

S.1.1

In the reply to this question it is stated: 'The State Forests look for ways to circumvent this regime by lobbying for the introduction of certain provisions into Polish law (e.g. Art. 52a of the Environmental Protection Act) and for "interpretations circumventing the requirements" (one of such interpretations: "in principle, disturbance of birds by forest work, is insignificant").

Could you please be more specific about the cited Article 52A – I have looked up the most recent version of the Environmental Protection Act and this Article is not included there any more. What was it about – has it been removed as a result of a political debate? Moreover, could you provide evidence where the interpretation as given in the parentheses above has been formulated?

The proper name of the legal act is the Nature Conservation Act (in Polish: "Ustawa o ochronie przyrody")¹. The Article 52a was introduced to Polish law some years ago on request of Polish State Forests. This article states that the most of the restrictions of species protection are not applicable for the forest management, if the forest management plan was assessed in a SEA procedure. The regulation allows foresters to destruct and disturb species and species habitats (allow not to take care for this). The only formal requirement is to have SEA procedure for the 10-years plan. Nevertheless, now this provision is subjected to be amendment. Currently there are works in the Polish parliament to change law and there is a plan to remove this provision from Nature Conservation Act² - this is the result of EU-Pilot infringement procedure opened by EC (the result achieved before formal letters).

Regarding the disturbance of birds the interpretation as above is commonly formulated by Polish State Forests. It is always the case of the ornithologists who asks for some limitation of the periods of forest works, with the only exception for so called "protective zones" which are legally established for the rarest species. There is no single evidence, but rather hundreds cases of experience.

¹ <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20040920880>

² the project of the new amendment (only in Polish):

<https://legislacja.rcl.gov.pl/docs//2/266607/266647/266648/dokument157839.pdf>

S.3

“The budget of AES payments, in RDP 2014-2020 for Poland, only for conservation measures are set at total 385 335 215 EUR”; “Less Favoured Areas payments budget is 2 165 998 652 EUR”

Could you please indicate exactly where this number can be found? I checked the PROW 2014-2020 quickly but I cannot find them.

The number could be found in the RDP 2014-2020 for Poland³ (the full version in the footnote).

Information about the budget which is allocated to conservation measures (payments allocated to protection of habitats and birds) is shown on page 672, in the point 11.4. Support table to show how environmental measure/schemes are programmed to achieve one (or more) environment/climate targets is in the table 11.4.1.1. M10 - Działanie rolno-środowiskowo-klimatyczne (art. 28).

The budget is:

10.1.5 - Habitats outside the Natura 2000 [Cenne siedliska poza obszarami Natura 2000] - 126 496 774 EUR

10.1.4 - Habitats and birds in the Natura 2000 [Cenne siedliska i zagrożone gatunki ptaków na obszarach Natura 2000] - 258 838 441 EUR.

The total amount is 385 335 215 EUR.

Information about the budget allocated to Less Favoured Areas payments could be found at page 668, in the row for action (*działania*) M13 which indicates the total public spending (*Całkowite wydatki publiczne*) for the amount 2 165 998 652 EUR.

“The government decided to move 25% of RDP budget to the first pillar”. Could you please provide evidence showing the amount which was shifted? Does the shift relate to the new budget (2014-2020) as compared to the previous budget (2007-2013) or does it relate to the changes in the proposed new budget during its formulation?

Such information could be found on the Ministry of Agriculture and Rural Development web page:

<http://www.minrol.gov.pl/Ministerstwo/Zespól-Prasowy/Informacje-Prasowe/Nowy-system-płatności-bezpośrednich-na-lata-2015-2020>

“Celowi temu służyć będzie przesunięcie 25% koperty II filaru na lata 2015-2020, tj. 2,34 mld EUR, zwiększające pierwotną pulę środków na płatności bezpośrednie do 23,49 mld EUR. Środki finansowe uzyskane w wyniku tego przesunięcia będą w większości (około 73%) przeznaczone na finansowanie dodatkowej płatności dla małych i średnich gospodarstw [...]”

(For this purpose serves the shift of 25% of the budget of the second pillar for the period of 2015-2020, i.e. 2.34 billion EUR, increasing the original pool of funds for

³ The full version of RDP - Program Rozwoju Obszarów Wiejskich 2014-2020 (file “PROW2014-2020_wersja_pełna.pdf), to download from: <http://www.minrol.gov.pl/Wsparcie-rolnictwa-i-rybolowstwa/PROW-2014-2020>

direct payments to 23.49 billion EUR. The funds which will be obtained as a result of this shift will be in the majority (c. 73%) used for the financing of an additional payment for small and medium-sized farms [...]).

AES limited only to SPA Natura 2000 (land, meadows and pastures SPA covers only 6% of Poland). Could you please indicate the source of this information?

The meaning of the sentence is: “bird package of AES is limited only to SPA Natura 2000 (land, meadows and pastures SPA covers only 6% of Poland).”

Bird package of AES is limited only to SPA Natura 2000 - RDP 2014-2020 for Poland (p. 302). Additionally see §12.4 of regulation of Ministry of Agriculture and Rural Development for AES⁴

(Arable) land, meadows and pastures SPA covers only 6% of Poland - SPA covers c. 17,82% of Poland, in this land 32% are arable land, meadows and pastures. The percentage of arable land, meadows and pastures is calculated on the basis of data (GIS files) for SPA Natura 2000 (source GDOŚ) and Corine Land Cover (source GIOŚ).

“Less Favoured Areas payments budget (...) 5,6 times higher that AES payments budget! when AES budget was lowered by 50% in comparison to previous period.

The sentence should be corrected, to have the same meaning as sentences used in questionnaire above it:

Budget for Less Favoured Areas payments (...) is 5,6 times higher that AES payments which are allocated for conservation measures. At the same time the AES budget was lowered by 50% in comparison to previous period.

Again, could you please provide evidence: the numbers and source of information? Maybe the best would be to provide a table with the numbers and comparisons reflecting the changes in the AES and Less Favoured Areas payments in the new financial perspective as compared to the previous one?

According to data which shows the implementation of RDP 2007-2013 budget (Summary report on the implementation of the RDP 2007-2013 for the current week - *Zbiorcze sprawozdanie bieżące tygodniowe z realizacji PROW na lata 2007-2013*⁵) the AES budget is set at 9 583 350 219,42 PLN (c. 2 376 233 627 EUR⁶) when LFA is 9 853 277 494,38 PLN (c. 2 443 163 277 EUR⁷).

⁴ “Rozporządzenie w sprawie szczegółowych warunków i trybu przyznawania pomocy finansowej w ramach działania „Działanie rolno-środowiskowo-klimatyczne” objętego Programem Rozwoju Obszarów Wiejskich na lata 2014–2020 (PROW 2014 – 2020)” (<http://isip.sejm.gov.pl/Download?id=WDU20150000415&type=2>)

⁵ <http://www.minrol.gov.pl/Wsparcie-rolnictwa-i-rybolowstwa/PROW-2007-2013/Monitoring-i-sprawozdawczosc-PROW-2007-2013/Zbiorcze-sprawozdania-biezace-z-realizacji-PROW-2007-2013/Zbiorcze-sprawozdanie-biezace-tygodniowe-z-realizacji-PROW-na-lata-2007-2013174> - data for the state of RDP 2007- 2013 implementation on 6 March 2015

⁶ Exchange rate 4,0330 PLN/EUR: an average exchange rate of National Bank of Poland on 15 March 2015 (Table No. 074/A/NBP/2015 of 2015-04-17)

⁷ as above

Budgets of RDP payments in EUR	2007-2013	2014-2020	% of previous period
Agro environmental schemes	2 376 233 627	1 184 062 782	49,8%
Less Favoured Areas	2 443 163 277	2 165 998 652	88,7%

The "dark green" payments in AES plus organic farming budget (all sources, EC and national) constitute overall c. 3,2% (EC and assessment of national contribution) or 5% (EC contribution only) of CAP budget for Poland.

S.4

Could you provide us with evidence or examples of the "business as usual" approach for implementation showing that it slows down the achievement of the Directive's objectives?

There is no single evidence, but rather experience of hundreds of cases. Nevertheless, some examples may be given, as:

- tendency to exclude all proposals of modification of present forest management from the Plan of Conservation Measures for Natura 2000 sites, even if there are arguments that some modifications like this are necessary for achieving Directives objectives (for this, various statements of Regional Directorates of State Forests, for example RDSF Wroclaw, Szczecin, Krosno comments to the drafts of Plans of Conservation Measures for the Natura 2000 sites);
- resistance against each significant requirements for farming schemes in Plans of Conservation Measures (Letter of GDEP to the RDEP, based on the Ministry of Agriculture position - no binding requirements for farmers should be included to the Natura 2000 sites Plans of Conservation Measures, because when such requirements would be included to the plan, the payments for the farmers who are not fulfilling the would be reduced);
- resistance against including limitations and modifications of spatial planning (position of the Ministry of Environment: no conditions on spatial planning should be included to the Natura 2000 sites Plans of Conservation Measures);
- rivers maintenance (despite some modifications in legislations) and the position of Ministry of Environment and regional water managers: no modifications of water management and water maintenance should be included to the Natura 2000 sites Plans of Conservation Measures.

R.4

With reference to the last part of the answer, please ask the respondent to provide:

(a) Evidence / concrete and specific examples showing that, early in the establishment of the N2000 network, the directives' rules were subject to complaints and enquiries. We would be interested to know, in particular, who made such complaints and enquiries, and what the contents of those complaints and enquiries were.

One of the most common problems at the beginning of developing Natura2000 were conflicts between Natura 2000 and the spatial planning process. It can be considered that this problem was due to the mistake that has been committed during the early designating of the N2000 areas in 2004, because at that stage (of designating the N2000 areas) the existing land plans were not sufficiently taken into account. There was no proper informational campaign on N2000, and then also lack of proper public consultation process which both result in current tripartite conflicts between the owners of land located within the areas N2000, municipalities and RDOŚ. Owners who already had decisions on building conditions and land management and applied for a building permit, didn't get it because RDOS did not approve this (because it was in contrary with the HD and BD). The decisions which were issued earlier often did take into account existence of Natura2000, mainly due to the lack of knowledge about N2000 among officials in the community which result in many court cases. But we could say that now the situation is changing because finally the officials in municipalities (polish: gmina) (who are responsible for issuing the decisions on building conditions and land management) have a sufficient know-how about N2000 site and the quality (including the coherence with the HD and BD) of the decisions are much more better now.

R.5

Please ask the respondent to provide evidence / concrete and specific examples that the EU prevents habitats and bird protection from being weakened 'in the name of local circumstances and personal interests'.

The national scheme of species protection and protected species list was changed in 2014. Generally, the protection regime of most of the species was lowered ('strict protection' status was changed to 'partial protection'), but with exclusion of Annex IV / Annex II species and birds, for which the regime remain the same, because the provisions of the Directives were defending it from wakening it.

Please ask the respondent to provide evidence / concrete and specific examples showing that progress in the Member State is achieved 'mainly in the areas where it is enforced by the EC'.

It has to be underlined that all positive changes in Polish nature conservation legislation after 2004 were made only because they were enforced by the EC (proper EIA procedures, considering nature impact in forest management plans, species protection regime improved, procedures of repairing nature damages). There were no other positive changes in legislation which were not a result of involvement of the EC.

Please ask the respondent to provide evidence / concrete and specific examples showing that citizens wish nature to be protected because this can benefit tourism.

Increasing wealth of European society and the satisfaction of basic needs is generating increased demand for attractive natural environment (higher resources of free time, mobility) and greater ability to pay for goods and services provided by nature. Thus, environmental protection becomes more widely understood and accepted by the general society who is more eager to use the benefits provided by nature⁸.

The Natura 2000 network is an opportunity for the development of European tourism, especially tourism nature. People are getting tired of civilization and at the same time the environmental awareness of tourists is increasing. Growing trends are ecotourism, rural tourism, green schools, hiking, biking or wildlife observation and photography. Alternative forms of tourism market are growing almost three times faster than the traditional market of tourist services⁹.

C.2

Would you mind asking the respondent where they have illustrative or documentary evidence for the insufficient integration with the NEC Directive? Any case studies, academic or scientific reports would be very helpful.

The National Emission Ceilings (NEC) Directive is a critical instrument to reduce air pollution in the European Union (EU). It ensures reductions of emissions of a number of pollutants which are harmful to our health and environment. The Directive will only deliver sufficient benefits if it sets targets which are ambitious enough and establishes effective mechanisms for achieving them¹⁰.

NECD sets upper limits for the total emissions of pollutants responsible for acidification, eutrophication and ground-level ozone pollution (sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia) in 2010 for each Member State. The Directive was amended as part of the accession of new Member States and is currently being reviewed as part of the EU's Clean Air Policy Package¹¹.

⁸ A. Boltromiuk; Natura 2000 – the Opportunities and Dilemmas of the Rural Development within European Ecological Network; <http://ekorozwoj.pollub.pl/no13/l.pdf>, p. 122)

⁹ The General Directorate for Environmental Protection, 'Natura w turystyce' ('Nature tourism'), p. 1 <http://goo.gl/pek6cR>

¹⁰ Position Paper Revision of the National Emission Ceilings (NEC) Directive October 2014; October 2014, <http://www.eeb.org/EEB/?LinkServID=9168DFDD-5056-B741-DBA5B64C92B81F9D>

¹¹ The Clean Air Policy Package was adopted 18 December 2013; http://ec.europa.eu/environment/air/clean_air_policy.htm

It is estimated that 62 % of the EU area was exposed to eutrophication, including 71% of Natura 2000 ecosystems¹². The eutrophication problem is very widespread but particularly acute in Natura 2000 protected areas, threatening more than three - quarters of sites and so jeopardising the €200 - 300bn annual benefits from the Natura 2000 network¹³. The tourism sector is affected by the resulting loss of amenity and recreational value of the natural landscape. Although N2000 Although Nature is very vulnerable to air pollution (especially the emissions of pollutants responsible for acidification, eutrophication and ground-level ozone pollution), the 2001 NECD does not make explicit reference to the BHDs. However, while there is no overt linkage between the two texts, its principal aim is to improve the protection of human health and the environment in the Community by limiting emissions of acidifying and eutrophying pollutants and ozone precursors (Article 1 NECD) and there are numerous references in the Directive to the impact of acidifying and eutrophying substances on the environment, including plants and ecosystems (Recital 5 and Article 3(d) NECD).

Thus, while there is no overt linkage between the two texts, the reduction of atmospheric pollution and consequential impacts on the environment (including vegetation and ecology) is clearly coherent with, and helps to support, the achievement of the objectives of the BHDs.

C.5

What is the reason for lack of management plans for the 17 marine Natura 2000 sites in Poland? What are the main reasons for the over-fishing in Poland of certain species above the limits established at the EU level and for uncontrolled by-catches of protected species of fish, marine mammals and birds? Why there is no reliable system for monitoring and reporting by-catches?

The delay in the preparation of management plans for marine Natura 2000 sites in Poland results from the complicated consultation process which involves several stakeholders who have divergent views. It is therefore extremely challenging to find any sort of compromise, especially with regard to fisheries. The process has been lasting almost 2 years and it is difficult to say when it will end.

As to the overfishing - it is not a case of fishing above the limits set by EU - the limits are followed. The main problem is that the limits that are set by EU Fisheries Ministers very often exceed the values proposed by scientists (in this case ICES - International Council for the Exploration of the Sea). All TACs should be set according to scientific advice to ensure fulfilment of Common Fisheries Policy goals. In order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield,

¹² http://ec.europa.eu/environment/archives/air/pdf/Impact_assessment_en.pdf; p. 14

¹³ <http://ec.europa.eu/environment/nature/natura2000/financing/docs/Economic%20Benefits%20Factsheet.pdf>

the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks.

Regarding the uncontrolled by-catch of protected species of fish, mammals and birds the all by-catch should be reported in log books but it is not always the case. To ensure proper reporting there is a need to rise awareness of the fishermen's related to by-catch issue. It is also needed to develop new or modify existing fishing gears to reduce the by-catch as well as to introduce other technical measures to reduce by-catch especially in protected areas under the conservation plans for these areas (in close cooperation with fishermen to increase the compliance).

The main reason of the lack of management plans for marine N2k sites is the difficulty to prepare such plan - general lack of sufficient knowledge about distribution and ecology of marine habitats and species, and difficulties in conservation management planning of marine protected areas. Nevertheless, for majority of these sites, plans are in preparation, and necessary knowledge is step by step collected. For example, SAMBAH project (financed by LIFE, as linked to Habitat Directive) provide very important knowledge about harbour porpoise in Baltic sea, which now can be used for management planning. The project "Species conservation programmes for Seals and Harbour Porpoises" implemented by WWF (from the Operational Programme Infrastructure and Environment designated for the support of the implementation of Bird and Habitat Directive) provide important knowledge and management proposals for these two species, which now can be included to the site management plans.

The University of Technology and Life Sciences in Bydgoszcz is implementing a project entitled Management plans for Natura 2000 sites in the Kuyavian-Pomeranian and Masovian Voivodships.

AV1

Is there evidence that protection of the environment is treated much more seriously than before?

The response states that Natura 2000 implementation leads to start consideration of economic value of ecosystem services in particular application cases such as the reservoir Raciborz, however, could you clarify if the origin of this approach is the Nature Directives or the WFD or the link between them?

The origin of the cited Raciborz case is definitely the Habitat Directive. It is based on calculation of economic values of ecosystem services of natural habitats protected in Natura 2000 sites, downstream from the proposed dam/reservoir.

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