animal species requiring conservation in the form of designation of the Natura 2000 sites is in force, which also sets out criteria and manners of selecting the representative number and the area of natural habitats and habitats of plants and animals for conservation in the form of the Natura 2000 sites.

Has your country identified sufficient candidate SACs and notified them to the Commission? Have core zones and puffer zones been suggested?

- According to the NGO and the Commission, it has not.
- In May 2004 the Minister for the Environment sent to the European Commission a draft national list including 184 sites of natural habitats conservation of the total area of 11,716 km2, i.e. of 3,7% of the territory of Poland.
- Green organizations have elaborated a special report entitled "A proposal of an optimum Natura 2000 network in Poland" - "Shadow list" which was send to the Commission. In the NGO's opinion "the list included only those areas which were not encumbered with significant protests of different interests groups and it is not a complete list. The report contains information concerning the occurrence of a particular species/habitat in Poland, an analysis of proposals of the government and proposals to supplement the draft areas so as to achieve the goals of the Directive (pp.9-11). The proposal includes the addition of at least 152 sites of the total area of ca 23,000 km2 (ca 11% of the area of Poland) and the adjustment of the boundaries of 15 sites included in the government list (increase by ca 573km2) and territories on the Baltic Sea of the area of 6,159.7km2. (Proposal of the optimum Natura 2000 network in Poland – "Shadow list", P. Pawlaczyk et al; http://www.lkp.org.pl/n2k/shadow_list_natura2000_pl.pdf.
- Buffer Zones – absence of a statutory requirement to designate buffer zones around the Natura 2000 areas which would constitute a significant tool of controlling actions taken beyond the borders of a given area. On the other hand buffer zones are designated around some "national" forms of nature conservation – around national parks obligatorily and around landscape parks and nature reserves optionally. Consequently, a protection zone is designated when the Natura 2000 area corresponds to the area of a national park and it can be designated as a discretionary measure when it corresponds to the latter two forms of conservation.

Which criteria were used to designate SPA's (art. 4(1) Dir. 79/409)?

- The criteria used by the BirdLive International;
- The status was granted to those sites where there occurs:
    i. a particular percent (1%) of population of the given species (e.g. threatened species or migratory species) in the country or the whole Union
    ii. or a specified number of species (e.g. regards gathering species which occur in large concentrations – at least 20,000 of marshbirds of one or a greater number of species or 10,000 pairs of one or many species of sea birds.

Was there any public consultation or discussion with regard to the selection of sites of Article 4(1) of Directive 92/43 and to designate SPA's (Dir. 79/409)?

- Act on Nature Conservation provide national consultation with bodies of the commune self-government competent with respect to the territory (30 days, absence of response denotes absence of comments) but do not provide for general public consultations/participation (e.g. NGO)
- Public participation in practice
    i. a representative of green organizations was a member of the majority of Voivodeship Implementation Teams dealing with a preliminary qualification of sites for the network;

ii. a draft list of sites prepared by the government was subjected to public consultations for 5 days – comments were not taken account of ("Shadow List", p.8)
iii. the report "Shadow List" elaborated by the NGO made it necessary to supplement the government draft list.
iv. "information meetings" with local public were organised

What were the main obstacles in process of identification these areas (e.g. local protests, lack of explicit criteria, lack of national data base on such areas)

- Absence of an exhaustive nature catalogue;
- Other obstacles stemmed from the above mentioned primary one – e.g. absence of explicit information regarding the occurrence of a particular habitat made it impossible to designate the boundaries of a site; when the defined site was too large, this gave rise to local protests.

b) Article 4 para. 2 and Art. 5 Dir 92/43

- *Is the Commissions decision with regard to the lists of areas (Article 4(2) of Directive 92/43) final? How many areas of those that had been proposed have been retained (number and surface)? What then happens to the candidate areas which had been proposed by a Member State, but not retained?*

- No, it is not.
- Basing on information already gathered and proposals of green organizations presented in the report „Shadow List", the Commission demanded that the government draft list should be supplemented ; works on the list are in progress.

c) **Art. 4(4) Dir 92/43**

Has your country already taken decisions with regard to Article 4(4) of Directive 92/43 (final decision to consider an area as special area of conservation of Community interest)? What is the state of decision-taking?

- No, it has not.

d) Are Natura 2000 sites protected through a genuine category of area protection, or are the existing categories of protected areas used for Natura 2000 areas?

- The Natura 2000 sites is 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.

e) Are there decisions by national courts which deal with the identification and notification of areas under Article 4(1) of Directive 92/43?

- No, there are not.

f) If the notification of the first round is completed, is there an obligation to improve the list of Natura 2000 sites, eg under Art. 10 Dir 92/43?

- The obligation to improve the list of Natura 2000 sites is not directly evident from the Directive and in order to achieve the goal of the Directive, i.e. the creation of the complete European network of special areas of conservation, it is necessary for each Member State to report about all such sites which should be included in the network at once. 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. In Poland, due to absence of a complete nature catalogue, proposals will have to be completed and modified in subsequent years.

g) Is it possible to reduce or abolish already designated sites (for others reasons then indicated in point II. 3.c).

- Yes, it is. According to the Act on Nature Conservation 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; the provision concerns both SPAs and SACs. As regards SACs this provision should be construed pursuant to Art. 9 of the Habitat Directive which permits a declassification of SACs when it is justified by natural changes.

2. Management of the Natura 2000 sites

a) Article 6 paras. 1 and 2 Dir 92/43

Does national law require management plans for the sites - are they specifically designate for the site or integrated to others plans (which?) - both

Special plans for the Natura 2000 area

- the Minister for the Environment sets up by way of ordinance a plan of conservation for the period of 20 years which can be changed if such are the conservation needs of those areas;
- a draft plan is drawn up a body/an entity/an official which/who exercises control over the area within 5 years of the day of its designation;
- already existing conservation plans for national areas of conservation/protection? (national parks, nature reserves, landscape parks) and existing plans for forest management/development which must comply with the conservation plan for the Natura 2000 area are used for the preparation of the conservation plan for the Natura 2000 area.

Integrated with other plans

- the obligation to take into account the requirements of nature conservation, including restrictions arising from the creation of the Natura 2000 site binds both during the elaboration of a zoning plan and other sectoral plans. At present the need to review the existing sectoral plans with respect to their compliance with the requirements of conservation of the Natura 2000 sites is emphasized (e.g. water management plans).

Which conservations measures - statutory, administrative or contractual measures – where chosen in your country? Which is the main form?

- The legal regime of the Natura 2000 site arises from the provisions of the Act on Nature Conservation, the plan for the conservation of the Natura 2000 site designed on its basis and agreements concluded.
- The Act introduces an interdiction to take any actions which can bear a significantly negative effect on the Natura 2000 area.
- 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.
- The need to adjust business, agricultural, forest-related, hunting or fishing activities to the requirements of the Natura 2000 area:
    i. justifies the implementation of support programmes connected with the lowered profitability,
    ii. and on sites where support programmes cannot be applied, voivodes can enter into agreements with owners or holders of a site (contractual measues);

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.

What appropriate steps are taken to avoid deterioration/disturbances (art.6(2) Dir 92/43

- The existing of legal regime: see next points

b) ***Who does administer/supervise Natura 2000 sites.*** *Is it organized within existing nature public bodies? Do environmental associations supervise?*

- Supervision is exercised by public bodies competent with respect to conservation of the Natura 2000 sites:
  i. supervision over a specific Natura 2000 area is exercised by a body specified in the ordinance on the designation of a given site (e.g. in the case of already designated SPAs these are voivodes or directors of the Maritime Office);
  ii. coordination of the operation of the Natura 2000 sites within the boundaries of a voivodeship is the responsibility of a body of the government administration – the voivode;
  iii. supervision over the operation of the Natura 2000 sites is exercised by the Minister for the Environment;
- Environmental organizations can supervise Natura 2000 by such instruments as public participation right in decision making process or in adoption of plans/programs or by access to information right. They also take part in different scientific projects concerning Natura 2000 sites.

c) Special question on GMOs and nature protection (posed in the context of research for the German Nature Protection Agency):

Is there specific regulation or a discussion in your country on whether in nature protection areas the sowing of genetically modified seeds can and even must be prohibited? Can the authorisation for releasing genetically modified seed be denied for the mere fact that the site of release is situated in a nature protection area? Would an authorisation of the bringing on the market of genetically modified seed exclude any measure restricting the sowing of the seed in nature protection areas (see Art. 22 Dir 2001/18)?

- The Act on Nature Conservation prohibits introduction of genetically modified organisms in national parks and nature reserves. The Act does not set out such a prohibition *expersis verbis* with respect to other areas of protection.

- The draft of the new act on GMO (December 2005) sets forth a new provision according to which a decision on the placing on the market of a genetically modified organism as a product or a component of a product is to define *inter alia* the conditions of conservation of valuable areas with respect to nature, ecosystems, the environment and, in justified cases, of geographical regions.

3. Appropriate assessment' and authorisation of plans and projects

a) **Article 6 para 3 and 4 Dir 92/43**

How was Article 6(3) and (4) Dir 92/43 transposed in your country

- The rules of the creation and conservation of the Natura 2000 areas are the subject of the Act on Nature Conservation. Consequently, obligations arising from Art. 6.3 and Art. 6.4 of the Directive were incorporated into the Act.
- The 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. Thus - according to Art. 6.3 and Art. 6.4 of the Directive – it provide 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 thereon , either individually or in combination with other plans or projects should be subjected to assessment proceedings (which takes the form of the assessment under EIA Directive or SEA Directive);
- 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 the Directive.

Does national law/case law make Article 6 para 3 and 4 applicable also to a) Proposed Sites of Community Importance (pSCIs) b) non proposed but eligible sites (npSCIs)? If yes is this regarded as required by EC law or as a stricter national measure?

- National law makes Article 6 paras.3 and 4 applicable to Proposed Sites of Community Importance (pSCIs). It is the way of realization the obligation to protect pSCIs but it can be treated as stricter national measure.
- No, national law does not permit the application of Article 6 paras. 3 and 4 to non proposed but eligible sites (npSCIs). There is no practice in this area.

What is the factual information on plans and projects affecting Natura 2000 candidates or determined sites

- From the legal point of view – there is an obligation to publish information about a draft plan or information about the intended project in connection with the proceedings in the matter of environmental impact assessment;
- In practice information about some investment projects can be found on the Internet pages of the Ministry of the Environment, and occasionally in the press.

b) Relation of the appropriate assessment under Article 6 to the EIA under EIA Directive and SEA under SEA Directive

PROJECTS

Does the assessment for the purposes of Article 6(3) take the form of an assessment under EIA Directive /or SEA Directive (if not – please shortly indicate the form, content and procedure of 'appropriate assessment ', including questions of public participation

- Yes, the assessment for the purposes of Article 6(3) takes the form of an assessment under EIA Directive /or SEA Directive; in accordance with the Act on Nature Conservation draft plans and draft changes in the approved plans as well as planned projects not directly connected with or necessary to the management of the Natura 2000 site but likely to have significant effect thereon require environmental impact assessment under terms specified in the Environmental Protection Law Act – EPL Act (this act contains provisions which are the transposition of EIA directive and SEA directive).
- In this way a concept of broadening of existing procedure of environmental impact assessment was adopted (see: M. Behnke, M. Kistowski, A.Tyszecki: *System ocen oddziaływania na środowisko w granicach obszarów Europejskiej Sieci Ekologicznej*

Natura 2000 w wybranych krajach UE oraz w Polsce, 2004, p.41; http://www.mos.gov.pl/1materialy_informacyjne/raporty_opracowania/soos_natura2000/index.shtml). It happens through the broadening of:

a) the scope of plans and projects covered by the procedure of environmental impact assessment; a new category of plans and a new category of projects requiring environmental impact assessment was introduced– plans and projects which are not classified as "likely to have a significant effect on environment" and which are not directly connected with or necessary for the management of the Natura 2000 site but likely to have a significant effect thereon, either individually or in combination with other plans or projects

b) the scope of "environmental report" with respect to plans and projects classified as „likely to have a significant effect on environment" (EIA dir.) – it must be extended by the assessment of the impact on the Natura 2000 area.

Is the appropriate assessment confined only to EIA Directive Annex I and II projects or also to other projects (if yes - how they are being defined and what triggers the procedure)

Is the appropriate assessment confined only to 'development consent" under EIA Directive or also to other permits (for example: IPPC permit)

- according to EPL Act appropriate assessment is confined both to projects likely to have a significant effect on the environment [EIA Directive Annex I and II] and to other projects then defined as likely to have a significant effect on the environment, which are not directly connected with or necessary for the management of the Natura 2000 site but likely to have significant effect thereon (Category I and II of the projects).
- Project means the execution of construction works or other interventions in the environment which consist in the transforming or changing of the manner of land use, including those involving the extraction of mineral resources, which require one of the decisions specified in Art. 46 para.4 of the Environmental Protection Law Act - EPL Act (called: development consent catalogue).
- According to EPL Act the execution of the designed project (both of the type which can significantly affect the environment and of another type which can have a significant impact on the Natura 2000 site) is permitted after having first obtained the so-called decision about environmental determinants. It is a special decision which defines environmental conditions for the execution of the given project. The decision is required before obtaining development consent enumerated in the Environmental Protection law Act / development consent catalogue/.
- Such a solution and the way of defining terms 'project' results that such project for which it is not necessary to obtain one of "development consents" mentioned in this catalogue, do not require a prior decision on environmental determinants and consequently proceedings concerning environmental impact assessment connected therewith. In the light of the obligation results from Article 6.3 Habitat Directive and Article 33 of the Polish Act on Nature Conservation such literal interpretation with respect to project likely to have significant effect on Natura 2000 should be rejected.
- What triggers the procedure:

  a) In case of a project likely to have a significant effect on the environment (EIA Directive, Annex I and II) – the investor who files an application for a decision on environmental determinants.

  b) In case of other projects (other then those listed in Annex I and II of the EIA Directive and not directly connected with or necessary for the management of the Natura 2000 site but likely to have a significant effect thereon) – the competent authority for issuing development consent. The investor applies to

the competent authority for the issuance of one of development consents (e.g. a building permit). In the case when the competent authority discovers a possibility that the planned project can significantly affect the Natura 2000 site, it orders the proceedings to be suspended until the investors obtains a decision on environmental determinants. Then the investor files an application for the issuance of a decision on environmental determinants.

- IPPC permit is not listed in the development consent catalogue.

Is the scope of EIA procedure and EIA documentation (EIS) limited in case of 'appropriate assessment' as compared with those under EIA Directive?

- from the point of EIA procedure it is not;
- yes, it is as compared to EIA documentation – in case of projects likely to have a significant effect on Natura 2000, other then those listed in Annex I or II EIA Dir, the scope of the environmental assessment report is limited to the description of the project's impact on natural habitats and habitats of different species for the protection of which the Natura 2000 site was designated.

PLANS

Is the 'plan'' under the Habitat Directive (and legal implications under Article 6.4) interpreted to cover all plans and programs covered by SEA Directive? How in practice it is determined that they are "likely to have significant effects on the site'? what triggers the procedure?

- Environmental assessment (taking into account the conservation of the Natura 2000 sites when necessary) is required for three categories of plans and programmes.
  a) development plans (Category I)
  b) plans and programmes adopted in the defined areas (such as: transport, energy, waste management agriculture, forestry, fisheries) and those which provide the framework for subsequent consents to specific projects listed in Annexes I and II to Directive 85/337/EEC (Category II, in case of strategic documents, it is possible under certain conditions to abandon the requirement of prior environment assessment;
  c) other than those described in point b) when they can have a significant effect on the Natura 2000 sites (Category III). The authority that elaborates the draft plan determines if the execution of the plan can significantly affect the Natura 2000 area. This authority is also competent for carrying out environmental impact assessment, including the preparation of the environmental report.

Is there any special decision making procedure to decide in case a plan will "adversely affect the integrity of the site". Who decides whether to agree to the plan and what compensatory measure be taken (the authority competent to prepare/adopt the plan or any other authority)?, in what legal form?

- Yes, there is a special decision making procedure
- Development of plans and programmes comes within the competence of different administrative bodies on national and local levels. These bodies are also competent for carrying out environmental impact assessment, including the preparation of the environmental report.
- If as a result of the environmental impact assessment, a negative effect on the Natura 2000 site is found out, an additional permission of the relevant voivode must be obtained. The voivode grants such permission provided that specified/particular prerequisites (Article 6.3 and 6.4 of the Habitat Directive and Articles 34 and 35 Act on Nature Conservation) do occur.

- So granting permission to the realization of a plan in spite its negative effect on the Natura 2000 site, including the specification of necessary compensatory measures, is exclusively the voivode's responsibility, regardless of which body has developed the plan in question. The voivode issues such permission provided that prerequisites determined by law (Article 6.3 and 6.4 of the Habitat Directive and respectively art. 34 and 35 Act on Nature Conservation) do occur.

c) Interpretation of certain terms according to administrative adjudication, court decisions, and academic debate (you can illustrate the following problems on significant case/cases or just answer the questions)

Design of impact studies

- information required by law

Meaning of „significant effect" and „adversely affect", e.g.: is the cutting of a special area of conservation (SAC) per se an adverse effect? Any mandatory or indicative thresholds (for example - projects within certain radius from a site deemed to be likely to have significant effect on it)

- The EPL Act contains a definition of the notion „impact on the Natura 2000 site" by which we understand „actions which can significantly worsen the state of natural habitats and the state of plant and animal habitats or in a different way negatively affect the species for the preservation of which the Natura 2000 site was designated. The notion "significant effect" is not defined. Every single time it requires an objective examine to be carried out taking in in view of the site's conservation objectives.
- No mandatory or indicative thresholds.

What is and what not regarded as „imperative reason of overriding public interest"? On what level of concretion are the objectives of the plan or project formulated (mark that the more concrete the less alternatives come into play)? Are they sometimes expressed in monetary terms?

- There is no legal definition of the notion „requirements of the overriding public interest". The Act, following the Directive, determines that these can be requirements of social or economic type or, with respect to priority areas, health or human life protection, ensuring public safety, obtaining favourable effects of the primary importance for the natural environment or other areas after having learned an opinion of the European Commission.
- It is proposed that public goals within the meaning of the Act on the management of real properties (e.g. public roads, railways, sewage treatment plants) should be included in this notion.
- As this notion is not defined, the decision-making body must define it every single time

What is the scope of alternatives to be considered? must any alternative considered be realisable by the original applicant? Are alternatives involving more costs than the prime variant excluded from further consideration?

- If from environmental impact assessment proceeding it is evident that realization of the project in an alternative form (different variant) than the one proposed by the investor is justified, the competent authority, upon the investor's consent, permit this alternative form (it is defined in a decision on the environmental determinants of the consent to the project). In absence of the investor's acceptance thereof, it refuses to define such environmental determinants of the undertaking consent.

- Although the EPL Act does not determine it, it seems that a variant involving higher costs is permitted. Whereas the decision whether an alternative solution is realizable should be considered from the objective rather than subjective perspective.

Are compensatory measures (Art. 6 para 4 subpara 1) be counted as reducing the adverse effect?

- Yes, they are

Do „prioritary"species under Art.4 para 4 subpara 2 Dir 92/43 also include endangered birds, such as those listed in Annex 2 of Dir 79/409 recognised?

-

What counts and what not as an „opinion from the Commission"? Is an informal statement sufficient? Are there instances of lobbying the Commission to render obtain a favorable opinion? What is the legal role of a positive or negative opinion?

- Absence of practice.
- The Act on Nature Conservation employs the same notion as the Directive, i.e. "an opinion of the Commission". This may suggest that the viewpoint of the Commission is of a non-binding nature. However, considering the goal of the Directive, one must admit that it has a binding character. Otherwise a Member State which in spite of the negative opinion of the Commission permits the realization of an undertaking can be subjected to the procedure instituted by the Commission under Art. 226 of the Treaty. Consequently, such an opinion should not be in the form of an informal statement.

Who has standing to challenge decisions under Art. 6 para 4 Dir 92/43? is it a difference between plans and programs in this respect? Does Article 10a of the EIA Directive apply?

- A decision concerning a project with regard to which a report on environmental impact was drawn up can be appealed against by a party or a green organization which participated in the proceedings 'as a party'; Art. 10 of EIA Directive applies.
- The law does not determine this issue explicitly with respect to plans. It is possible, however, to defend a viewpoint that green organization which participate in the proceedings concerning the adoption of a particular plan (which are not typical administrative proceedings) should have the right to appeal against the decision (it is voivode's permission).

Is Art. 4 para 4 Dir 79/409 either as such or in combination with Art. 7 /Art. 4 para 4 Dir 92/43 directly applied if the site was not notified?

- Absence of practical experience but in such cases Art.4 para 4 of Directive 79/401 should be directly applied;

Is Art. 4 para 4 Dir 92/43 directly applied aa) if the site was notified and listed by the Commission (Draggagi case) bb) if the site was notified but not yet listed cc) if the site was not notified but qualifies as potential Natura 2000 site.

- ad aa] and bb] there is no need to apply the Drective because such an obligation results from national law;
- ad cc] such obligation does not result from national law; lack of practical experience the list of sites is under construction.

III. Species Protecion (only for discussion)

- *For reasons of time we will discuss this topic as in terms of EC requirements rather than as in terms of national law. It is recommended that you make yourself familiar with Artiles 12 to 16 Dir. 92/43 as they are viewed from the EC and national perspectives. No written report is requested.*

IV. Financing nature protection (please write a short opinion, if possible)

- *Should there be a financial instrument (fund) at EC level for financing conservation measures? Don't we run the risk that then Member States will do something on the condition that there is money coming from Bruxelles?*
- *What about Article 175(5) EC Treaty and Article 8 of Directive 92/43: should these provisions be made operational?*
- *Is it appropriate to delete LIFE (Regulation 1655/2000) and let the Structural Funds intervene instead?*

V. The actual state and the future development of EU nature protection law (topic for inal discussion; the written answer is optional)

It is suggested that we come up with an avosetta resolution on certain basic points including e.g.

- *The results of 26 years of Directive 79/409 and 13 years of Directive 92/43. What has been the evolution of animals and plants in this time? Is it true that despite these measures, nature slowly withdraws from the environment in Member States?*
- *Major deficiencies in the 2 directives: e.g.: does EC law allow for too many possibilities for the balancing of interests and thus the preponderance of exploitation interests?*
- *The main 'troubles' with regard to transposition and applying of the directives?*
- *Is the system of Directives 79/409 and 92/43 enough to protect nature in Europe? Should there be further European legislation (e.g. on landscapes)?*
- *What can be done to improve the situation of nature within the EU and globally?*