

EUFJE 2006  
Helsinki, 15 – 16 September

## Impact of Natura 2000 sites on Environmental licensing

Delegates and observers are invited to answer this questionnaire and to return their contribution to the organizers no later than June 16<sup>th</sup>, 2006. For the convenience of the organizers, we ask you to answer freely but to recognizably adhere to the disposition and the questions below. The answers will be summarized and presented at the meeting. Those delegates wishing to present case examples of how possible effects on Natura 2000 sites have been taken into account in the environmental licensing process are invited to submit the topic of their talk and, preferably, a brief abstract no later than August 15<sup>th</sup>, 2006.

### **A. Natura 2000 sites**

#### **1. Country or area**

The choice of appropriate localities and areas was made from the whole Slovak territory. The Slovak Republic has still paid its attention to the main reason for establishment of the network NATURA 2000 which is an effort to maintain European natural heritage for future.

From the point of Slovak expert's view by means of the NATURA 2000 network of protected sites the protection of the most rare and endangered wild flora, wild fauna species and natural habitats within the area of the European Union as well as in the Slovak republic is really provided. Through the protection of the species and habitats of European importance EU biodiversity would be maintained.

#### **2. Number and area of sites**

The National List of proposed Sites of Community Importance (so called "List of pSCI") according to Art. 27 par 4 Act No. 543/2002 Coll. on Nature and Landscape Protection was approved by the Slovak Government on 17 March 2004 and contains 382 sites, which together cover more than 1 400 000 acres, i.e. 11.7 % of Slovak territory.

The National list of proposed Special Protection Areas (so called "List of pSPA") according to Art. 26 par 2 Act on Nature Protection was passed by the Slovak Government on 9 July 2003. This list contains 38 localities, which cover more than 3 000 000 acres, i.e. 25.2 % area of Slovakia. From the points of Slovak Government's view Special Protection Areas are designed in accordance with the appropriate provisions of the EU Birds

Directive. Slovak legislation created new designation for this category of the protected area - "Special Protection Area". On the other hands "Special Areas of Conservation" (so called SAC) is designed in accordance with the Habitats Directive.

The List of pSPA consists of 382 SPA totally covering 11, 7 % of the Slovak territory. Under preliminary information from EU Commission the List is sufficient for more then 57% from total number of evaluated spices and biotopes. It seems the Slovak Republic will have to determine new areas for other spices and biotopes or realize more detailed investigation.

### **3. Which authority drafted the national Natura 2000 site list?**

Not only state authorities in question (e.g. the Slovak State Office for Nature Protection or the Ministry of Environment of the Slovak Republic) proposed suitable localities but under special guideline approved by the Ministry of Environment NGO's or other private persons were also involved in this process.

### **4. How were the sites chosen?**

Was there a screening of possible sites and field surveys of competing site candidates? Were existing conservation areas designated as sites? Which authorities participated in the screening process? Did NGOs have a say? Was there a public debate on the criteria for choosing sites? Did (or does) the public have access to the biological data, on the basis of which decisions were made?

The Slovak Guideline for choosing SCI and SPA was approved by the Ministry of Environment of the Slovak Republic. This Guideline is based on the sophistic and very technical approach for evaluation of all Slovak territory as regards possibility to obtain relevant data and information on birds' areas and suitable localities for species. The Guideline was created by experts in nature and environment protection and it is available at web site: [www.sopsr.sk](http://www.sopsr.sk).

For the reason of quick creation of proposals and successful choice pSPA or pSCI special definitions were created as follows:

A Natural Habitat of European Interest is a natural habitat that is endangered by disappearance in Europe or has a small natural range or represents typical examples of one or more bio-geographical regions of Europe.

A Priority Natural Habitat is a natural habitat of European interest protection of which is of special importance with regard to proportion of its natural occurrence in Europe.

A species of European interest is an animal species or a plant species which is in Europe

1. endangered,
2. vulnerable, which is likely to be endangered in the near future if

the causal factors continue operating,

3. rare, with a small population that is not endangered or vulnerable so far, which is at risk,

4. endemic and requiring particular attention due to specific character of its natural habitats, or

5. a species requiring particular attention due to impacts of its exploitation on its habitat or on the status of the species.

A Priority Species is a species of European interest protection of which is necessary considering its small natural range in Europe

## **5. Which authority decided which sites were to be included in the Natura 2000 network?**

Above mentioned Lists of pSPA and pSCI were published during general remark procedures by way of Ministry of Environment's web site for a marking up. This marking up was available for anyone who is able to use internet means.

The above mentioned general remark procedures were launched extra for SCI and extra for SPA.

### **SCI:**

The List of pSCI was created during 8 phases. The last phase consists of 4 steps, in particular determination of number of lots and buildings in question and their owners or trustees (users).

The Slovak Ministry of Environment with cooperation with Land Register Offices identified more than 2 500 000 lots with 42 000 owners or trustees in 384 pSCI. Then the Ministry of Environment had to discuss with the known owners or other users (trustees, administrators, lessees) of real properties (especially lands and buildings) affected by the intended protection including of a proposed area of European interest in the national list; reasoning of the including of a site in the national list, defining of activities that require an approval of the nature protection body or which are prohibited according to this Act and the way of compensation for restriction of common cultivation had to form a part of the discussion.

Although owners of all identified lots have not been registered yet because of near past (the Federal Land Register Office operated in incorrect manner its activity during socialist regime) more than 360 meetings with owners and trustees (users) were realized.

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Then the List of pSCI was modified according to remarks produced both by the Ministry of Defense and Ministry of Agriculture within general remark procedure.

### **SPA:**

The List of pSPA was remarked particularly by the Ministry of Agriculture. Its remarks were very serious and it redounded to exclude some pSCA from List.

Upon acceptance of remarks which were raised during a marking up process by some Slovak ministries the Government of the Slovak Republic approved the List of pSPA that finally contains 38 localities, which cover 1 236 545 ha, i.e. 25.2 % area of Slovakia and further approved the List of pSCI that contains 382 sites, which cover 573 690 ha, i.e. 11.7 % of Slovakia.

Than (at April 2004 sharp) both the Lists of pSPA and pSCI were sent to the European Commission in Brussels in a form of the Standard Data Forms for Alpine and Pannonic biogeographic regions together with the electronic and paper maps. Although European Commission has not still approved it number of workshops has already been raised not only with the Slovak republic but with its neighbours like Hungary and Poland in order to eliminate some negatives at proposed lists.

Workshop aiming to proposal of SCI areas was in the first instance realized in Slovenia on May 2005 in so called Alpine biogeographic seminar and then in Hungarian National Park Fertő-Hanság on September 2005 in so called Pannonic biogeographic seminar, in which the European Commission assessed the pannonic part of the Slovakia. The European Commission assessed the proposes of Sites of Community Importance from Slovakia, Hungary and Czech Republic occurring in the pannonic biogeographic region. The pannonic biogeographic region covers the whole area of Hungary, lands in Slovakia and a small part of the Czech Republic and Romania. Representatives from countries, NGO's, experts and landowners (users of land) participated on this seminar. The purpose of the seminar was to evaluate whether pSCI are sufficient for all habitats and species of Community interest naturally occurring in the pannonic biogeographic region. According to preliminary results the Slovak List of pSCI is sufficient for 58 % of habitats and species. For other habitats and species it will be necessary to define new sites or to realize a scientific research. EU Commission's remarks will be discussed during bilateral meetings.

In the meantime the Slovak Ministry of Environment publicized the Regulation of the Ministry of Environment No. 3/2004-5.1 by which National list of proposed Sites of Community Importance was issued. This Regulation entered into force from 1 August 2004. There has been the preliminary protection of the pSCI and pSPA that is up to a proposed level of expected protection. Approximately 86 % of proposed SCI overlaps each other with existing system of nature parks, nature reserves or other protection areas. This causes therefore that it will not come to essential change of a level of protection in these areas.

## **6. Appeals against the Natura 2000 national network decision**

Which authority decided on the appeals, which parties had legal standing and on what grounds could appeals be lodged?

The process relating to an insertion of the pSCI and pSPA into National List was differentiated for SCI and SPA themselves.

- A) Proposal of the List of pSPA was sent to the Ministry of Environment when it had been created. Thereafter general remark procedure was commenced by the Ministry of Environment. Only the Ministry of Agriculture filed main and serious remarks. These remarks generated bargaining basis for creation of agreement between both Ministries to exclude some proposed localities from National list. This procedure does not subject to court reviewing because it is part of legislative procedure. If the Ministry of Environment should not comply with the Ministry of Agriculture's remarks so then the Ministry of Agriculture or other dissatisfied state authority in question has right to bring a petition to the Slovak Legislative Council. The Slovak Legislative Council was established like an advisory body for the Slovak Government in order to manage, check and organize a legislative procedure. If decides in favour of the Ministry of Agriculture then the Ministry of Environment will have to comply its proposal with the remarks. If it be to the contrary general remark procedure continues without any changes till it will not the Ministerial Decree or Governmental Regulation be issued.
- B) Proposal of the List of pSCI was subject to different process. Firstly requirements of landowners or trustees (users) in question were discussed in detail with them and then a general remark procedure was launched. Only both the Ministry of Defense and the Ministry of Agricultural produced serious remarks within this procedure. Accordingly like in previous case the Ministry of Environment made an agreement with above mentioned ministries on exclusion of some proposed SCI from proposal.
- C) The Ministry of Environment is obliged firstly under Art. 26 par 3 of Act on Nature Protection to publish in its Official Journal the List of SPA that includes a name of each bird area proposed for protection, cadastral area, in which the site is situated, acreage of the site and reasoning of the proposal of protection and secondly under par 6 to publish the List of SCI and determination of borders of a protected bird area and a list of forbidden activities including territorial and time restriction of their execution by its Ministerial Decree. Ministerial Decree is a generally binding regulation.
- D) Under the Slovak Constitution only the President of the Slovak Republic, at least one-fifth of all Members of Slovak Parliament, a court as well as the Attorney General may submit a motion to the Slovak Constitution Court in order to decide on the conformity of the Ministerial Decree with the Slovak Constitution. There is no other form of legal remedy in this procedure.
- E) On the other hand there is a special expropriate procedure under Art. 50 of Act on Nature Protection. Under this Article the responsible nature protection body is obliged to give a written notice of the intention to designate a protected landscape element, protected site, nature reserve, nature monument or protected tree to the owner or other user (trustee, administrator, lessee) of

the affected real estate who may be found out in the Land Register, to the affected municipality and to the affected bodies of the state administration.

The notice of an intended designation contains general characteristics of the intention and the place of the designation. If larger number of landowners is affected or their residence is unknown the intention may be notified by a public order.

The municipality is obliged within 15 days of receiving a notice of the intention of designation to inform the public in the district and to allow public comments for at least 15 days.

Then the owner or other user of the affected real estate, the municipality and the affected body of the state administration have the right to file written comments within 30 days of the delivery of the notice of the above intention or of its public notice. The nature protection body is obliged to directly discuss the comments no later than 30 days with persons who have made the comments.

Further the owner or other users of the real estate in question must to notify the nature protection body responsible for designation of a part of the nature as protected without undue delay of any activities between an intention and designation which require approval or are prohibited under the Act. If the interest of nature and landscape protection requires it, the nature protection body may determine conditions for these activities; in case of loss due to defining of the conditions, the owner or other users of the affected land must be compensated for restriction of usual activities.

It is important to note that if the nature protection body does not designate a protected area or tree according to this Act within 5 years from the notification of the intention, then the above mentioned conditions are terminated.

Any administrative decision issued within this expropriate procedure is subject to judicial review.

## **7. Number and success of appeals**

As it was pointed out above this procedure of creation Lists of SPA and SCI is not subject to any court review and it could not to bring an appeal again outcome of the procedure – the Ministerial Decree with only possible exception: filing a Constitutional application on the ground of inconsistency with the Slovak Constitution.

The only one legal remedy filed by dissatisfied state authority in question is to bring a petition to the Slovak Legislative Council which like an advisory body created for the Slovak Government decides in favour of a state authority or not.

There has been no relevant information if landowners or other users (trustees, administrators or lessee) of real estate situated in SCI or SPA try to eliminate or abolish their legal restrictions by way of courts at law including the Slovak Constitutional Court. Since it is not possible to give you detailed information of number and success of appeals.

It seems to be very important for this form to point out the fact that the Slovak Attorney General challenged the constitutional conformity of the provisions of the Act on Nature Protection which concern themselves with implementation of EU Bird and Habitats Directives and filed constitutional application against them. The Slovak Constitution Court has not decided yet.

## **B. Conservational status of Natura 2000 sites**

### **8. Status of Natura 2000 sites**

Do Natura 2000 sites also have the status of nature reserves, national parks or other nature protection areas?

Under the Regulation of the Ministry of Environment No. 3/2004-5.1 by which the National list of proposed Sites of Community Importance was issued the “preliminary protection” regime (it means the same level of the protection like is proposed) entered into force in these areas from 1 August 2004. Approximately 86 % of proposed SCI overlaps each other with existing system of nature parks, nature reserves or other protection areas. This causes therefore that it will not come to essential change of a level of protection in these areas.

The preparation of the Ministerial decrees relating to final determination of SPA has been launched since the beginning 2005 year. The Ministry of Environment only three Ministerial decrees passed especially: SPA Horná Orava (Ministerial Decree No. 173/2005 Coll.), SPA Little Karpaty and SPA Lehnice. Rest of SPA could be passed till the end 2006 year. Preliminary protection regime will be in force till then. All SPA are discussed with landowners and other users of real estate. The Ministry of Environment assigned in general remark procedure proposals of further Ministerial Decrees for next four SPA on December 2005: SPA Medzibodrožie, Dolné Považie, Ostrovné Lúky a Dubnícke Štrkovisko.

From these reasons the Slovak Republic does not wait for EU Commission’s authorization of Natura 2000 sites and the status of protected areas is granted to each locality at that time when each Ministerial Decree issued under Art. 26 par 5 of the Act on Nature Protection will enter into force.

As it was pointed out above the owner or other users of land and buildings in question must tolerate restrictions and measures resulting from prohibitions and other conditions of nature and landscape protection set forth by or based on the Act of Nature Protection.

The main problem is created by a common cultivation of the land. It means:

a) use of the agricultural land in compliance with a special regulation if the land is cultivated in this way for a period of at least two

years prior to lodging an application,

b) an activity on the forest land, corresponding to the proposal of cultivation measures for units of territorial division of the forest prior to application of restriction requirements of the nature protection bodies,

c) other activity on a land that is in compliance with conditions set forth in the permit of the activity according to special regulations, mainly in the decision of use of an area, decision of defining of a protective zone and decision of defining of a protected area,

If regime of nature protection restricts a common cultivation of the land then the owner is entitled to compensation at the amount corresponding to the restriction of the common cultivation.

A compensation is awarded to the owner of the land where a common cultivation was restricted. If the land is owned by several co-owners, a compensation is awarded to a representative determined by the co-owners.

## **9. Protection of Natura 2000 sites**

How has Article 6 of the Habitats Directive been transposed into national law in your country? By special national law implementing the Directive, by other national law, etc.

Art. 6 of the Habitats Directive was transposed into Slovak legal order by way of amendment of the existing the Act on Nature Protection.

How is the protection of Natura 2000 sites ensured? Are there site-specific management plans or other rules of conduct regulating activities within the sites?

Legal protection of Natura 2000 sites is secured by set of legally binding measures. The new Act No. 24/2006 Coll. on evaluation of impact on environment came into effect on 1 February 2006. This Act stipulates process of evaluation of expected influences resulting from strategic and important documents or studies on environment.

According to Art. 18 par 5 of Act No. 24/2006 Coll. on EIA any person or corporation (in other words provider) is obliged to ask the State Office for Nature Protection for issuing a decision which solves question whether activities presumed by the provider are able to serious harm nature (it means activities leading to substantial changes of biological varieties, structure or function of ecosystems) or not. If the State Office for Nature Protection gives negative decision (it means that these activities will be able to harm nature) then these activities will be evaluated by the Act No. 24/2006 Coll.

The structure of level of protection in case of SPA and SCI is determined case by case.



For example, under the Art. 2 of Ministerial Decree No. 173/2005 Coll. which established SPA “Horná Orava” following activities are strictly forbidden:

- a) conducting activity changing state of wetlands or river-beds, mainly for their regulation, back-filling, drainage, extraction of cane, peat, mud and river sediments except if these activities in river beds are conducted by their administrators in accordance with a special regulation,
- b) dissemination of a non-native species of plants or animals outside the urban areas of municipalities with the exception of species specified by the Ministry upon agreement with the Ministry of Agriculture under a generally binding regulation, species specified in an approved forest management plan or species grown in agricultural plantations,
- c) aerial application of chemical substances and fertilizers,
- d) discharge of water reservoirs or ponds,
- e) influence of natural habitats of European interest or those of national interest which can result in their damage or destruction,
- f) elimination of other water areas and their assignment to use for business purposes in a special regime,
- g) liquidation of existing permanent grasslands with the exception of activities permitted according to special regulations.

The basic and general protection clause is enshrined to Art. 3 of Act on Nature Protection. According this provision everyone must protect the nature and landscape against endangerment, damage, and destruction and, according to his abilities, care of its components and elements, mainly for the purpose of preservation and protection, improvement of a state of the environment, and the development and maintenance of a territorial system of ecological stability.

According to Sections 26 till 28 of the Act No. 543/2002 Coll. on Nature and Landscape Protection the special protection regime of protected bird area, area of European interest and coherent European network of protected areas applies as follows:

*Special Legal Protection of Bird Areas (“SPA”)*

Habitats of bird species of European interest and habitats of migratory bird species may be designated as protected bird areas for the purpose of ensuring their survival and reproduction. The Ministry procures a national list of bird areas, which the Slovak Government approves by the Governmental Regulation. Following its approval the Government sends the List of bird areas to the European Commission.

The national list of bird areas that includes a name of the site of the proposed protected bird area, cadastral area, in which the site is situated, acreage of the site and reasoning of the proposal of protection is published

by the Ministry in its Official journal.

During assessment of impacts of any activity upon environment according to a special regulation, during permitting of this activity and any other activity according to this Act, a proposed protected bird area included in the approved list of bird areas is considered to be a protected area designated according to this Act from the date of approval of this list.

In a protected bird area activities that may have negative impact upon the subject of its protection are prohibited.

#### *Special Legal Protection of Area of European Interest (“SCI”)*

An area of European interest according is considered an area in the Slovak Republic formed by one or more sites,

- a) in which natural habitats of European interest or species of European interest are situated for protection of which protected areas are designated,
- b) which are included in the national list of these sites procured by the Ministry and discussed with the Ministry of Agriculture.

The Ministry must discuss with owners or other users of lands affected by the intended protection including of a proposed area of European interest in the national list. Reasoning of the including of a site in the national list, defining of activities that require an approval of the nature protection body or which are prohibited according to this Act and the way of above mentioned compensation for restriction of common cultivation must form a part of such discussion.

The national list is discussed by the Government and following its approval it is sent to be approved by the European Commission.

The national list that includes a name of the site of the proposed area of European interest, level of territorial protection of the proposed area of European interest and reasoning of the proposal of protection is following its approval by the Government established by the Ministry under a generally binding regulation and is continually updated, mainly based on the European Commission’s opinion of the need of extension of the national list by further sites.

The owner, trustee or lessee of the affected land is obliged to tolerate, for compensation, restrictions resulting from conditions of protection of a proposed area of European interest from the date when the generally binding regulation comes into effect to designation of the proposed area of European interest.

Proposed areas of European interest approved by the European Commission is designated by the nature protection body as a protected area or a zone of a protected area according to this Act within six years from the approval of the national list by the European Commission at the latest.

#### *Special Legal Protection of the Coherent European Network of Protected Areas*

Protected bird areas and other protected areas and their protective zones and areas of European Interest form a part of the coherent European network of protected areas aimed at conservation of a favourable status of both natural habitats of European interest and species of European interest.

An activity that may influence, either individually or in combination with other activities, the area which belongs to the coherent European network of protected areas or the area of European interest, while the above activity is not inevitable to ensure care of such area according to documentation of nature and landscape protection, is considered to be intervention in the area which may cause substantial changes in biological diversity, structure and function of ecosystems. Impact of such activities upon environment is subject to assessment according to a special regulation. The state administration body permits the activity only in case that this activity based on results of the assessment according to a special regulation does not have a negative impact upon a favourable status of the affected area with respect to its protection.

If there are not alternative solutions following the negative assessment of impacts, such activity may be realised only in the public interest. If there are priority natural habitats or habitats of priority species in areas that belong to the coherent European network of protected areas or in areas of European interest, the above activity may be permitted only in case of endangerment to human health, public order, safety of the Slovak Republic, in case it has substantial influence on improvement of the environment or if, according to the opinion of the European Commission, relates to other urgent reasons with respect to the public interest.

Businessmen and legal persons conducting activities forbidden by protection of nature are obliged at their own expense prior to suggest and execute measures for returning of damaged or destroyed natural habitats of European interest or habitats of species of European interest to their original state and to carry out the measures before executing activities by which they could be damaged or destroyed.

The above mentioned measures consist of activities focused on researching new territory or ensuring of a favourable status of a existing site or pay a financial compensation.

If the responsible party fails to realise measures focused on returning damaged or destroyed natural habitats of European interest, the Ministry may carry them out at the expense of the responsible party.

## **10. Coverage of implementation**

Do national acts, plans and other rules implement the Habitats Directive fully? Are there types of enterprises, impacts on nature or licensing procedures where the requirements of the Directive are not altogether taken into account?

The Slovak Republic has obtained recently Infringement Letter from EU Commission in which it paid to Slovak Republic's attention insufficient implementation of some provisions of the Council Directive No. 79/409/EEC on the conservation of wild birds. More information about stage of process does not get.

It seems to be very important for this form to point out the fact that the Slovak Attorney General challenged the constitutional conformity of the provisions of the Act on Nature Protection which concern themselves with implementation of EU Bird and Habitats Directives and filed constitutional application against them. The Slovak Constitution Court has not decided yet.

## **11. Assessment of impacts**

- Which authority decides on whether an assessment is to be made or not?

According to Art. 64 of the Act on Nature Protection the following state authorities are responsible for the state administration with respect to nature and landscape protection according to this Act.

- a) the Ministry of Environment as the central body of the state administration of nature and landscape protection,
- b) the Slovak Environmental Inspection,
- c) the Slovak Office for Nature Protection,
- d) the State Veterinary and Food Authority,
- e) regional offices of environment,
- f) district offices of environment as well as
- g) municipalities.

For example a municipality executes the primary level state administration with respect to protection of the woods, may impose the owner, trustee, administrator or lessee of the land with a wood to execute measures necessary for its treatment or decide about its cutting and calls for and approves the document of the Local Territorial System of Ecological Stability and the management document for the woods.

The municipality may establish a generally binding order in which it details protection of the woods that form a part of the public green vegetation.

- If harmful effects on a Natura 2000 site are probable, which party is responsible for assessing the impacts: Applicant, Environmental authority, Licensing authority, etc?

Under Art. 28 par of the Act on Nature Protection any activity that may influence, either individually or in combination with other activities, the area which belongs to the coherent European network of protected areas or the area of European interest (SCI), while the above activity is not inevitable to ensure care of such area according to documentation of nature

and landscape protection, is considered to be intervention in the area which may cause substantial changes in biological diversity, structure and function of ecosystems.

Impact of such activities upon environment is subject to assessment according to the Act No. 24/2006 Coll. on Environmental impact assessment. A district office of environment permits the activity only in case that this activity based on results of the assessment according to the Act No. 24/2006 Coll. does not have a negative impact upon a favourable status of the affected area with respect to its protection.

- How is the appropriateness of the assessment ascertained ?

**This question was not understood. Please send detailed comment.**

- If the applicant is required to assess impacts, does he/she have access to the data that prompted the inclusion of the area into a Natura 2000 site?

Almost information are imposed in Regulation of Slovak Ministry of Environment No. 3/2004-5.1 on National list of proposed Sites of Community Importance. On the other hand each applicant has right to obtain full and timely information about the environmental situation and about the reasons and consequences thereof. Of course, the right of everyone to be inform by the Slovak Ministry of Environment about environment is also relevant in this case.

Under Art. 3 of the Act on Nature Protection any entrepreneur and legal person must include most effective measures to prevent and limit nature damage and their destruction into their project proposals, programmes, plans and other documentation developed according to Building Act.

- How is assessment of impacts caused by projects or plans in combination with other projects or plans safeguarded?

The general protection of nature is provided by obligation laid down by Art. 3 of the Act on Natural Protection. Everyone is obliged to protect the nature and landscape against endangerment, damage, and destruction and, according to his abilities, care of its components and elements, mainly for the purpose of preservation and protection, improvement of a state of the environment, and the development and maintenance of a territorial system of ecological stability.

Especially businessmen and legal persons who through their activities influence ecosystems, their components and elements are obliged, at their own expenses, to provide measures to prevent and limit their damage and destruction.

Act No. 543/2002 Coll. on Nature and Landscape Protection by way of its Article 28 gives strict competence to the State Authority for Nature Protection of the Slovak Republic. Above mentioned state body presents its official opinion within EIA procedure whether building or proposed activity will influence area in question or whether should be assess this influence at all.

Any activity that may influence, either individually or in combination with other activities, the area which belongs to the coherent European network of protected areas or the area of European interest (SCI), while the above activity is not inevitable to ensure care of such area according to documentation of nature and landscape protection, is considered to be intervention in the area which may cause substantial changes in biological diversity, structure and function of ecosystems. The Slovak State Office for Nature Protection permits the activity only in case that this activity based on results of the assessment according to the Act on EIA does not have a negative impact upon a favourable status of the affected area with respect to its protection.

If proposed activity will negative influence on protected area the State Office for Nature Protection will impose that these negatives will be prior solved by revitalisation, compensation or by other means of nature protection.

For example businessmen conducting such activities will have to at their own expense and prior to commencement of activities suggest and execute measures for researching new territory, re-financing or returning of damaged or destroyed natural habitats of European interest or habitats of species of European interest to their original state. In addition businessman is obliged to ask for a prior approval of the Ministry of Environment with respect to the way and conditions of executing protection measures. Prior giving its approval, the Ministry of Environment must ask for the European Commission's opinion with respect to measures intended to return damaged or destroyed priority natural habitats or habitats of priority species belonging to the coherent European network of protected areas to their original status.

## **C. Case examples of how possible impacts on Natura 2000 areas is taken into account in the licensing procedure**

### **12. Examples of licensing decisions regarding projects outside or inside Natura 2000 sites, where**

- Assessment of impacts was not deemed necessary
- Impacts were assessed but not deemed adversely affect the integrity of the site concerned
- Impacts were assessed and deemed significant

Under Ministerial Decrees No. 173/2005 Coll. – Horná Orava, No. 216/2005 Coll. – Malé Karpaty and No. 377/2005 Coll. - Lehnice in no case Licensing authority is not competent to grant any exception from prohibitions containing in above mentioned Decrees. Since we may not send answer to your questions.

On the other hand there are “natural” exemptions from above mentioned prohibition which seem to be legitimate on ground of a public interest in conjunction with state supervision.

The group of general exemptions from to strict conditions of protection is as follows:

- a) the activities are conducted in connection with execution of the state supervision or other inspection activities (state approval is always required), or
- b) it is an activity focused on care of a protected area or its protective zone in accordance with the nature and landscape protection documentation, and if the activity is conducted or procured by the nature protection organisation (state approval is always required), or
- c) the nature protection body responsible for granting exceptions indicates, in advance, that the activity is generally required for care of a protected area or its protective zone (state approval is always required), or
- d) human life or health, property or safety of the Slovak Republic are immediately endangered by foreign power (state approval is not required),
- e) the activity is executed in connection with state border protection or its administration (state approval is not required).

In addition there is a group of special exemptions from to strict conditions of protection. According to Art. 40 par 2 of the Act on Nature Protection the Ministry of Environment may, in reasonable cases mentioned below, allow exceptions to conditions of protection of protected species, selected plant species and selected animal species, however, only in case there is no other alternative and the exception does not endanger preserving populations of the affected species. If these are protected species of animals that are at the same time game, the exception may be allowed only upon agreement with the Ministry of Agriculture.

These exemptions may be allowed by way of issuing an administrative decision for example:

- a) to protect affected species or natural habitats,
- b) to prevent serious damage, mainly of harvest, livestock, forests, fish farming, game keeping, water management,
- c) to protect health and safety of inhabitants, safety of the state or other important public interests prevailing nature and landscape protection including social and economic reasons with favourable impact on the environment,
- d) for research and educational purposes, repatriation of species into their habitats and for possessing, growing or breeding in captivity of affected species that are necessary for these purposes.

An administrative decision allowing such the exception must include

- a) a definition of the affected species and quantity or number for which the exception is valid,
- b) methods, means and facilities allowed for removal, capture or killing the affected species,
- c) a definition of a place and time when the activity allowed by the exception may be carried out,
- d) time during which the exception is valid,
- e) the way of execution of the activity allowed by the exception,
- f) the way of inspection of meeting conditions of the exception,
- g) detailed conditions of execution of the activity ensuring nature and landscape protection and restrict their validity.

### 13. Relevance of Community decisions

- What kind of influence has the judicature of the ECJ on national decisions (e.g. the precautionary principle)

According to Art. 144 of the Slovak Constitution the Slovak judge, in the performance of its function, shall be independent and, in decision making process shall be (only) bound by the Slovak Constitution, by constitutional law, by international treaty pursuant to Art. 7 par 2 and 5, and by domestic law. It could results from mentioned provision that any Slovak judge is not bound by voluminous case-law of the European Court of Justice and secondary EU legal acts. On the other hand the Slovak Constitution Court argues firstly that the primary EU acts are binding because of legal influence of the Treaties establishing Communities and the Treaty on EU and secondly that all EU legal acts have precedence over Slovak laws.

- Relevance of the Commission guidelines on Managing Natura 2000 sites?

The question on relevance of above mentioned guidelines is solved in Art. 7 par 2, 4 and 5 of the Slovak Constitution. Under par 2 all legally binding acts of the European Communities and of the European Union have precedence over laws of the Slovak Republic. The transposition of legally binding acts which require implementation is realised through a law or exceptionally by a special Governmental regulation.

For validity of international treaties on human rights and fundamental freedoms, international political treaties, international treaties of a military character, international treaties from which a membership of the Slovak Republic in international organisations arises, international economic treaties of a general character, international treaties for whose exercise a law is necessary and international treaties which **directly confer** rights or impose duties on individuals, require under par 4 the approval of the Slovak Parliament before ratification.



International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.

**14. Examples of licensing decisions concerning exemptions from protection (see Article 6 par 4 of directive).**

*Under Art. 6 par 4 of Council Directive No 92/43 EEC if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.*

- Which authority decides on exemptions and which authority on appeals?

Only the Ministry of Environment is competent authority (Art. 24, 40 and Art. 65 par 1 letter h/) to allow exceptions, if justified, to prohibited activities in case of areas that belong to the coherent European network of protected areas (SPI), national parks, national nature reserves and national nature monuments with the exception of nature monuments and national nature monuments and their protective zones.

- Have exemptions been applied for and have they been granted?

The Slovak Republic is the Member State of EU for very short time and no relevant proceedings are not therefore known to Slovak Supreme Court.

- Grounds for refuting and allowing an exemption (alternative solutions, imperative reasons of overriding public interest, opinions of the Commission)

Combination of imperative reasons of public interest with opinions of the Commission is allowed. A prohibition of an activity with respect to protected species, selected plant species and selected animal species (Art. 40 par 1) does not apply if the activity is carried out in connection with the state

supervision or other inspection activity, or if the activity is related to care of protected species, selected plant species or selected animal species and if such activity is carried out or ensured by the nature protection body.

- In case an exemption has been granted, how has the incurred loss to protected values of nature been recompensated? How has the Commission reacted?

On the ground of existing information any exemption has not been granted yet.