

AVOSETTA GROUP
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Country Report: Romania
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(1) General background of the MS relevant for nature protection

Please describe shortly:

(2) the legislative and executive competencies in your country with regard to nature protection

Romania has accepted the community *acquis* on biodiversity protection without any transitory arrangements or exemptions and has presented major interest in and has committed to the conservation of biodiversity through ratifying most of the international conventions and agreements. During the past 10 years, Romania has passed a large number of domestic laws and regulations, but despite these efforts the authorities continue to experience difficulties and significant delays in implementing the strategies and policies aimed to achieve effective biodiversity conservation.

The transposition into the Romanian law of the Directive 92/43/CEE and Directive 79/409/CEE has started in 2000, and by the end of 2005 the necessary institutional framework has been established. The finalization of site inventory is proposed for 2007.

The framework law regarding the implementation of Natura 2000:

- *Law no. 462/2001 for the approval of Governmental Emergency Ordinance no 236/2000 regarding the regime of natural protected areas, conservation of natural habitats and of wild flora and fauna*

Concerning the development of the implementation process of the community *acquis* on biodiversity conservation is worth to mention that the process of legislative activity, which has started in 2000 with the adoption of the Emergency Ordinance no. 236/2000, later confirmed by Law no. 462/2001, underwent several changes, which affect the conservation measures as well. Emergency Ordinance no. 236/2000 contains the procedures and the criteria of site designation as well as the lists of protected species and protected habitats¹, on the basis of which the site identification work has started. However, at end of November 2005, the Ministry of Environment and Water Management issued a new Order (Order no. 1198 of November 25th, 2005) which replaces Annexes 2, 3, 4, and 5 of the Emergency Ordinance no.

¹ Annex 1 (Aim and scope of management of protected areas), Annex 2 (Types of habitats which require special conservation status), Annex 3 (Species of plants and animals of which conservation requires designation of conservation sites), Annex 4 (List of strictly protected species of plants and animals), Annex 5 (Species of plants and animals of community interest of which collection and exploitation requires management measures), Annex 6 (Methods and means of capture and killing of wild animals), Annex 7 (Criteria of selection of eligible sites of community importance for their designation as special conservation areas SCAs).

236/2000 and amends Law no. 462/2001. This new legal act overrules the previous lists on natural habitat types, species of plants and animals which need special protection.

No public debate or public information is available yet, which would qualify from a scientific point of view whether this amendment is an improvement in comparison with the former lists or not, and to which extent site assessment works done so far need to be repeated.

In addition to the framework law no. 462/2001 effectiveness of legal implementation is strongly related to the assimilative capacity of the general legal framework on environment protection to promote the specific aims of biodiversity conservation.

A large number of general framework laws and special laws also contain a set of provisions on the conservation of biodiversity, the most relevant being: Law no. 137/1995 on the protection of the environment, Law no. 82/1993 on the establishment of the Danube Delta Biosphere Reserve, Law no. 26/1996 on Forestry Code, Law 103/1996 on the protection of wild flora and fauna, Law no. 5/2000 on national territorial planning.

However, as the implementing norms concerning the conservation of biodiversity have been relatively recently issued, the rest of relevant legislation in the field of environmental protection has not yet been integrated and detailed in form of concrete measures the provisions of Law no. 462/2001.

The substantive provisions of these laws on biodiversity protection are still formulated mainly at the level of principles and of general provisions. Environmental laws, like many other fields of the Romanian law, are often issued in form of Emergency Ordinances (although Romania continues to be severely criticized by the European Commission for using this 'legislative technique'), which need subsequent approval in the Parliament, by a law. In such cases delays of 1-2 years may occur in issuing effective implementing norms, which postpone the implementation and enforcement actions, also affecting the conservation of biodiversity.

It is typical for the environmental legislation, that the legal framework is very fragmentary. Therefore, the laws and regulations in some cases overlap and are often unclear, which gives raise to diverging enforcement practices.

Biodiversity conservation, as it is regulated within the legal framework on environment protection, is not treated in accordance with its major significance for the rest of environmental values protected in the field of environmental law. We may say that biodiversity conservation is not yet a major target of the legislative strategy in Romania. Therefore, the importance of conservation measures is not sufficiently acknowledged either by central and local administration or the citizens. Since the legislation in the field of biodiversity conservation is relatively young, the doctrine has not yet had time to develop in order to assist political decision makers and practitioners.

The current situation is due to some extent also to the weak integration of the environmental policies, in general, and the conservation of biodiversity, in particular, in the rest of sectoral policies. Article 50 lit. e. of the Government Ordinance no. 236/2000 provides for the integration of biodiversity conservation in territorial planning, and in general for integration in water management and forestry, but not in agriculture.

NGOs raise concerns regarding the inadequate integration of biodiversity conservation into water management legislation, and the legal framework on forests administration. It is considered that forestry laws, regulations and guidelines do not reflect sufficiently the special conservation needs of forest management, in accordance with the requirements of the Habitat and Birds Directives².

² NATURA 2000 IN THE NEW EU MEMBER STATES-ONE YEAR AFTER ACCESSION, Status report for new and candidate countries, QUESTIONNAIRE –Romania, p. 3

Internalization of the acquis on biodiversity protection is, in general, weak in Romania, the implementation of Natura 2000 being treated rather as an external conditionality within the framework of accession preparations.

In spite of the satisfactory results in the establishment of the legal institutional framework for the protection of biodiversity, site works develop very slowly, and according to the environmental protection associations Romania may risk not to have sufficient capacity to access the structural funds upon accession if the process of implementation of Natura 2000 is not sufficiently speeded up during 2006.

Romania has ratified the major international conventions in this field, including:

- *Convention on the conservation of European wildlife and natural heritage (Bern, 1979)*, ratified by Law no. 13/1993.
- *Convention on biological diversity (Rio de Janeiro, 1994)* ratified by Law no. 58/1994.
- *Convention on international trade with endangered species of flora and fauna (Washington, 1973)*, ratified by Law no. 69/1994
- *Convention on conservation of migratory species of wild animals (Bonn, 1979)*, ratified by Law no. 13/1998
- *Agreement on the conservation of African-Eurasian migratory water birds (Hague, 1995)*, ratified by Law no. 89/2000
- *Agreement on the conservation of bats in Europe (London, 1991)*, accepted by Law no. 90/2000
- *Agreement on the conservation of cetaceans in the Black Sea, Mediterranean Sea and contiguous Atlantic area*, ratified by Law no. 91/2000
- *Convention on wetlands of international importance especially as waterfowl habitat (Ramsar, 1997)*, ratified by Law no. 5/1999.

Institutional framework:

The Law no. 462/2001 that transposes both Birds and Habitats Directives into the national legislation appoints the competent authorities and their responsibilities. According to the provisions of Chapter V - Authorities and Institutions (Art. 38 – Art.44), responsible authorities in charge of implementing the nature protection policies are: *Ministry of Environment and Waters Management (MEWM)* responsible for – coordination, regulation, supervision and control, *Romanian Academy* (together with the subordinate research institutes) – as a national scientific authority and *UNESCO National Commission* through the Man and Biosphere National Committee with responsibilities in coordination of biosphere reserves management.

At the beginning of 2004, in accordance with the provisions of Governmental Decisions no. 1625/2004 and 1626/2004 the National Agency for Environmental Protection and 8 Regional Agencies for Environmental Protection were set up.

Regarding the obligations referring to the nature conservation, according to the Governmental Decision 1625/2004, the National Agency for Environmental Protection "coordinates inventory activities at national and local level of future Special Areas of Conservation – Areas

of Community Importance, Special Protected Areas with the main objective of creating the European Network of Protected Areas entitled Natura 2000".

According to the Governmental Decision no. 1626/2004, the 8 Regional Agencies for Environmental Protection have as a priority obligation in the field of nature conservation "to ensure the technical support for the competent authorities by approval of management plans for the protected areas within the Nature 2000 Network".

Since 2005 through the Governmental Decision no.440/12/05/2005 the National Environment Guard, within the Ministry of Environment and Water Management, is responsible in to control activities with potential impact on the environment and applies penalties for notified infringements in the fields of:

- nature protection;
- landscape and natural habitats protection;
- biodiversity conservation;
- use of biological resources, including fishery funds within natural waters and wild animals of hunting interest;
- protected areas.

The MEWM also collaborates with:

- The Ministry of Agriculture, Forests and Rural Development, with responsibilities in the fields of sustainable management of agricultural biodiversity, fishery, forestry and hunting funds;
- The Ministry of Transport, Constructions and Tourism with responsibilities in land use planning and for ensuring sustainable tourism;
- The Ministry of Administration and Internal Affairs, with control responsibilities and, at local level, with competence to manage some protected natural areas;
- Ministry of Education and Research, with responsibilities in adapting the education programs and plans at all levels, training and formation, and the promotion of studies and research programs for the priorities established in this field;
- The "ROMSILVA" National Forests Administration, with responsibilities regarding the sustainable administration of forests, hunting funds and of some natural protected areas.

The main competencies:

- Ministry of Environment and Waters Management, Directorate of Biological Diversity Conservation and Biosafety
 - coordinates the nature conservation activity, elaborates the policies and the strategies for biological diversity conservation and sustainable use of its components;
 - coordinates the management of the protected areas network;
 - issues implementing measures concerning the sustainable use of the assets of biological diversity;
 - proposes and coordinates scientific and technical research programs for knowledge and assessment of the state of the natural habitats, wild species and other goods of the natural heritage, financed by the ministry' budget;
 - ensures and monitors the enforcement of the provisions and recommendations stipulated in the international conventions and agreements in the nature conservation field;

- National Agency of Environmental Protection
 - assures the technical fundament for politics, strategies and action plans for nature conservation, taking into account the sustainable development objectives;
 - coordinates the implementation of the National, Regional and local action plans for nature conservation.
- Regional Agencies of Environmental Protection
 - elaborate and implement the Regional Action Plans for Nature Conservation in collaboration with NEPA and local EPAs, local public authorities, different offices of other responsible ministries, as well as the commercial companies and civil society;
 - assist the EPAs in the enforcement process of national legislation in the nature conservation field;
 - support the National Environmental Guard in the control activities and offer laboratory services and requested data for these activities.
- Environmental Protection Agencies
 - periodical assessing, surveying and analysis of the conservation status of the natural habitats and wild species in the county territory;
 - monitoring of the enforcement of the of national legislation in the nature conservation field;
 - authorize, at the request of the natural and juridical persons, the harvest of the plants and animals from wild flora and fauna, according to the legal provisions;
 - delivery of opinions on the ecological impact studies and assessments for the effects of the investments and of exploitation of some natural resources, from the point of view of the conservation of the natural habitats and species diversity.

The process of implementation of Natura 2000 is a top-down process. The legislation on biodiversity protection requires the local authorities to include in their budgets funds for the protection of environment, and they also have management competences for the conservation of protected areas belonging to local public ownership and for the private areas falling under their territorial competence (Art. 8 para 1 of Law 462/2001). However, they are short of specialists and funding. The local financial autonomy of administrative territorial units in Romania is very slowly evolving, which affects also their financing capacities regarding environmental protection.

Despite the well-settled institutional framework, the process of site identification is far behind the legal institutional developments. Site works done by NGOs were without coordination until recently and without substantial central financing, except the “Danube Delta” Biosphere Reserve. The site assessment related scientific work in some isolated cases started to be indirectly outsourced by the central authority in charge with the implementation of Natura 2000 to environmental NGOs, in form of purchase of the scientific evaluations done by such organizations. However, at the moment there is no sufficient involvement at institutional level of NGOs in the decision-making related to Natura 2000.

From June 2004 the Romanian Ornithological Society, the WWF and the Romanian Danube Carpathian Mountains Program in collaboration with 40 domestic environmental protection NGOs have set up a Coalition of NGOs, which started the implementation of a project aimed at strengthening the role of NGOs in relation to Natura 2000. This initiative is expected to improve both the coordination among the NGOs and to strengthen their positions in the consultation and decisional processes at the level of central and local public administration, as well as a better monitoring and administration of the protected areas. Up to the end of 2005

under this project there were identified 230 areas, which could be declared protected areas under Natura 2000. The coalition expects to finalize the site identification work during 2006.

(3) *and the characteristics of your natural resources and major threats for nature*

In total 17 major terrestrial ecosystem formations exist in Romania, including Europe's entire major ecosystems. Natural and semi natural ecosystems represent about 47% of the country's total area.

The Romanian biogeography area comprises cca. 52 ecoregions with a high diversity of terrestrial and aquatic ecosystems, specific to the littoral zone of the Black Sea, e.g. steppe, forest steppe, hill, mountain, dry areas, wetlands (including the Danube Delta, rivers and lakes).

Studies from the CORINE Biotope Programme identified 783 habitat types: 13 coastal habitats, 89 wetland habitats, 196 grassland habitats, 206 forest habitats, 54 marshes habitats, 90 rocky/sandy habitats, and 135 agricultural habitat types. There are 827 natural protected areas, which, according to the Law 5/2000 on national territorial planning, represent 5.8 % of the territory. Three of the protected areas are in the UNESCO-Man and Biosphere (MAB) Reserves Network: The Danube Delta Biosphere Reserve (since 1990) which is also a World Heritage Site, the Retezat National Park (since 1935), and the Rodna National Park (since 1980).

The Romania authorities have proposed cca. 5 % of the territory of the country to be declared protected areas according to the Natura 2000, whereas the environmental organizations argue for a percentage above 10%.

Measures on amendments of the Annexes

Regarding the amendment of annexes of Directive CEE 92/43, proposals were made by Romanian NGOs and the central administration in charge of environmental protection for new habitat types (10 types). Proposals for Annex I on plants and Annex II and IV were forwarded to the European Commission in February 2001, and the scientific data for Annex II and Annex III of Directive 79/409 was submitted in June 2004.³

Since the scientific site work concerning the assessment of the protected plants and animals has not yet been completed, additional amendments may be submitted in the future. The Natura 2000 Coalition has work in progress also in this regard. For example, for Annex I of the Directive 79/409 two additional species (*Parus lugubris* and *Oenanthe pleschanka*) have been recently proposed.

(4) Major threats:

However, there are many threats to the natural heritage. They result from the activities developed in the past, as inadequate land use, large networks of irrigation, and extensive heavy industrial networks. In the past decade agricultural and industrial pressures of these types have diminished with the decline of these sectors, but there have appeared new risks for the conservation of biodiversity. In the present economic and social priorities prevail to the protection of biodiversity, although the general principles governing biodiversity protection stipulate that conservation of biodiversity should not be affected by economic interest.

The change of ownership by restitution of nationalized forests and agricultural lands to their former owners has negatively effected conservation of biodiversity. The restitution process of

³ <http://www.natura2000.ro> (website financed by the European Commission on the implementation of Natura 2000 in Romania).

forests was much slower and more difficult compared to the restitutions of buildings and agricultural lands. Several revisions of the restitution process took place by subsequent amendments to the restitution law, the last one dating of August 2005, which generated a relatively high turnover of owners and discontinuity in the forms of exploitation, protection and conservation of nature. The process of restitution has not been yet completed, there are still several thousands of restitution requests under processing and solutioning, and therefore there are no exact data on the total area of land, which has been or should be returned to the original owners. Therefore, economic activities in the buffer zone can be hardly controlled, on one hand, because of the insufficient regulatory solutions, and the unclear ownership structures, on the other hand. The pressure from agriculture on the environment is major, the most important threat being soil erosion, which has the tendency to expand and intensify. Almost half of Romania's agricultural land is affected by excessive drought (7.1 million ha). Illegal hunting and illegal forest exploitation, as well as illegal over-exploitation of wild flora and fauna are also major concerns, in spite of the fact that there are well-settled legal provisions controlling forest exploitation⁴. Another threat that is worth to mention is tourism, under the development pressure in Romania. The current legislation on tourism does not integrate biodiversity principles well enough.

II. Natura 2000

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

- (5) Article 4(1) Dir 92/43 and 4(1) Dir 79/409
- (6) *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?*

According to Law no. 462/2001 nature protection areas, including SACs, and SPAs, can be designated by a Government Decree on the basis of a proposal of the central public authorities in charge of environmental protection or of a proposal made by any other institution/organization, in agreement with the Romanian Academy of Science, while taking into consideration the criteria for selecting sites of community importance (Art. 5, para 4, of Emergency Ordinance no. 236/2001).

The Natura 2000 sites are defined in Law 462/2001, Annex I, as protected areas:

Special preservation areas

The special preservation areas are those natural protected areas that are aimed to be kept, and where appropriate, brought again in a beneficial preservation condition in order to be the natural habitats of the populations of species for which the site has been designed for.

The natural preservation areas are specially designed to preserve the types of natural habitats and species habitats mentioned in Annexes no.2, 3 and 4.

The special preservation areas' management requires adequate management plans specific to the designed sites, in order to avoid the deterioration of natural habitats or species habitats and disturbance of species for which the areas have been set up for.

⁴ Order of the MEWM no. 647/2001 on the approval of the authorization procedure for exploitation, capture and/or acquisition and trade on the domestic market and export and import of wild plants and wild animals

The special protection areas are set up in accordance with the provisions of Directive CEE 93/43.

Special bird protection areas

The special bird protection areas are those natural protected areas aiming to preserve, keep and, where appropriate, bring again in a beneficial preservation condition the specific habitats set up for protecting the wild migratory bird species, particularly those mentioned in annexes no.3 and 4. (See also the recent replacement of these annexes by Order no 1198 of November 25, 2005.)

The special protection area management is made similarly to the special preservation areas.

The special protection areas are set up according to the provisions of the Directive 409/1976/CEE of 2 April 1979 concerning the wild birds' preservation and will be included in the European network NATURE 2000 after the European Commission will acknowledge their statute.

Most of the protected areas that have been identified so far will be proposed to the European Commission for the Natura 2000 sites. The national network of protected areas is made up by the protected areas as identified in Annex 1 of the Emergency Ordinance 236/2000.

Annex 7 of Emergency Ordinance 236/2000 enlists the criteria of selection applicable for the designation of areas of community importance with the status of special preservation area. The assessment procedure has two stages. In stage 1 is assessed at national level the importance of the sites of natural habitat types mentioned in Annex 2 and for each species listed in Annex 3 (See amendments by Order no. 1198/2005).

Criteria for assessing the sites for the natural habitats provided for in Annex 2 of the Ordinance are as follows:

- a) the degree of coverage of the natural habitat type within the area concerned (site);
- b) the area surface covered by the natural habitat type in comparison to the total surface covered by the natural habitat within the whole territory;
- c) preservation level of the structures and functions of the concerned natural habitat type and possibilities of recovery/reconstruction;
- d) global assessment of the concerned area's value for the preservation of the specific natural habitat type.

Criteria of assessments for Annex 3 are:

- a) Size and density of population of the species present in a certain area, in comparison with the situation on the whole territory of the country;
- b) Conservation degree of the characteristics of the specific habitat, necessary for the protected species and the possibilities of restoration of the area;
- c) Degree of isolation of the population of the species in the site, taken into account the natural disturbance of the species.

The list of sites eligible to be designated as sites of community importance is done according to the criteria mentioned above.

In stage 2 are assessed the sites included on the lists.

In addition Annex 7 contains the procedure for the evaluation of other sites for the lists of the Member States, giving due consideration to the contribution of these species to the conservation and rehabilitation of a natural habitat mentioned in Annex 2 or of species mentioned in Annex 3 or being related to *Natura 2000*. Such evaluations shall be made on the basis of the:

- a) value of the site at national level;
- b) the geographical location of the site in relation to the migration ways of species included on the lists of Annex 3 and those cases where this belongs to an ecosystem situated at both sides of one or more community frontiers;
- c) the number of natural habitats (Annex 2) and of species (Annex 3 and 4) of the site;
- d) The global ecological value of the site for the specific biogeographical region.

However, the current legislation does not contain any quantifiable criteria concerning the size of the areas or number of the species on the area.

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

The process of identification has not yet been completed.

In the case of areas, which have been identified, there are no puffer zones and core zones concretely identified in the relevant legislation on the establishment of biosphere reserves, national parks, and natural parks (Law no. 230/2003), although according to Art. 15 of Emergency Ordinance 236/2000: forest belts, natural bushes, banks, meadows vegetation along the rivers and on the lakes, natural wet areas, natural meadows, vegetation on land bordering agricultural crops, vegetation along roads and railways, are protected as well as conserved, with a role of ecological corridors, excepting the cases that may be justified and authorized by the competent environmental authorities. This provision in principle does provide sufficient legal background for the designation of buffer zones, however, as long as there are no quantifiable provisions on authorization of exemptions, the effects of this provision on the conservation of the special protected areas can hardly be estimated, even if applied. Neither Order no. 552/2003 of the MEWM on the internal delimitations of national parks and natural parks for the purposes of biodiversity conservation or the recently issued Order no. 494/2005 contains provisions in this regard.

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

No quantifiable criteria are mentioned in the current legislation (laws, regulations and technical norms).

Law 462/2001 only states in Art. 6 para 4 that the size of the land, which may be declared special protected area according to Art. 5, shall be established upon scientifically assessment. Annex 1 lit. j of Emergency Ordinance no. 236/2000 only mentions that the special protection areas are set up according to the provisions of Directive 409/1976, and that these areas will be included in the Natura 2000 Network.

- (9) *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)?*

The only provision in the framework law on biodiversity conservation, which indirectly stipulates the right of local communities to be consulted in the process of site identification is Art. 10 of Emergency Ordinance no. 263/2000.

Art. 10 provides that for the constitution and administration of the protected areas, there shall be given consideration to the interest of local communities, facilitating their involvement in the implementation of protection measures, conservation and utilization of the natural resources, supporting the conservation of the local practice and usages, and traditional know-how for the exploitation of resources in the interest of the community.

However, the regulatory value of Article 10 of Ministerial Ordinance no. 263/2000 is two-fold regarding effective conservation and public consultation, because it may give raise to such local decisions which promote economic and social interests, on the basis of existing practice and usages, which may not be fully compatible with the standards of conservation requirements.

In general, the economic pressure on local communities is high, whereas the environmental culture is low.

In addition, the general legal provisions on public access to environmental information and public consultations may be invoked in support of public involvement in the process of selection. However, its impact on decision-making has been low till now.

Most of these general provisions refer to public consultation in the process of issuing of environmental authorizations and environmental permits in cases where the proposed economic activities and projects may have adverse effects on the environment.

The public access to information and participation in decision making is organized according to the provisions of Law no. 137/1995 on environmental protection, republished in 2002 in form of Governmental Decision no. 1115/2002 on the access to the environmental information and according to the methodology established by the Ministerial Order no. 1182/2002.

According to Article 12 of Law no. 137/1995 public consultation is compulsory for the issuing of environmental permits and authorizations, subject to the legal provisions of commercial and industrial secrecy.

Romania has ratified the Aarhus Convention on public information and public access to environmental information.

With GEF/World Bank support, a National Public Awareness Strategy for Biodiversity Conservation has been developed. This strategy includes an action plan with short and medium term actions for a mass-media campaign on protection of natural habitats and wild species. Also, in the frame of the LIFE-Nature projects, several informative materials have been elaborated regarding the importance of conservation of wild species and natural habitats, as well as the importance of the European Network Natura 2000.

However, regarding the effectiveness of consultation of the local communities in projects with potential negative impact on the environment and biodiversity conservation is questionable as some major economic projects have been initiated during the past years in areas where biodiversity may be endangered, in spite of repeated public protest, the most recent such case being the Rosia Montana gold mining project.

The NGOs express concern related to the consultation process, which is poorly enforced.

So far, one representative of the Romanian Office of WWF has been officially accepted in May 2005 in the working group responsible to elaborate the Rural Development Plan and is expected to propose specific measures regarding Natura 2000.

(10) *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)*

According to environment NGO's involved in the process of scientific work related to site identification, identification works were done by the state authorities according to the old data-bases, which in some cases do not correspond any longer to the current situation. At the level of central and local authorities both human resources and financing is limited in comparison to the requirements of the assessment works. As mentioned in the previous section, the legislation does not contain quantifiable criteria. NGOs also mention the shortage of specialists at the level of central authority in charge of implementation of Natura 2000, and their involvement in many other activities related to environment protection.

(11) *Is the Commission decision with regard to the list of areas (Article 4 (2) of directive 92/43) final? How many areas of those 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?*

Not yet the case in Romania.

Article 4 (4) Dir 92/43

(12) *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?*

Order of the MEWM no. 1198 of November 25, 2005, which replaces Annex 2,3,4 and 5 of Emergency Ordinance no. 236/2000 contains in Annex I the list of the habitat types and Annex 3A and 4A enlist the species of community interest. Six habitat categories are mentioned in Annex I, including in total 92 of habitats.

The process of site identification is ongoing, which means that it is not excluded that this list as well may change in the future.

Government Decision no. 230/2003 delimitates 11 areas within the category of protected natural areas, section 'biosphere reserve', 'natural parks', 'and national parks'. In case of each area, the decision contains a detailed topographical description of the protected area. Ministerial Order no. 552/2003 further details the internal delimitation of the areas, and uses the term of 'special conservation area' when stating in Article 4 (1) that 'till the approval of management plans for each national park or natural park, there shall be forbidden in the special conservation areas, any kind of exploitation or use of natural resources or land use which is incompatible with the scope of protection and conservation.

Order no. 552/2003 contains in the Annexes the maps and the description of each individual area of special conservation within the 11 protected natural areas.

(13) *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?*

There is a tendency to declare special protected areas those already protected (natural parks and natural reserves) for which the central public authority is often criticized by environmental associations.

NGOs qualify Romania's strategy on Natura 2000 as: 'the minimum resistance policy', by concentrating efforts to include in the Natura 2000 Network mainly areas that are already protected under the national legislation (existing reserves, national and natural parks). NGOs' opinion is that such approach would lead to serious gaps in the networks, as even the existing protected areas do not cover all important biodiversity areas⁵.

The legislative strategy as well reflects this tendency even at the level of legal wording, (the legal categories and concepts used in the text of laws and regulations) which is often confusing when trying to exactly identify which provisions of the acquis in what forms and ways have been transposed.

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

There are no courts decisions or court cases which deal with the identification and notification of protected areas under Directive 92/43.

However, there are two major pending cases, which include aspects related to infringement of laws on biodiversity conservation in Romania.

The first one concerns the Roşia Montana area, where a major gold mining infrastructure construction plan was approved by the Romania authorities without considering the adverse effects of the gold mining activity on the environment, in general, and conservation of biodiversity, in particular. In this case the Appeal Court of Alba Iulia has declared void the environmental authorization issued regarding the gold mining project⁶.

Another court complaint was submitted in summer 2005 by 20 environmental NGOs, including the WWF, against the Romanian Orthodox Church for infringement of the legislation on the protection of natural reserves by starting construction works in the Ceahlau natural reserve⁷.

(15) *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?*

⁵ NATURA 2000 IN THE NEW EU MEMBER STATES –ONE YEAR AFTER ACCESSION, status report for the new and candidate countries, QUESTIONNAIRE-Romania, p. 4

⁶ <http://www.ngo.ro/rosiamontana/masmediaro>.

⁷ <http://www.cheile-rimetului.ro/>

Is not yet the case in Romania.

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

Article 6(1) of Ministerial Order no. 552/2003 establishes that by occasion of approval of management plans of each protected area, the internal delimitations of these areas may be revised, when the case arises. No mentioning is made of the possibility of reduction or abolishment of already designated sites neither forbidden by this legal act or by that establishing the 11 protected areas (Government Decision no. 230/2003).

Emergency Ordinance no.236/2000 states as a general provision, in Art. 5 para 4 only that the categories of protected areas (including the Natura 2000 network) can be changed or supplemented by Government Decision at the proposal of the central public authorities for environment protection upon consultation with the Romanian Academy, and giving due consideration to the opinion of international organizations, on the basis of the criteria settled in Annex 7.

However, the issuance of Ministerial Order no. 1198 of November 25, 2005 which replaces the Annexes of Emergency Ordinance no. 236/2000 is a clear sign that even the sites already designated may be changed on the basis of the new lists of species and habitats.

Since, also the Coalition of Natura 2000 NGOs has started several site works for the assessment of sites eligible for Natura 2000 conservation, it is not excluded that other changes may occur in the future.

(17) **2. Management of Natura 2000 sites**

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

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

The management of future Natura 2000 sites declared within the existing network of protected areas will be undertaken in accordance with the provisions of *Law no 462/2001 (Section 3 – Administration of the Protected Areas Network– Art. 16, 17, 18) .*

According to the Art. 8 (3) of Governmental Decision no. 230/2003 regarding the delimitation of biosphere reserves, national and natural parks and constitution of their administration), “structures which ensure the management of natural protected areas stipulated by contract have the responsibilities to draw up and periodically up-date the rules and management plans”.

The management plans will be elaborated by the administrators of the sites, and will be approved by the competent authority in the field of nature conservation. Where already exist management plans for several natural and semi natural areas and where it is not necessary to establish a special administration for such sites, the management will be undertaken on the basis of an agreement between the environment authority and those involved in administration.

Administrative structures of the protected areas have the following responsibilities:

- to implement the management plan of the natural protected area in accordance with the regulations in force, in a participative and transparent manner, by consulting and implication of the stakeholders within a maximum of two years after conclusion of the contract;
- to administrate the natural protected area on the basis of the present contract and in accordance with legal provisions in force, management plan and regulation of the natural protected area, and to control the way it is implemented on the basis of the mandate/power given by the responsible authority;
- to elaborate the regulation on organization and functioning of the administrative structure, and to draw up the human resources plan and submit for approval to the responsible authorities;
- to support sustainable development of the entire area by measures that contribute also to the conservation of the managed natural heritage (e.g. traditional agriculture, ecotourism etc.);
- to promote actions for awareness and information of the local community regarding the necessity of protecting nature and the roles of the natural protected areas;
- to inventory the goods of the managed natural heritage and to monitor their evolution contributing significantly to a better understanding of the natural assets entrusted;
- *to contribute actively to the development of the European network Natura 2000 as an obligation assumed by Romania in the European integration process*⁸
- to supply regularly the data bases managed by the responsible authority with information in order to improve the support system for assisting the decision making in the field of protected areas and reporting to the national and international institutions;
- to take all necessary measures in order to ensure an efficient protection of natural protected areas and of the natural and cultural heritage values.

The provisions do not detail the content of the obligation to contribute actively in the implementation of Natura 2000.

In the areas which benefit from LIFE-Natura projects the management plans have already been established and implemented.

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

Forms of conservation management are:

- management contracts,
- custody contracts,

⁸ It is strange that the 'Natura 2000' is presented even by the specific legal provisions aimed at the implementation of the domestic laws transposing provisions of the Habitat and Birds Directives as a general obligation, separate from and not as integrated part of the management concept of the special conservation areas. This legislative approach will continue to negatively influence the effectiveness of conservation measures.

-direct administration by the central authorities in charge of biodiversity conservation in case of lack of interest for contracting by the private sector.

It is hard to estimate which will be the main form of conservation measures, as long as no public information is available on the current state of outsourcing of the management of natural parks and national parks, including the special conservation areas.

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

In the national legislation there are stipulated measures in order to avoid deterioration/disturbances in Law no. 462/2001 (Article 14 and 15).

These are:

- (1) Protected natural areas and protection zones will be obligatorily mentioned in local, zonal and national plans of land development and local planning.
- (2) On the surfaces of protected natural areas and their neighbourhood, as well as of other assets of the natural patrimony subject to a special protection and conservation state, it is forbidden to perform any work or activity capable of generating a negative impact on them.
- (3) Authorization for the activities carried out within the protected natural areas and in their vicinity is given by the administration of the protected natural area.

According to Art. 26. Chapter III of Emergency Ordinance no. 236/2000, for terrestrial, aquatic, and underground wild plants and animal species under special protection regime, including those provided in Annex 4, as well as for the species included on the national red list and which live on as well as outside the protected natural areas, are forbidden:

- e) any type of gathering, catching, killing, destroying, growing or hurting;
- f) deliberate perturbing during the period of reproduction, growing, hibernation, and migration;
- g) destruction and/or collecting of nests and eggs in nature;
- h) deterioration and/or destruction of reproduction and rest places;
- i) gathering of fruits and flowers, collecting cutting, uprooting or deliberate destruction of these plants in their natural habitats;
- j) possession, transport, trade or exchange for any purposes, without the authorization of the competent environment authorities.

According to Art. 27 for purposes of conservation may be issued regulations on:

- a) access in certain areas;
- b) temporary and or local interdiction of gathering and catching some species;
- c) periods, ways and means of gathering, catching in conformity with the provisions of Annex No. 6
- d) setting up of a system of authorization for wild plant and animal gathering /catching for trade purposes, including shares determination,
- e) stimulation of growing and breeding wild flora and fauna species of economic interest in captivity in order to reduce pressure on natural population.

For the moment is difficult to estimate, how effectively are the prohibitions implemented, because there are no specific implementing norms, guidelines or other data available on the quantifiable criteria applied for the authorization of activities under Art. 14 and 15 of Law no. 462/2001 in the special conservation areas.

Financing of biodiversity protection:

The national parks have been mostly financed from international funds. The legislation, however, provides a series of other financial sources for biodiversity conservation:

-central budgetary allocation and local public financing. Despite the legal provisions in this regard, contributions from central state budget have been insignificant up now.

The Ministry of Environment has only recently instituted a special financing item for the biodiversity conservation within the Environmental Fund.

Central and local authorities are obliged to institute provisional protection measures till the implementation of measures aimed at the establishment of protection and conservation regime, according to Article. 6 para 2 of Ministerial Order no. 263/2000.

Art. 6 of Law no. 137/1995 oblige the local authorities to constitute within their budgets special funds for the protection of the environment.

- own revenues of the protected areas. Administrations of the protected areas may institute taxes and tariffs subject to approval by the central public administration in charge of environment protection, and the local public authority where the case it is.

-indirect subsidies. Law no. 137/1995 on the protection of the environment provides for tax exemption for those persons who own protected areas upon a valid legal title and undertake conservation measures.

-compensation of conservation measures financed by private owners. Private owners, as well, may be compensated for the costs of conservation measures undertaken. However, the effectiveness of these provisions depends on the funds available in the central budget. Therefore the provisions must be read together with those stating the obligations of the authorities in charge to implement biodiversity conservation.

International and EU funding (Phare and LIFE-NATURE) are still the main financial instrument. LIFE-NATURE has been successfully implemented in Romania so far.

Financial contributions of domestic NGOs are still low, but increasing. In 2004 the National Coalition of NGOs for Natura 2000 was set up, which currently undertakes a significant part of the assessment work related to site identification.

(22) *Who does administer/supervise Natura 2000 sites – is it organized within existing nature public bodies? Do environmental associations supervise?*

This issue is regulated by Law no. 462/2001, Article 18

(1) The ways to manage protected natural areas and other assets of the natural patrimony, subject to a special state of protection and conservation are determined by taking into consideration:

- a) the category of the protected natural area and the managing type of this area;
- b) the surface of the protected natural area and the type of property of lands and assets existing on that surface;
- c) the possibilities of providing financial resources for the personnel and the means required by a good management;
- d) the capabilities and the interest of some scientific forums, universities, research and education institutions from public and private sector, governmental and non-governmental professional bodies to assume the responsibilities of managing some categories of

protected natural areas while providing the necessary financial and human resources under the control of the national responsible authorities.

These criteria are very general and lack quantifiable, objective criteria.

(2) Administration of protected natural areas and of other assets of the natural patrimony subject to a special state of protection and conservation can be made by:

- a) management structures especially set up;
- b) public companies, national and commercial companies and associations, authorities of local public administration, decentralized services of central public administration;
- c) scientific, education and research institutions of the public and private sectors, museums, non-governmental organizations founded according to law;
- d) natural persons in the position as caretaker under the provisions of Article 20.

(3) The administration structures that are especially founded should take care obligatorily of the biosphere reserves, national parks, natural parks and, as appropriate, of wet zones of international importance.

(4) The administration structures that are purpose-founded are represented by:

- a) self-administration with qualified, purpose-employed personnel that administer protected natural areas, according to the management plans and organizational and operational regulations that are approved by the central authority for environmental protection;
- b) consultative administration councils that are organized along self-administration and that are made up of representatives of institutions, economic organizations, local authorities and communities which possess area surfaces of any title within the respective natural area and which are involved and interested in applying protection, conservation and sustainable development measures.

(5) Self-administration bodies with qualified, purpose-employed personnel are appointed by:

- a) the central authority of environment protection, in cases where these bodies are subordinated to it, being financed from state budget within the total number of positions established for the central authority for environment protection and its decentralized services within the limits of the budget grants approved for this authority;
- b) commercial companies which are given the right to administer a protected natural area and which agree to provide from their own sources the financial and technical means necessary for a good management, according to the management plans approved by the central authority for environment protection.

(6) The consultative administration meetings are organized at the suggestion of the administration of the protected natural areas with the approval of the central public authority for environmental protection.

(7). The administration structures that are specially set-up for the protection of natural areas, in conformity with the paragraph (4), will be guided and managed by a scientific council board.

(8) The structure of the scientific council boards is proposed by the administration of the protected areas with the agreement of the Romanian Academy and is approved by the central public authority for environmental protection

(9) The scientific council bodies evaluate the way the measures of management phases are applied and forward yearly, or whenever it is necessary, reports with findings, proposals and suggestions to the Romanian Academy and the central authority for environment protection.

(10) In cases of scientific reserves, natural reserves, nature's monument, special areas of preservation, areas of special protection and of other assets of natural inheritance, which are not included in biosphere reserves, national parks and natural parks, the management can be done through one of the ways provided in paragraph (2) point b), c) and d), based on

agreements that are concluded, as appropriate, with the central authority for environmental protection, the Romanian Academy and the authorities of the local public administration.

(11) If in the same zone there are protected natural areas and other assets of natural inheritance, subject to special regulation of protection, their management may be provided by a single administration board in direct coordination of the county inspectorate of environmental protection

Secondary legislation

Ministerial Order no 429 of 30 May 2005 establishes the procedures of delegation of management of protected areas and the transfer of management into custody on contractual basis. This Ordinance is applicable for both the new areas and the existing ones, for which management contracts are in force. However, in the later case further implementing norms will set up the deadlines for new contract conclusions (Annex 1, art. 2 (3)). In cases where there is no demand for delegation of management, the authority in charge will take the necessary measures for the establishment of park administrations under its subordination, with financing from the central budget (Annex 1, Article 2 (4)). The selection of offers and the implementation of contracts are done by a commission comprising 2 representatives of the National Environmental Guard, of the Commission of the Romanian Academy for the Protection of the Natural Monuments. With observer status the representatives of the territorial environmental agency to which the protected area belongs may also participate in the selection.

Both forms of outsourcing are governed by model contract forms, containing minimum obligatory provisions to which the contracting parties may add other obligations, subject that these do not infringe the compulsory contractual provisions.

According to the model contract, the contracting party is compelled to implement the proposed management plan within 2 years from the date of contract conclusion and to submit annual reports on the implementation of the contract. In addition, they are obliged to provide the state authorities with information and to report any damage which may occur to the natural capital under his administration, and to provide data for the information networks and to actively contribute to the development of Natura 2000 Network (Article 4).

Here again, Natura 2000 and the conservation according to these criteria are mentioned in the text of the Ordinance as something separate from the general conservation and management obligations related to the protected area. This, from the point of view of the regulatory approach, cannot be qualified as a successful solution.

Among the obligations of the authority in charge there is stated to control, at least once a year, and as often as necessary, the contract implementation, with the involvement of the local environmental authority.

The authorities are also compelled to promote the projects initiated by the administration and to support, from the state budget, within the limits of the funds available the projects which were included in the management plans, and approved.

The administration may establish tariffs for the use of the protected area in order to cover the costs related to administration of the protected area (Article. 4.4 lit. d) and they have the right to represent the protected area at the level of international and national meetings (Article. 4.5 lit. a) and may ask for the assistance of the authority in charge, for fundraising aimed at the protection of the contracted area (Article. 4.5. lit. e).

Contracts may be concluded for a period of 10 years, according to Article 5.

The management project must include solution on the visiting of the protected areas and the measures that may be taken in order to avoid the negative impacts on the protected area; activities allowed and forbidden (Annex 2, on custody, art. 2, iv).

The management plans should be submitted within 1 year from the date of contract awarding and the regulations of the protected area within max. 6 months (Article 4.1 lit. a, b of the model contract). The agency for the protection of environment shall assist the custody, control at least once a year the contract implementation, and support its projects. The custody may participate in contracts concerning the protected area (Article 4.3 lit.g) and establish tariffs to cover the administration costs (Article 4.3 lit. j).

The contract duration is 5 years, according to Article 5.

Environmental associations have no supervisory competences in the field of environmental protection, according to the currently applicable legislation.

(24) GMOs and conservation of biodiversity

Government Ordinance no. 49/2000, which implements Directive 98/81/CE on contained use of genetically modified micro organism and Directive 2001/18/CE on the deliberate release into the environment of genetically modified organisms.

The ordinance institutes general provisions on the contained use of the genetically modified micro organism in line with Directive 98/81/CE Annex 4. However, there are no specific rules related to the use of genetically modified seeds in the neighbourhood of the protected areas. Therefore, in such cases the general provisions apply.

Government Ordinance no. 49/2000 regulates the use of GMOs and provides the method of risk assessment (Annex 12) according to the Cartagena Protocol on Biosafety (ratified through Law no. 59/2003) and the Convention on Biological Diversity (ratified through Law no. 58/1994). The Ordinance entered into force mid 2002 through Law no. 214/2002. Further implementing laws regulate the setting up of a Biosafety Commission (Ministerial Order no. 684/2002), the obligations of farmers to declare the surfaces that are cultivated with GMOs and the source of the seeds (such records are kept for 5 years). In spite of well developed legislation and institutional framework, the implementation and enforcement of the provisions is not yet well developed. Illegal farming of GMOs is recorded in international monitoring databases such as the GM Contamination Register⁹.

3. Appropriate assessment and authorization of plans and projects

(23) Transposition of Art. 6.1 Directive 92/43

There are is no specific law or regulation concerning the EIA procedure or specific criteria regarding the management of special conservation areas. Thus, the general legal provisions on EIA are applicable in such cases as well.

The procedures for EIA are regulated by Governmental Decision no. 918/2002 Article 3 and Law no. 137/1995 republished in 2003, Art. 35

Governmental Decision no. 918/2002 on establishing the framework procedure on environmental impact assessment and the list of public and private projects subject to EIA:

⁹ <http://www.gmcontaminationregister.ro>

Art 3. The environment impact assessment identifies, describes and evaluates, in the proper way and for each special case, the direct and indirect effects of the projects on the following factors:

- a) human beings, fauna and flora;
- b) soil, water, climate and landscape;
- c) goods and cultural heritage;
- a) the interactions between all the factors from a), b) and c).

The impact assessment on environment is accomplished in steps, as follows:

- a) the project is encapsulated in the environment assessment procedure;
- b) the evaluation domain is defined and the impact assessment report on environment is accomplished;
- c) the quality of the report is analyzed for the environment impact assessment.

Law 137/1995 republished in 2003, Article 35

The central public authority for environment protection and central authorities which deal with natural resources elaborates the technical regulations concerning measures for the ecosystems' protection, biodiversity conservation, natural resources management and public health preservation.

At the design of factors which can modify the natural framework of one area, it is necessary to have the impact evaluation procedure on the area, followed by the determination of technical solutions for ecosystems function preservation and vegetal and animal protection, including the ones which migrate, with respect to the conditions imposed by the environment authorization, and also the self monitoring until all of these goals are accomplished.

The protection of rare species and extinction-threatened organisms, biodiversity conservation, implementation of protected areas and the measures established by the environment authorities are priorities compared to other interests.

Government Decision no. 918/2002 does not use the term of plan, only projects fall under its field of application. Both private and public projects are subject to EIA as part of the environmental authorization procedure.

Art. 2 defines the term of project as: execution of construction works or other site works and equipment work as well as other activities affecting the nature and landscape, including those related to the exploitation of natural resources.

Art. 5 para. 1 stipulates that do not require EIA national projects related to national defence, or those of which details are established by a specific legal act, subject that they comply with the rest of the provisions of Government Decision no. 918/2002.

Another category of exemptions is stated in para. 2 of Art. 5. According to this provision in 'exceptional cases', as public order, national security, some parts of the projects may be exempted from the requirement of EIA upon request by the submitting authority, subject that:

- a) another method of impact assessment will be applied and its findings will be made public, and
- b) the public opinion will be properly informed about the procedural exemption and the reasons of granting exemption.

The concern of Government Decision no. 918/2002 about the special conservation areas is somehow marginal. Only in Annex 3 on selection criteria of the projects is explicitly mention made of such areas under point 2.3, lit. f.

This provision stipulates in rather general terms that it should be considered the absorption capacity of the environment, with special attention on the SPAs designated under Law no. 462/2001 and Emergency Ordinance no. 236/2000.

According to the NGOs involved in the implementation process of Natura 2000, as WWF, in some of the EIA the biodiversity aspects are not properly assessed. According to their findings there are cases where there is no public consultation for the evaluation of EIA and for measure proposed for the investment as a result of the assessment. It is highlighted in the Report that ‘in many cases local/regional NGOs lack either the capacity to participate in the public debate or the resources to prepare biodiversity studies that could support alternative solutions to investments with negative impacts on designated or proposed sites¹⁰.

(24) *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?*

No case law has been developed on this issue and no doctrine has evolved yet concerning the application of Article 6 para 3, and 4.

Emergency Ordinance no. 236/2000 in Annex 1 (lit.i) on the goal and regime of management of natural protected areas regulates for the conservation of special preservation areas that ‘any plan or project indirectly related to or necessary for the site management, but likely to have a significant effect on the site will be subject to an impact assessment taking into account the objectives of the conservation. Such plans or projects will be implemented only upon public consultation.

Lit. i only partially transposes the second sentence of Article 6 (3), while omitting to mention the requirement that ‘ the competent national authority shall agree to the plan or project, only after having ascertained that it will not adversely affect the integrity of the plan concerned.

No mention is made in the text of the Emergency Ordinance no. 236/2000 of the requirements of art. 6 (4) or of the competences of the authorities in charge of such cases. Therefore the general provision on the institutions in charge of the implementation of Natura 2000 applies, as mentioned in the chapter on the institutional framework.

The same is applicable for the conservation of special bird protection areas (Annex 1, lit.j).

(25) *What is the factual information on plans and projects affecting Natura 2000 candidates or determined sites?*

No detailed information on this issue is available. The sites have not been yet designated (except those 27 SPAs identified so far). Therefore, is no data on the activities, which could affect negatively the candidate sites. However, WWF has signalled that the maps developed by the Coalition of Natura 2000 NGOs indicate such potential priority areas which may be negatively affected by the planned highways¹¹.

¹⁰ NATURA 2000 IN THE MEMBER STATES- ONE YEAR AFTER ACCESSION, Status Report for new candidates and Member States, QUESTIONNAIRE-Romania, p. 2

¹¹ NATURA 2000 IN THE NEW MEMBER STATES - ONE YEAR AFTER ACCESSION, Status Report for new and candidate countries, QUESTIONNAIRE-Romania, p. 10

(26) *Relation of the appropriate assessment under Article 6 to the EIA under EIA Directive and SEA under SEA Directive*

(27) *PROJECTS*

(28) *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)*

Emergency Ordinance no. 236/2000 contains the same general provision concerning the transposition of Article (3) for both the special conservation areas (Annex 1, lit.i) and special bird protection areas (Annex 1, lit.j).

Annex 1, lit.i makes mention that the public should be consulted, but there is no provision on the form, content and procedure of ‘appropriate assessment’.

(29) *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)*

The general legal provisions do not detail this issue.

(30) *is the appropriate assessment confined only to ‘development consent’ under EIA Directive or also to other permits (for example: IPPC permit)*

The general legal provisions do not detail this issue.

(31) *is the scope of EIA procedure and EIA documentation (EIS) limited in case of ‘appropriate assessment’ as compared with those under EIA Directive?*

The general legal provisions do not detail this issue.

(32) *has there been any discussions concerning the possible effects on the national legal scheme of the Waddenzee¹² case; Draggagi case*

There is no information about such discussions.

(33) *PLANS*

(34) *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?*

(35) *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*

¹² Gemeint sein dürfte das Muschelfischerurteil, EuGH, Rs. C- 127/02, 7.9.2004,

measure be taken (the authority competent to prepare/adopt the plan or any other authority)?, in what legal form?

Government Decision no. 918/2002 as well as Law no. 137/1995 use only the term of project in relation to the EIA procedure.

Emergency Ordinance no. 236/2000 in Chapter III on conservation of habitats contains only general provisions on this issue.

Article 28 allows for derogations from the prohibitions stipulated in Articles 26 and 27:

- a) in the interest of wild flora and fauna protection and natural habitat conservation;
- b) to prevent damages to domestic animals, forests, fish breeding pools, waters and other assets;
- c) in the interest of human health and public safety;
- d) for the benefit of scientific research and education;
- e) for repopulating purpose.

Derogations should to be approved by the central public authority for environmental protection upon agreement with the Romanian Academy, subject that there are no “*acceptable alternatives*” and the the measures proposed will not affect the conservation of the respective species’ population in their natural area.

No further details or definition may be found in the primary and secondary legislation in this regard.

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

2. *design of impact studies*

No information.

3. *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)*

No such case law or academic debate yet in Romania.

(36) *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?

No specific provision, which details the concept of imperative reason of overriding public interest, can be found in the currently applicable legislation. No doctrinal debates have yet evolved in relation to biodiversity conservation and overriding public interest.

(37) *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?*

No legal provisions or information on administrative practice or court practice on these issues.

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

No mention is made in the currently applicable primary and secondary legislation of compensatory measures in relation to conservation of special protected areas. Therefore, in such cases the general legal provisions apply, like those concerning forest administration, which may not be in full compliance with the conservation purpose of the protected area.

(39) *Do „priority“ 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?*

No information on this issue, because the list of protected bird species is not yet finalized.

(40) *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 favourable opinion? What is the legal role of a positive or negative opinion?*

Not yet the case in Romania.

(41) *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?*

Not yet the case in Romania.

(42) *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?*

Not yet the case in Romania.

(43) *Is Art. 4 para 4 Dir 92/43 directly applied aa) if the site was notified and listed by the Commission (Dragaggi 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*

Not yet the case in Romania.

— **Species Protection (only for discussion)**

(44) *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 Articles 12 to 16 Dir. 92/43 as they are viewed from the EC and national perspectives. No written report is requested.*

— **Financing nature protection (please write a short opinion, if possible)**

(45) *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?*

(46) *What about Article 175(5) EC Treaty and Article 8 of Directive 92/43: should these provisions be made operational?*

(47) *Is it appropriate to delete LIFE (Regulation 1655/2000) and let the Structural Funds intervene instead?*

The LIFE -NATURE program has been proven to be successful in Romania. In the period of 1999-2005 there were implemented 35 projects¹³, out of which 22 concern directly or indirectly biodiversity conservation. NGO's as well consider that the continuation of LIFE Nature will be vital for strengthening the implementation of Natura 2000 in Romania. However, in spite of the relatively high number of successful projects, their effects on speeding up site identification and improving the quality of legislation has been low. Neither the financing nor the know-how transferred through the technical assistance provided under these projects has worked as sufficient incentives to speed up the process of implementation. Nevertheless, for the moment being the financing through international funds and the project conditionality continue to be the major motor of the process.

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

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

(49) *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?*

¹³ <http://europa.eu.int/comm/environment/life/project/>

- (50) *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?*
- (51) *The main 'troubles' with regard to transposition and applying of the directives?*
- (52) *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)?*
- (53) *What can be done to improve the situation of nature within the EU and globally?*