

QUESTIONNAIRE EUFJE Conference 2010 – Enforcement of European Biodiversity Law at national level

I. Natural habitats and their fauna and flora

A. Habitat protection

Questions

I.A.1. Are there general habitat protection measures, applicable to all special areas of conservation and special protection areas in your country, or are they site specific, or is there a combination of general and site specific measures?

In Polish law Council Directive 92/43/EEC of 21 May 1992 on conservation of natural habitats and of wild fauna and flora (Journal of Laws Dz. Urz. UE L 206 of 22 July 1992, page 7 as amended) is implemented in the scope of its regulation by Act of 16 April 2004 about conservation of nature (consolidated text Journal of Laws Dz. U. from 2009 No. 151, item 1220 as amended). This Act is a basic legal regulation specifying objectives, principles and forms of conservation of living and nonliving nature and landscape.

According to Art. 3 point 2 Nature Conservation Act the objectives of nature conservation are accomplished through covering resources, formations and elements of nature with forms of nature conservation. The Nature Conservation Act includes the following forms of nature conservation: national parks, nature reserves, landscape parks, protected area landscapes, **Natura 2000 sites**, nature monuments, documentation stations, ecological arable land, landscape-nature protected complexes and conservation of plant, animal and fungi species (Art. 6 Act 1 Nature Conservation Act).

According to a disposition Art. 25 clause 1 Nature Conservation Act the network of Natura 2000 sites includes: 1) areas of special protection of birds; 2) special areas of natural habitat conservation; 3) sites of Community importance. Moreover Natura 2000 sites may include a part or the entirety of areas (a national park, a nature reserve, a landscape park, a protected landscape area) and objects (nature monuments, documentation stations, ecological arable land, landscape-nature protected complexes) covered by forms of nature conservation.

Nature Conservation Act includes in its content the explanation of basic concepts related to the network of areas Natura 2000 (including conservation of natural habitats). Definitions used in the Act shall have the following meaning:

- Natura 2000 site is an area of special protection of birds, a special area of natural habitat conservation or a site of Community importance, created in order to protect the population of wild occurring birds or natural habitats or species being the interest of the Community (Art. 5 point 2b Nature Conservation Act);

- Special area of natural habitat conservation is an area designated, according to the regulations of the European Union in order to permanently protect natural habitats or populations of plant or animal species endangered with extinction or in order to reconstruct the appropriate state of natural habitat conservation or the appropriate state of such species protection (Art. 5 point 19 Nature Conservation Act);

- Site of Community importance is a designed special area of natural habitat conservation, approved by the European Commission by way of a decision, which in the bio-geographical region, to which it belongs, contributes significantly to preserve or reconstruct the state of appropriate natural habitat conservation or a species being the Community interest, and it may also contribute significantly to the integrity of Natura 2000 sites and preservation of biodiversity within a given bio-geographical region. Whereas in the case of animals occurring on large areas, the site of Community importance is an area within the natural range of such species, characterizing itself with physical or biological factors important to their life or reproduction (Art. 5 point 2c Nature Conservation Act);

- Natural habitat of Community importance is a natural habitat, which on the territory of Member States of the European Union:

- a) is endangered with extinction in its natural range, or
- b) has a small natural range as a result of regression or due to a limited area of occurrence resulting from its internal, natural properties, or
- c) constitutes a representative example of typical properties of the bio-geographical region occurring in Member States of the European Union (Art. 5 point 17 Nature Conservation Act);

-Natural habitat of priority importance is a natural habitat endangered by extinction on the territory of Member States of the European Union, the Community being especially responsible for its protection due to the size of its natural range located on the territory of such States (Art. 5 point 17b Nature Conservation Act).

Based on Art. 26 Act of 16 April 2004 about nature conservation the Minister of the Environment issued a regulation that specifies types of natural habitats as well as plant and animal species, indicating types of natural habitats and species of the priority importance, which require protection in the form of designation of Natura 2000 sites, and the criteria and manners of the representative number and area of natural habitats as well as plant habitats and animal habitats for conservation in the form of Nature 2000 sites – Regulation of the Minister of the Environment of 16 May 2005 on the types of natural habitats as well as plant and animal species that require protection in the form of designation of Nature 2000 sites (Journal of Laws Dz. U. No 94, item 795).

The Natura 2000 network on the territory of Poland consists of:

- 141 sites of special bird protection (OSO), covering 4 865 292 ha (15,59%) of the land area of the country.
- 364 sites of Community importance, covering 2 527 671,93 ha (8,10%) of the land area of Poland.
- On 29 October 2009 Poland, upon obtainment of decision of the Cabinet, sent new proposed sites of Community importance to the European Commission. The date of acceptance of such sites by the European Commission is expected at the end of 2020 at the earliest.

I.A.2. Who supervises habitat protection measures in your country? Are there (also) specialized inspectorates supervising them?

Functioning of Nature 2000 sites (including natural habitats) is supervised by the Director-General for the Environmental Protection. The supervision consists of: issuance of recommendations and guidelines in the scope of protection and operation of Nature 2000 sites, determination of the scope and requesting information concerning to protection and functioning of Nature 2000 sites, control of execution of provisions related to conservation plans and plans of protection tasks as well as keeping the register of data for Nature 2000 network. According to art. 27a clause 2 Nature Conservation Act the supervision over Nature 2000 sites or the proposed site of Community importance shall be performed by an appropriate regional director of the environmental protection or on the sea areas – a director of a maritime office. A regional directors of the environmental protection shall also coordinate functioning of Nature 2000 sites on the territory of theirs operations. In the event a Nature 2000 site covers in full or in part an area of a national park, the director of the national park shall perform supervision over the Nature 2000 site. On the territory administered by the State Forests the National Forest Holding, located on a Nature 2000 site, tasks related to the environmental protection shall be executed by the local forest manager individually, according to provisions of a plan of protective tasks or a conservation plan of the Nature 2000 site, taken into consideration in the plan of forest arrangement.

I.A.3. If habitat protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

If the principles of habitat protection are infringed, sanctions of the administrative, civil or criminal nature may be applied.

Forms of administrative liability are determined primarily in Act of 27 April 2001 Environmental Protection Law (consolidated text Journal of Laws Dz. U. from 2008 No. 25, item 150 as amended) in art. 362-368. They include: a) a decision obliging to reduction of effects on the environment or bringing the environment to the former status (the powers of self government or decentralized bodies of government), b) a decision about a suspension of activity (the powers of a voivodeship inspector of

environmental protection), c) a decision about a suspension of plant use (the powers of a voivodeship inspector of environmental protection, the Voivode or the Mayor, and in certain cases an appropriate body of the Fire Brigade), d) administrative fines (the powers of a voivodeship inspector of environmental protection, and in certain cases of the Voivode or the Mayor).

Other sanctions of administrative nature are provided for in Act of 13 April 2007 on prevention of environmental damage and its repair (Journal of Laws Dz. U. No. 75, item 493). According to art. 15 clause 1 of this Act if an entity using the environment does not take up preventive and corrective measures provided for in the Act a regional director of environmental protection shall issue a decision about laying a duty on him to execute such actions. Moreover the Act provides an option to impose a decision about taking measurements of the content of a substance in soil, earth or water, or environmental monitoring of biological and landscape variety.

Sanctions of the civil nature are provided for primarily in the Act of 23 April 1964 Civil Code (Journal of Laws Dz. U. No. 16, item 93 as amended) and Act of 27 April 2001 Environmental Protection Law.

Civil Code regulates bases of liability primarily within the law of tort. Within liability for environmental protection the most important part is played by claims for damages (art. 415 and 435 Civil Code). Whereas Act Environmental Protection Law regulates the issues of civil liability in art. 322-328. The most frequently applied sanctions within such liability include: an obligation to reconstitute the former status, discontinuation of infringements and payment of damages.

Sanctions of the criminal nature are regulated by Act of 16 April 2004 about nature protection, which provides punishments for intentional infringement of prohibitions binding in natural habitats (art. 127 point 1 letter e Nature Conservation Act). A criminal offence is threatened with a penalty of arrest or fine. Moreover according to art. 131 point 8 Nature Conservation Act: *everyone who without a decision of the regional director of environmental protection or against the conditions determined in such a decision executes, on the territories with special values of nature, works consisting in regulation of waters and erection of flood embankments as well as land reclamation works, building drainage and other earth works changing water conditions and point 9 introduces into the natural environment or displaces plants, animals or mushrooms of foreign species into such an environment* – is subject to a penalty of arrest or fine.

In such matters a general court shall adjudicate based on provisions of Act of 24 August 2001 Code of procedures in cases prosecuted as petty offence (consolidated text Journal of Laws Dz. U. from 2008 No. 133, item 848 as amended).

Penal liability is provided for in chapter XXII entitled *Offences against the environment* also Act of 6 June 1997 Penal Code (Journal of Laws Dz. U. No. 88, item 553 as amended). According to:

-art. 181 § 1 Penal Code *everyone who causes the significant damage to the plant world or the animal world is subject to a sentence of imprisonment from 3 months to 5 years*. In the event the perpetrator's

action is unintentional he is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years (art. 181 § 4 Penal Code);

-art. 181 § 2 Penal Code *everyone who, against regulations binding on the protected area, damages or destroys plants or animals causing the significant damage, is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years.* Also those who, irrespective of the place of the act, damage or destroy plants or animals staying under species protection, causing thus the significant damage are also subject to such a penalty (art. 181 § 3 Penal Code). In the event the perpetrator's action is unintentional he is subject to a fine or a penalty of restricted liberty (art. 181 § 5 Penal Code);

-art. 187 § 1 Penal Code provides penal liability for acts causing the significant damage of the natural habitat on the protected area. According to this provision, such liability is borne by everyone, *who destroys, seriously damages or causes the significant deterioration of the natural value of a legally protected site or object, causing thus a significant damage, is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years.* According to art. 187 § 2 Penal Code perpetrator's unintentional acts threatened with a penalty of fine or a penalty of restricted liberty are also punishable;

-art. 188 Penal Code *everyone who, on the protected site, due to nature or landscape considerations or in a buffer zone of such a site, against the regulations, erects a new or extends an existing structure or conducts economic activity constituting danger to the environment is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years.*

The liability for criminal offences of corporate entities and other organizational units has been introduced based on Act of 28 October 2002 about liability of legal persons for acts prohibited under penalty (Journal of Laws Dz. U. No.197, item 1661 as amended).

I.A.4. What type of sanctions can be applied if a plan or project as referred to in art. 6.3. of the Habitat – directive is carried out without an appropriate assessment? Make sit a difference if not only an appropriate assessment is lacking, but also a permit for the project or an approval of the plan?

Any penalties associated with implementation a plan or project as referred to in art. 6.3 of the Habitat – directive without an appropriate assessment, in theory, can be very severe.

The Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment dated 3rd October 2008 (Journal of Laws no. 199, item 1227) is a normative act that principally governs the procedures for assessing the environmental impact of investments also on Nature 2000 sites. The assessment of impact on Nature 2000 sites is a part of the procedure to issue decisions that needs to be obtained prior to project implementation for projects which do not have significant environmental effects and are not directly related to the protection of Nature 2000 sites or do not result from such protection. For such projects, the authorities must examine, prior to issuing a decision, whether the project has the potential to significantly impact Nature 2000 sites. The Act provides examples of types of decisions which have to be examined in terms of potential impact on Nature 2000 sites for instance all decisions for which a decision

on environmental conditions has to be obtained (planning permits, road investment permit, motorway location decision, etc.); concessions issued under the geological and mining law, water permits, permits to remove trees or bushes, etc.

The building regulations define high penalties for building wilfulness and operation of the facility without permit or notification. In case of carrying out a project without the required permit inspector may issue a demolition and restitution order. Moreover, if an object or its part is used without permit there may be imposed a fine. In addition, implementation of building project (that require an appropriate assessment) without the required permit is threatened by penal liability, penalty of restricted liberty or deprivation of liberty.

I.A.5. Conduct falling under article 3 (h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case May be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply Rother types of sanctions or to simple drop the case?

Nowadays the Ministry of Environment, in order to implement the European Parliament and Council Directive of 2008/99/EC of 19 November 2008 on the environmental protection through penal law (Official Journal of EU Dz. Urz. UE L 328 from 06 December 2008, p. 28), on 26 May 2010 submitted to the Cabinet draft assumptions for a draft Act – Penal Code and certain other Acts (the version from 19 May 2010).

According to this draft:

According to art. 3 letter h Punitive Directive a prohibited act should be „any conduct that causes a serious damage to the natural habitat on the protected area”. Liability for conduct consisting in causing a serious damage to the natural habitat on the protected area is regulated by art. 187 § 1 Act of 6 June 1997 Penal Code (Journal of Laws Dz. U. No. 88, item 553). According to the provision of the said regulation liability shall be borne by everyone who ” destroys, seriously damages or causes the significant deterioration of the natural values of a legally protected site or object, causing thus a significant damage”. According to art. 187 § 2 Penal Code perpetrator’s unintentional conduct shall be also punishable. Natural habitat on the protected area constitutes, according to Act of 16 April 2004 about nature protection, a legally protected area, just as other categories of areas connected with special nature conservation. Considering the above, provisions of Penal Code include hallmarks of a prohibited-type act, identical with those specified in art. 3 letter h Punitive Directive.

Within liability of legal persons specified in art. 6 and 7 Punitive Directive one should mention Act of 28 October 2001 about liability of corporate entities for prohibited acts under threat of penalty, which regulates principles of liability of corporate entities for acts prohibited under threat of penalty as criminal offences or fiscal offences, and the principles of procedures in relation to such liability.

According to art. 3 of this Act a corporate entity is subject to liability for a prohibited act when a physical person acts on behalf or for the benefit of a corporate entity within his authority or duty to represent such an entity, make decisions in its name or perform internal control, or when exceeding such an authority, or a failure to perform such duty, or such a person has been admitted to act as a result of exceeded authority or failure in performance of duties, or acts on behalf or for the benefit of a corporate entity, with a consent or knowledge of a person authorized to represent the corporate entity, if such conduct has brought or might have brought a profit, even a nonmaterial one to the corporate entity. The content of the abovementioned provision is implemented by art. 6 Punitive Directive.

Moreover art. 16 clause 1 point 8 of the abovementioned Act, provides liability of a corporate entity, if the person specified in art. 3 of the Act has committed a criminal offence against the environment, specified in art. 181-184 and art. 186-188 Penal Code.

In relation to provisions of the Punitive Directive a draft Act provides extension of the said catalogue.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

There is a negligible number of civil cases illustrating the above issue and they are not separated in court statistics.

The number of penal cases in relation to criminal offences against the environment based on Penal Code is also negligible, it oscillates between 60 – 90 on the territory of the whole country yearly.

One should note that the regulations that changed due to the accession of Poland to the European Union have been binding for a relatively short period of time, bringing in the initial period only a small number of cases. The latest statistical data refer to the year 2008.

In reference to the above the principles of legal protection in the abovementioned issue are best illustrated by cases conducted in the administrative procedures.

The most typical cases include proceedings on the effects of investment processes on Natura 2000 protected sites. Regarding the projected Nature 2000 sites, the Supreme Administrative Court has decided that it is necessary to conduct an appropriate assessment defined in art. 6.3. of the Habitat-directive, but the application of the procedure defined in art.6.4 of the Habitat-directive is prohibited till the approval of these sites by the European Commission.

In another case regarding the projected Nature 2000 sites (reference symbol of documents – II OSK 821/08), the Supreme Administrative Court has indicated that a situation in which any activities are prohibited due to the projected Nature 2000 sites should be ruled out. Administrative bodies and courts should take into account all circumstances. It can't be excluded that some activity can be carried out on the area projected to be the protected area. It depends on certain conditions and facts of a case.

In another case the Supreme Administrative Court has explained that a decision on environmental conditions for certain project can't be treated as a decision that grants a right for implementation of the investment. A decision on environmental conditions is a kind of "initial decision" for future permission for implementation of certain investment.

One of the most known cases regarding the Nature 200 sites is the case of the Augustow ring road. The investment has been stopped because of reversal of the permission for building and environmental

conditions for building. This decision has been issued without appropriate assessment and alternative solutions and it is against the habitat-directive.

B. Species protection

Questions:

I.B.1. Are the fauna (including birds) and flora protection measures organized within one coherent legislative framework, or through a patchwork of legislations, or is there a combination of general and specific measures?

Species protection in the Polish law is regulated by Act of 16 April 2004 on conservation of nature. Based on this act the following instruments have been issued:

- a regulation of the Minister of the Environment of 9 July 2004 on the wildy occurring plant species under protection (Journal of Laws Dz. U. No. 168, item 1764),
- a regulation of the Minister of the Environment of 9 July 2004 on the wildy occurring mushroom species under protection (Journal of Laws Dz. U. No. 168, item 1765),
- a regulation of the Minister of the Environment of 28 September 2004 on the wildy occurring animal species under protection (Journal of Laws Dz. U. No. 220, item 2237).

I.B.2. Who supervises fauna and flora protection measures in your country? Are there (also) specialized inspectorates supervising them?

In the Polish law according to Act of 16 April 2004 species protection of plants, animals and fungi is introduced by the Minister of the Environment by means of a regulation. Moreover, a regional director of environmental protection may, on the territory of a voivodeship, for a defined period of time, by means of an act of local law in the form of a disposition, introduce protection of plant, animal or fungi species not subject to the protection under a regulation of the Minister of the Environment.

I.B.3. Do the enforcement efforts concentrate on a few types of fauna, birds or flora? Are there some topics that gather all attention, all enforcement efforts? Is there an evolution through time in the focus of enforcement efforts?

Poland, as a new member state, has undergone significant evolution of the focus on enforcement efforts in the last years aiming to adopt Polish law and legal practice to the EU law requirements. It does not have any concentration point.

I.B.4. If fauna and flora protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

If principles of species protection are infringed, sanctions of administrative, civil and penal nature may be applied.

Forms of administrative liability are defined primarily by Act of 27 April 2001 Environmental Law (consolidated text Journal of Laws Dz. U. from 2008 No. 25, item 150 as amended) in art. 362-368. They include: a) a decision obliging to restrict impact on the environment or restoration of the environment to the former status (the powers of the Starost and in certain cases of the Voit or the Mayor), b) a decision about suspension of activity (the powers of the voivodeship inspector of the environmental protection), c) a decision suspending the use of a plant (the powers of the voivodeship inspector of the environmental protection, the Voit or the Mayor, and in certain situations of an appropriate body of the Fire Brigade), d) administrative fines (the powers of the voivodeship inspector of the environmental protection and in certain cases of the Voit or the Mayor). Other sanctions of administrative nature are provided for in Act of 13 April 2007 about prevention of damage in the environment and its repairs (Journal of Laws Dz. U. No. 75, item 493). According to art. 15 clause 1 of this Act if an entity using the environment fails to take up preventive and corrective actions specified in the Act, the regional director of the environmental protection shall issue a decision imposing a duty on him to perform such actions. Moreover the act provides an option, by means of a decision, to impose taking measurements of the substance content in soil, earth or water or the environmental monitoring of biological and landscape diversity.

Sanctions of the civil nature are primarily provided for by Act of 23 April 1964 Civil Code (Journal of Laws Dz. U. No. 16, item 93 as amended) and Act of 27 April 2001 Environmental Law. Civil Code regulates the base of liability first of all within the law of tort. Concerning liability related to environmental protection the most important part is played by claims for damages (art. 415 and 435 Civil Code). The Act Environmental Law regulates the issues of civil liability in art. 322-328. The most frequent sanctions applied in relation to such liability include an obligation to restore the former status, a discontinuation of infringements and a payment of damages.

Sanctions of penal nature are regulated by Act of 16 April 2004 about conservation of nature, which provides for punishability for intentional infringement of prohibitions binding for plants, animals or mushrooms under species protection (art. 127 point 2 letter e Nature Conservation Act). **Offences are threatened with a penalty of arrest or fine.** Moreover art. 131 Nature Conservation Act provides in:

-point 1a), that everyone who *captures or kills wildy occurring animals* included in the strict protection and partial protection system *with the use of devices, means or methods*, acting on a large scale or non-selectively, that may cause a local disappearance or serious disturbances in population of such animals (e.g. electric or electronic devices that might kill or stun – art. 54 clause 1 Nature Conservation Act);

-point 8), that everyone who *without a decision of the regional director of environmental protection or against the conditions determined in such a decision, on the sites of special natural values, executes works consisting in regulation of waters and erection of flood embankments as well as land reclamation works, building drainage and other earth works changing water conditions*;

-point 9), that everyone who *introduces into the natural environment or relocates within such an environment plants, animals or mushrooms of foreign species* - **is subject to a penalty of arrest or fine.**

In such matters a general court shall adjudicate on the basis of provisions of Act of 24 August 2001 Code of procedures in cases prosecuted as petty offence (consolidated text Journal of Laws Dz. U. from 2008 No. 133, item 848 as amended).

Penal liability is also provided for in chapter XXII entitled *Offences against the environment* of Act of 6 June 1997 Penal Code (Journal of Laws Dz. U. No. 88, item 553 as amended). According to:

-art. 181 § 1 Penal Code *everyone who causes the significant damage to the plant world or the animal world, is subject to a sentence of imprisonment from 3 months to 5 years.* In the event the perpetrator's action is unintentional he is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years (art. 181 § 4 Penal Code);

-art. 181 § 2 Penal Code *everyone who, against regulations binding on protected areas, damages or destroys plants or animals causing the significant damage, is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years.* Also those who, irrespective of the place of the act, damage or destroy plants or animals staying under species protection, thus causing a significant damage, are also subject to such a penalty (art. 181 § 3 Penal Code). In the event the perpetrator's action is unintentional he is subject to a fine or a penalty of restricted liberty (art. 181 § 5 Penal Code);

-art. 188 Penal Code *everyone who, on protected areas, due to nature or landscape considerations or in a buffer zone of such areas, against the regulations, erects a new or extends an existing structure or conducts economic activity endangering the environment is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years.*

Penal liability for acts consisting in causing a significant damage to the natural habitat on a protected area is regulated by art. 187 § 1 Act of 6 June 1997 Penal Code (Journal of Laws Dz. U. No. 88, item 553 as amended), according to which liability is borne by everyone who "destroys, seriously damages or causes the significant deterioration of the natural value of the legally protected area or object, thus causing a significant damage, is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years". According to art. 187 § 2 Penal Code perpetrator's unintentional acts threatened with a penalty of fine or a penalty of restricted liberty is also punishable.

The liability for criminal offences of legal persons and other organizational units has been introduced based on Act of 28 October 2002 about liability of corporate entities for acts prohibited under threat of penalty (Journal of Laws Dz. U. No.197, item 1661 as amended).

I.B.5. Conduct falling under article 3 (h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case May be,

by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply Rother types of sanctions or to simple drop the case?

The Directive has not been implemented yet. Nowadays the Ministry of the Environment in order to implement the European Parliament and Council directive 2008/99/EC of 19 November 2008 on protection of environmental through criminal law (Journal of Laws of EU Dz. Urz. UE L 328 from 06 December 2008, p. 28), on 26 May 2010 submitted to the Cabinet draft assumptions for a draft Act – Penal Code and certain other acts (the version of 19 May 2010). Legislation works are pending.

Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.

Please look at the cases described in point A.

II. International trade

Questions:

II.1. Who supervises compliance with the CITES-regulation in your country_ Do the monitoring efforts concern as well the import into and export and re-export from the Community as the commercial activities and movements of life specimens with the Community, your country?

According to art. 61 clause 1 Nature Conservation Act the managing body in the understanding of the Council regulation (EC) no. 338/97 of 9 December 1996 on protection of wild fauna and flora species by regulating trade therein is a minister appropriate for the environmental matters, and the scientific body in the understanding of those provisions is the National Council of Nature Conservation.

Export of living plants belonging to the species under protection based on the abovementioned regulation, coming from cultures is allowed based of phytosanitary certificates. Import of life animals or eggs of species requires a permit (an application for issuance of such a certificate should be provided with an attachment of a medical-veterinary opinion or declaration issued by the poviát veterinary doctor declaring fulfillment of the conditions required for keeping of such species by the importer, corresponding to their biological needs), as well as export of species specimens. An application for issuance of a permit or a certificate authorizing to export should have an attachment of a permit to acquire species specimens from the environment mentioned in the application, or an extract from the farm documentation or a medical-veterinary declaration issued by the poviát veterinary doctor certifying birth of specimens and their ancestors in the culture (in the case of animals), or an applicant's declaration about the origin of plants from the culture. A permit or certificate is issued upon an inquiry for opinion of the National Council of Nature Conservation.

According to art. 63 clause 1 Nature Conservation Act a minister appropriate for the environmental affairs keeps a register of scientific institutions authorized to transport across the borders of the European Union, to scientific purposes, without the abovementioned permit, herbarium specimens or museum exhibits preserved, dried or fixed in any other manner or life plant material to the purposes of a free-of-charge exchange, lending or donation.

II.2. If protection measures are infringed, what type of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? Do they include the possibility of seizure and confiscation of specimens? What is the level of fines and prison sentences? Are those sanctions often applied and considered to be effective? Can those sanctions be applied on legal persons?

Violation of legal regulations in relation to trade of wild fauna and flora is provided for by Act of 16 April 2004 about nature conservation. They are sanctions of penal nature. According to:

-art. 128 Nature Conservation Act: *Everyone who without a document required based on provisions of the Council regulation (EC) no. 338/97 of 9 December 1996 on protection of wild fauna and flora species by regulating trade therein, or against its conditions carries cross the border of the European Union a species specimen subject to protection based on provisions of this disposition and violates*

legal regulations of the European Union related to protection of species of wildy living animals and plants in relation to regulation of their trading through: a) a failure to submit an import permit, b) use of specimens of specified species to purposes other than defined in the import permit, c) unauthorized use of exemptions from orders while trading in artificially reproduced plants, d) offering to sell or purchase, acquisition or obtainment, use or public exhibiting to commercial purposes, disposal, keeping or carrying in order to sell specimens of certain species of plants or animals, e) use of a permit or certificate for a specimen other than the one for which they have been issued, f) submission of an application for issuance of an import, export, re-export permit or a certificate without a notification about an earlier rejection of an application – is subject to a penalty of imprisonment from 3 months to 5 years;

-art. 131 point 1 Nature Conservation Act: Everyone who conducting economic activity related to trade in animals of species subject to protection based on provisions of the Council regulation (EC) no. 338/97 of 9 December 1996 about protection of species of wild fauna and flora through regulating their trade, does not possess or does not submit appropriate documentation certifying legality of the animal's origin and point 10 without a permit or against its conditions brings to the country, keeps, runs a culture, reproduces or sells on the territory of the country plants, animals or mushrooms of foreign species, which in the event they are freed from the natural environment may threaten domestic species or natural habitats – is subject to a penalty of arrest or fine;

*-art. 129 Nature Conservation Act: In the event of a punishment for criminal offences specified in art. 131 or sentencing for criminal offences specified in art. 128 **the court may adjudicate:** 1) **confiscation** of items serving to commit an offence or a crime and items, plants, animals or mushrooms coming from an offence or a crime, even if they are not the perpetrator's property; 2) **a duty to restore the former status, and if such a duty is unfeasible – an extra pay up to 10.000 złotych** for the benefit of a social organization acting in the sphere of nature conservation or the voivodeship funds of environmental protection and water management appropriate due to the place of committing of an offence or crime.*

III.3 Conduct falling under article 3 (h) of the Ecocrime-directive shall, at the latest on 26 December 2010, be qualified as a criminal offence and be punishable by effective, proportionate and dissuasive criminal penalties. Has these provision already been implemented in your country, as the case May be, by pre-existing legislation? How is this conduct described in your legislation: copy- and past or a specific national description? What are the minimum and maximum penalties? Is there a difference between penalties for natural and legal persons? If such an infringement is reported, is it still possible not to prosecute such an offence before a criminal court and to apply Rother types of sanctions or to simple drop the case?

Nowadays the Ministry of Environment in order to implement the European Parliament and Council Directive of 2008/99/EC of 19 November 2008 about the environmental protection through penal law (Official Journal of EU Dz. Urz. UE L 328 from 06 December 2008, p. 28), on 26 May 2010 submitted to the Cabinet draft assumptions for a draft Act – Penal Code and certain other acts (the version of 19 May 2010).

According to this draft:

Implementation of art. 3 letter g Criminal Law Directive into the legal system should consist in introduction, in Nature Conservation Act (e.g. through a change of art. 128), of a provision specifying penal liability for criminal offences consisting in possession or appropriation and trade of such a number of protected species of wild plants and animals, based on provisions of the Council regulation (EC) no. 338/97 of 9 December 1996 about protection of species of wild fauna and flora through regulating trade therein (Journal of Laws of EC Dz. Urz. WE L from 61 of 03 March 1997, p. 1; Official Journal of EC Dz. Urz. UE Polish special edition, chapter 15, vol. 3, p. 136), which has a bigger than negligible one impact on preservation of species.

This provision (as art. 128a Act), might acquire the following content:

„Art. 128a. 1. Everyone who kills, destroys, comes into possession or trades in specimens of species in numbers higher than small, subject to protection based on provisions, referred to in art. 61 clause 1, in such conditions or in such a manner that it has an impact on preservation of appropriate status of species protection, shall be subject to a penalty of imprisonment from 3 months to 5 years.

2. If the perpetrator of an act specified in clause 1 acts unintentionally, he is subject to a fine, a penalty of restricted liberty or imprisonment up to 2 years.”